

CHAPTER 3 **SECURITY AND CONTROL**

Authority

N.J.S.A. 30:1B-6, 30:1B-10, 52:17B-169 and 2A:154-3 and 4.

Source and Effective Date

R.1997 d.41, effective January 21, 1997.
See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Executive Order No. 66(1978) Expiration Date

Chapter 3, Security and Control, expires on January 21, 2002.

Chapter Historical Note

Chapter 3, Security and Control, was originally adopted as R.1986 d.410 and d.409, effective October 6, 1986. See: 18 N.J.R. 1057(b), 18 N.J.R. 1067(a), 18 N.J.R. 2016(a). Subchapter 2, Keep Separate Status, was adopted as R.1991 d.250, effective May 20, 1991. See: 23 N.J.R. 383(a), 23 N.J.R. 1672(b). Pursuant to Executive Order No. 66(1978), Chapter 3, Security and Control, was readopted as R.1991 d.503, effective September 16, 1991. See: 23 N.J.R. 1259(a), 23 N.J.R. 3031(b). Pursuant to Executive Order No. 66(1978), Chapter 3, Security and Control, expired on September 16, 1996.

Chapter 3, Security and Control, was adopted as new rules by R.1997 d.41, effective January 21, 1997. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. INTRODUCTION

10A:3-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish policies and procedures regarding the use of force by correction officers, both on duty and off-duty;
2. Establish policies and procedures for searching inmates and facilities in order to control and deter contraband;
3. Define contraband and establish procedures for its seizure and disposal;
4. Establish procedures for breathalyzer testing in order to control and deter the use of alcohol by inmates;
5. Establish procedures for the use of polygraph examinations to insure that they are used only under limited and appropriate circumstances;
6. Establish procedures for fingerprinting and photographing juvenile inmates who may be transferred to a Department of Corrections facility;
7. Establish policies and procedures regarding the transportation of inmates outside the correctional facility and from one jurisdiction to another; and
8. Establish procedures for placing inmates in and removing inmates from keep separate status.

Amended by R.1991 d.250, effective May 20, 1991.

See: 23 N.J.R. 383(a), 23 N.J.R. 1672(b).

Added reference to keep separate status.

Amended by R.1996 d.209, effective May 6, 1996 (operative August 19, 1996).

See: 28 N.J.R. 763(a), 28 N.J.R. 2387(b).

Added breathalyzer provision.

Amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

In (a)6, added text "who may be transferred to a Department of Corrections facility".

10A:3-1.2 Scope

This chapter shall be applicable to the Department of Corrections unless otherwise indicated in this chapter.

Amended by R.1991 d.250, effective May 20, 1991.

See: 23 N.J.R. 383(a), 23 N.J.R. 1672(b).

Added reference to Subchapter 2 at (a).

Amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Amended by R.2001 d.197, effective June 18, 2001.

See: 32 N.J.R. 2637(a), 33 N.J.R. 2082(a).

Rewrote the section.

10A:3-1.3 Definitions

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Body cavity search" means the visual inspection or manual search of a person's anal or vaginal cavity.

"Central Communications Unit" means the centralized communication center within the Department of Corrections which coordinates certain functions of the Department of Corrections on a 24 hour, seven day a week basis.

"Central Control" means the unit which coordinates the security and communication functions within a correctional facility.

"Central Medical/Transportation Unit" means the centralized unit which provides transportation for inmates within the Department of Corrections.

"Contact visit" means a visit between an inmate and a visitor where there is no barrier (that is, window, wall) between them.

"Contraband" means:

1. Any item, article or material found in the possession of, or under the control of, an inmate which is not authorized for retention or receipt;

2. Any item, article or material found within the facility or on its grounds which has not been issued by the correctional facility or authorized as permissible for retention or receipt;

(b) Whenever a decision is made to remove an inmate from keep separate status, the original Form 173-II along with the supporting documents shall be forwarded to the Senior Classification Officer to be filed in the inmate's classification folder.

(c) A copy of the removal notice Form 173-II shall be sent to the Classification Department of the correctional facility at which the other inmate(s) involved in the keep separate status is housed.

Recodified from 10A:3-2.4 by R.1993 d.679, effective December 20, 1993.
See: 25 N.J.R. 4702(a), 25 N.J.R. 5929(a).

SUBCHAPTER 3. USE OF FORCE WHILE ON-DUTY

10A:3-3.1 Correction officers authorized to carry firearms while on-duty

(a) Prior to being permitted to carry a firearm on-duty, correction officers shall:

1. Have taken and successfully completed the Police Training Commission (P.T.C.) approved basic course for State correction officers as set forth in N.J.S.A. 52:17B-66 et seq. (The Department of Corrections shall allow completion of an equivalent P.T.C. approved course for county correction officers to substitute for this requirement.);
2. Have taken and successfully completed the firearms training course at the Thomas M. Cooper Corrections Staff Training Academy (CSTA), New Jersey Department of Corrections; and
3. Have been sworn as peace officers by taking the oath of office and completing Form 156-I OATH OF OFFICE.

10A:3-3.2 Firearms training, qualification and requalification

(a) As required by N.J.S.A. 2C:39-1 et seq., all correction officers shall be initially trained and shall qualify in the use and handling of approved on-duty firearms.

(b) Correction officers shall requalify annually on a range approved by the New Jersey Department of Corrections.

(c) Only those correction officers who achieve and maintain the required level of proficiency during range qualification and requalification shall be authorized to possess firearms while on-duty.

(d) Once a correction officer has qualified on his or her approved firearm, the officer shall receive the official State of New Jersey, Firearms Unit Weapons Card. Correction

officers shall be required to carry the weapons card, the official badge and photo identification card of the New Jersey Department of Corrections while on-duty.

(e) Each Director of Custody Operations, Unit Chief, or their designee shall be responsible for preparing and maintaining a current master list of each correction officer authorized to carry a firearm.

1. The master list shall be maintained by the Director of Custody Operations, Unit Chief, or their designee to indicate the correction officer's firearm qualification date (new or expired), model name and number, and serial number of the authorized firearm.

2. Each time a correction officer registers a firearm in accordance with this subsection, the Director of Custody Operations, Unit Chief, or their designee, is responsible for comparing the firearm qualification date, firearm model name and number, and firearm serial number contained on the master list against the State of New Jersey, Firearms Unit Weapons Card accompanying the firearm.

10A:3-3.3 On-duty firearm

(a) The authorized on-duty firearm shall be the responsibility of the correction officer at all times.

(b) The correction officer shall not draw or exhibit his or her firearm except for one of the following circumstances:

1. For maintenance of the firearm;
2. To secure the firearm;
3. When commanded by the firearms staff during training exercises, range practice, qualification or requalification with the firearm; or
4. When circumstances create a reasonable belief that it may be necessary to use the firearm in the performance of the correction officer's duties.

(c) A correction officer, if required to carry a firearm while on-duty, shall carry his or her on-duty firearm on his or her person at all times unless otherwise instructed by his or her immediate supervisor. The firearm shall:

1. Remain in the holster while in a rest room; and
2. Not be left in a motor vehicle or other unauthorized location except under unusual or special circumstances, such as when a correction officer must remove his or her on-duty firearm and another authorized staff member is unavailable to take custody of the firearm. Under an unusual or special circumstance every effort shall be made to secrete the firearm within a locked compartment.

(d) The correction officer entering any residential or correctional facility of the Department of Correction shall store his or her firearm at the main correctional facility or at

an approved Department of Corrections authorized weapons storage unit.

(e) When an authorized firearm is believed to have been lost or stolen, the correction officer shall report this fact to the local law enforcement authorities and to the New Jersey Department of Corrections within three hours from the time the correction officer is aware that the firearm is missing.

(f) When a State of New Jersey, Firearms Unit Weapons Card, official photo identification card or badge of the New Jersey Department of Corrections is believed to have been lost or stolen, the correction officer shall notify the local law enforcement authorities and the Director of Custody Operations, Unit Chief, or their designee as soon as practicable.

10A:3-3.4 Use of force

(a) In any case when a correction officer uses force while on-duty, the correction officer shall only use that force that is objectively reasonable under the totality of the circumstances as known by the correction officer at the time the officer uses force.

(b) A correction officer may use the amount of force reasonably necessary to accomplish the law enforcement objective. If the individual resists, the correction officer may increase the degree of force as necessary to accomplish the law enforcement objective but as soon as the individual submits, the officer shall reduce the degree of force used.

Recodified from 10A:3-3.1 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

In (a), substituted reference to use of objectivity reasonable force for reference to use of minimum force possible; and added (b). Former rule recodified to N.J.A.C. 10A:3-3.7.

10A:3-3.5 Non-deadly force; when justified

(a) The Department of Corrections justifies the use of non-deadly force against persons only under the following circumstances:

1. To protect self or others against the use of unlawful force;
2. To protect self or others against death or serious bodily harm;
3. To prevent damage to property;
4. To prevent escape;
5. To prevent or quell a riot or disturbance;
6. To prevent a suicide or attempted suicide; or
7. To enforce correctional facility regulations where expressly permitted by Department of Corrections regulations or in situations where an officer with the rank of Sergeant or above believes that the inmate's failure to comply constitutes an immediate threat to correctional facility security or personal safety.

(b) Non-deadly force includes the use of chemical agents, batons, and other weapons which are not likely to cause death or serious injury.

Recodified from 10A:3-3.2 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Substantially amended section. Former rule recodified to N.J.A.C. 10A:3-3.8.

10A:3-3.6 Deadly force; when justified

(a) Deadly force shall be used against persons on order of the following:

1. The Commissioner;
2. The Chief of Staff;
3. The Assistant Commissioner, Division of Operations;
4. The Directors, Division of Operations;
5. The Administrator (Superintendent);
6. The Associate Administrator (Assistant Superintendent);
7. The Director of Custody Operations;
8. The Chief, Special Operations Group; or
9. The Assistant Chief, Special Operations Group.

(b) The correction officer shall use deadly force against inmates when the officer reasonably believes that a lesser degree of force will be ineffective and the inmate(s) presents an imminent threat of deadly force or serious bodily harm to the officer or a third party.

(c) Deadly force may be used in the following situations under limitations consistent with the provisions of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq:

1. When the correction officer reasonably believes that deadly force is imminently necessary to protect himself or herself against the use of unlawful force which the correction officer believes may result in death or serious bodily harm;
2. When the correction officer reasonably believes that deadly force is imminently necessary to protect another against the use of unlawful force which the correction officer believes may result in death or serious bodily harm. However, deadly force is not justifiable if the correction officer can otherwise secure the complete safety of the protected person;
3. When the correction officer reasonably believes that deadly force is imminently necessary to prevent or stop the inmate from committing or continuing a criminal offense which would endanger human life or inflict serious bodily harm upon another person unless the commission or the consummation of the crime is prevented; or

4. Where the correction officer reasonably believes that deadly force is imminently necessary to prevent the escape of an inmate committed to a correctional facility for the detention of persons charged with, or convicted of an offense, provided that the correction officer reasonably believes that the force employed creates no substantial risk of injury to innocent persons.

(d) Deadly force includes, but is not limited to, the use of shotguns, handguns, rifles, and other lethal weapons.

(e) Where feasible, before using a firearm, the correction officer shall attempt to identify himself or herself as an officer and state his or her intent to shoot. Warning shots are not authorized by the Department of Corrections.

(f) The correction officer shall not discharge a firearm if there is a substantial risk of injury to innocent persons.

(g) Correction officer involved in a pursuit shall not fire his or her firearm from or at a moving vehicle or engage in any vehicle contact action, such as ramming, except as a last resort to prevent imminent death or serious injury to the correction officer or another person where deadly force would otherwise be justified.

(h) Whenever feasible, the correction officer shall contact Central Control to request assistance before engaging in any use of force that reasonably could result in serious bodily injury.

(i) Written post orders shall govern the use of deadly force by correction officers.

Recodified from 10A:3-3.3 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Substantially amended section. Former rule recodified to N.J.A.C. 10A:3-3.9.

10A:3-3.7 Use of force against persons other than inmates; duties outside security perimeter

(a) While engaged in roving patrol or other duty outside the correctional facility's security perimeter, appropriate force may be used against persons other than prison inmates when a correction officer observes what the correction officer believes to be a violation of the law and when there is also imminent peril of bodily harm to any individual or destruction of property.

(b) Whenever possible, the correction officer shall contact Central Control to request assistance before engaging in any use of force.

(c) In situations where a violation of law is suspected, but no imminent danger is present, the correction officer shall immediately contact Central Control.

(d) Non-deadly force may be used upon or toward persons other than inmates only under the following circumstances:

1. To protect self or others against the use of unlawful force;
2. To protect self or others against death or serious bodily harm;
3. To thwart the commission of a crime involving or threatening bodily harm or damage to property;
4. To prevent a suicide or attempted suicide;
5. To prevent escape, or flight from arrest for a crime; and/or
6. To effect an arrest for any offense or crime.

(e) Deadly force may be used against persons other than inmates when the correction officer reasonably believes that the person presents an imminent threat of death or serious bodily harm.

(f) The correction officer shall not discharge a firearm if there is substantial risk of injury to innocent persons.

Recodified from 10A:3-3.4 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

In (a), substituted "the correction officer believes" for "appears"; in (b), substituted "shall contact" for "should contact"; in (c), substituted "shall immediately contact" for "should immediately contact" and deleted reference to contacting local police; and added (d) through (f). Former rule recodified to N.J.A.C. 10A:3-3.10.

Case Notes

Senior corrections officer's criminal conviction for harassing his immediate superior was one "involving or touching" his employment as a senior corrections officer, and, therefore, he was properly removed from his employment pursuant to forfeiture statute. *Moore v. Youth Correctional Institute of Annandale*, 230 N.J.Super. 374 553 A.2d 830 (App.Div.1989) affirmed 119 N.J. 256, 574 A.2d 583.

10A:3-3.8 Reports

(a) The correction officer shall immediately contact his or her shift supervisor and shall write a special report when the officer participated in, or witnessed, an incident in which:

1. A firearm was discharged outside of the firing range;
2. A use of force resulted in death or serious bodily injury; and/or
3. An individual alleged that a serious bodily injury had been inflicted.

(b) The report shall contain the following information:

1. A description of the events leading up to the use of force;
2. A description of the incident;
3. The type of force used;

4. The reason(s) for employing force;
5. A list of all participants and witnesses to the incident;
6. A description of the injuries suffered, if any, and medical treatment given; and
7. Other relevant facts or comments about the incident or conduct of employees or inmates.

(c) The Shift Supervisor shall forward, as soon as possible, all special reports to the Special Investigations Division of the correctional facility and the Director of Custody Operations for review. The Director of Custody Operations shall forward all reports to the Superintendent. The Superintendent shall then report the incident in accordance with N.J.A.C. 10A:21, Reports.

Recodified from 10A:3-3.5 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Rewrote (a); in (c), inserted reference to forwarding reports as soon as possible. Former rule recodified to N.J.A.C. 10A:3-3.11.

Administrative change.

See: 32 N.J.R. 303(a).

10A:3-3.9 Use of mechanical restraints

(a) On authorization of the Shift Supervisor, mechanical restraints may be used in the following instances:

1. When transporting an inmate from place to place;
2. When the inmate's history, disciplinary record, behavior or present emotional state indicates the likelihood that bodily injury to any person, damage to property or escape by the inmate will occur; or
3. On current medical advice, to prevent the inmate from attempting suicide, self-inflicted injury, or injury to others.

(b) Mechanical restraints shall not be used as punishment, or in any way that causes undue physical discomfort, inflicts physical pain or restricts the blood circulation or breathing of the inmate.

(c) Mechanical restraints shall be removed promptly when the reason for their initial use has ceased to exist or has sufficiently abated.

(d) An inmate in restraints shall be under continuous observation by a correction officer(s).

Recodified from 10A:3-3.6 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

In (c)3, inserted reference to injury to others; and added (d). Former rule recodified to N.J.A.C. 10A:3-3.13.

10A:3-3.10 Use of chemical agents; storage

(a) Only Department of Corrections approved chemical agents shall be used by correction officers in accordance with N.J.A.C. 10A:3-3.

(b) Whenever chemical agents are used as a means of control, staff members shall comply with the reporting procedure in N.J.A.C. 10A:3-3.

(c) A correction officer is not permitted to carry or use chemical agents unless he or she has received appropriate training and annual retraining in chemical agent use and effects.

(d) After each instance of use, individuals who have been exposed to chemical agents shall be referred to the medical staff for any necessary examination and treatment.

(e) Chemical agents shall be safely stored, legibly labeled to show the chemical name and expiration date, and properly inventoried to insure security and an adequate unexpired supply.

Amended by R.1993 d.219, effective May 17, 1993.

See: 25 N.J.R. 1044(b), 25 N.J.R. 1971(b).

Revised (a).

Recodified from 10A:3-3.7 and amended by R.1996 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Substantially amended section.

10A:3-3.11 Training

(a) Training in proper methods and techniques of using force and in the legal aspect of using force shall be provided as part of the Basic Course for Correction Officers provided at the Thomas M. Cooper Corrections Staff Training Academy (CSTA), New Jersey Department of Corrections.

(b) All security and custodial personnel shall receive annual training in proper methods and techniques of using force and in the legal aspects of using force. In addition to annual training, retraining may be repeated as needed. Such training shall be provided by each correctional facility.

Recodified from 10A:3-3.8 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Substantially amended section.

10A:3-3.12 Penalties for violation

(a) Correction officer action which does not conform to the provisions of this subchapter and any procedures implemented in connection with this subchapter may result in the following:

1. Disciplinary action pursuant to N.J.A.C. 4A:2;
2. Personal, civil or criminal liability;
3. Denial of indemnification; and/or
4. Refusal by the Office of the Attorney General to represent the correction officer.

(b) Decisions regarding (a)3 and 4 above shall be made by the Attorney General after an investigation of the facts of the case.

10A:3-3.13 Correctional facility procedures

(a) Each correctional facility shall prepare suitable written post orders and procedures to govern the use of force and storage of chemical agents, consistent with this subchapter.

(b) Those correctional facilities which house juvenile commitments may promulgate written post orders and procedures which are more restrictive than these rules regarding use of chemical agents, mechanical restraints or force.

(c) All written post orders and procedures shall be forwarded to the Office of the Chief of Staff for review and approval on or before February 15 of each year.

Recodified from 10A:3-3.9 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

SUBCHAPTER 4. USE OF PERSONAL FIREARMS AND USE OF FORCE WHILE OFF-DUTY

10A:3-4.1 Personnel authorized to carry firearms while off-duty

(a) Except as provided by 10A:26, firearms may be carried off-duty only by Department:

1. Correction officers holding the rank of Senior Correction Officer and higher who meet the following requirements:

i. Have taken and successfully completed the Police Training Commission (P.T.C.) approved basic course for State correction officers as set forth in N.J.S.A. 52:17B-66 et seq. (The Department of Corrections shall allow completion of an equivalent P.T.C. approved course for county correction officers to substitute for this requirement.);

ii. Have qualified in the use and handling of approved off-duty firearms at the firearms training course of the Thomas M. Cooper Corrections Staff Training Academy (CSTA), New Jersey Department of Corrections; and

iii. Have been sworn as a peace officer by taking the Oath of Office and completing Form 156-I (Oath of Office); and

2. Administrative staff authorized by the Chief of Staff who have taken and successfully completed the firearms training course at the Thomas M. Cooper Corrections Staff Training Academy (CSTA), New Jersey Department of Corrections.

Amended by R.1987 d.515, effective December 7, 1987.

See: 19 N.J.R. 1717(a), 19 N.J.R. 2302(a).

Added Superintendents and Assistant Superintendents. New Rule, R.1988 d.107, effective March 7, 1988.

See: 20 N.J.R. 42(a), 20 N.J.R. 532(a).

Repealed text from old rule and inserted new.

Administrative correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

Amended by R.1991 d.503, effective October 7, 1991.

See: 23 N.J.R. 1259(a), 23 N.J.R. 3031(b).

Administrative title changes made and correction of an internal N.J.S.A. citation.

Amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Substantially amended section.

10A:3-4.2 Authorized off-duty firearms, ammunition and holsters

(a) Eligible employees who are trained and meet qualification specifications shall be permitted only one firearm authorized for off-duty use.

(b) A firearm intended for use as an off-duty weapon must have been obtained and registered pursuant to State and local laws of the State in which the employee lives. Employees may not loan or improperly transfer personal firearms.

(c) The off-duty firearm to be carried off-duty shall be approved and authorized by the New Jersey Department of Corrections.

(d) Ammunition for the off-duty firearm shall be approved and authorized by the New Jersey Department of Corrections.

(e) Only shoulder, waist and ankle holsters shall be used for off-duty use. Holsters must hold the firearm firmly when inverted and have no internal clips. Off-duty firearms shall be carried in the approved holsters on the body. No purse holsters or holstered firearms in purses are approved.

(f) The waist holster is the only holster approved for use while qualifying with the off-duty firearm.

(g) Personnel who elect to use a shoulder or ankle holster for off-duty use shall demonstrate proficiency in the use of that holster during firearms requalification but need not qualify while using the holster.

(h) The employee shall be responsible for assuming the cost of the firearm, ammunition, holsters and for maintaining his or her firearm in a safe, secure and serviceable condition.

Amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Substantially amended section.

10A:3-4.3 Off-duty firearm

(a) The authorized off-duty firearm shall be the responsibility of the employee at all times.

(b) The employee shall not draw or exhibit his or her firearm except for one of the following circumstances:

1. For maintenance of the firearm;
2. To secure the firearm;
3. When commanded by the firearms staff during training exercises, range practice, qualification, or requalification with the firearm; or
4. When circumstances create a reasonable belief that it may be necessary to use the firearm.

10A:3-4.4 Firearm instructors

(a) As established by the New Jersey Division of Criminal Justice requirement, only those persons who have successfully completed a Police Training Commission (P.T.C.) approved firearms instruction course and are P.T.C. certified as Firearm Instructors shall instruct in the Department of Corrections Firearms Training Program at the Corrections Staff Training Academy (C.S.T.A.).

(b) As established by the New Jersey Division of Criminal Justice, all firearms training instructors engaged by the Department of Corrections for annual and requalification firearms training shall satisfy at least one of the following requirements:

1. Be certified by the P.T.C.;
2. Possess training equivalent to the P.T.C. approval firearms instructor course and are able to demonstrate a knowledge of and skill with a firearm; or
3. Have successfully completed some other recognized firearms instructor course as determined by the Commissioner of the Department of Corrections.

Recodified from 10A:3-4.3 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Substantially amended (a); and added (b). Former rule recodified to N.J.A.C. 10A:3-4.5.

10A:3-4.5 Firearms training, qualification and requalification

(a) All personnel authorized by the DOC to carry firearms off-duty must be initially trained and shall qualify in the use and handling of approved off-duty firearms.

(b) Department of Corrections personnel who carry off-duty firearms shall requalify annually on a range approved by the New Jersey Department of Corrections.

(c) Only those employees who achieve and maintain the required level of proficiency during range qualification and requalification shall be authorized to possess firearms while off-duty.

(d) Once an individual has qualified on his or her approved personal off-duty firearm, he or she shall receive the official State of New Jersey, Firearms Unit Weapons Card. The off-duty firearm he or she carries must be the same one identified on the off-duty weapons card. Authorized personnel shall be required to carry their off-duty weapons card, the official badge and photo identification card of the New Jersey Department of Corrections at all times while carrying their off-duty firearm.

(e) The Director of Custody Operations or his or her designee at each correctional facility shall be responsible for preparing and maintaining a current master list of each employee authorized to carry an off-duty firearm.

1. The master list shall indicate the employee's firearms qualification date (new or expired), model name and number, and serial number of the authorized off-duty firearm.

2. Each time the employee registers a firearm, the Director of Custody Operations, or his or her designee, is responsible for comparing the firearms qualification date, firearm model name and number, and firearm serial number contained on the master list against the State of New Jersey, Firearms Unit Weapons Card accompanying the personal firearm.

(f) Should a personal firearm become unusable, stolen or unserviceable and the employee selects a personal off-duty firearm different from the one originally qualified for use, he or she must requalify on the different firearm before it can be used. This qualification may be completed prior to the next annual qualification period.

(g) Should the employee wish to change his or her authorized personal off-duty firearm as a matter of preference, the employee shall notify the Department of Corrections Special Operations Group—Firearms Unit to arrange for qualification in the use and handling of his or her authorized personal off-duty firearm.

Recodified from 10A:3-4.4 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Substantially amended section. Former rule recodified to N.J.A.C. 10A:3-4.6.

10A:3-4.6 Storage of personal firearms while on-duty

(a) An employee entering a correctional facility grounds while armed with an off-duty firearm must proceed directly to the weapons collection station of the correctional facility. The off-duty firearm shall be turned in fully loaded, in its holster, attached to the State of New Jersey, Firearms Unit Weapons Card. No loose or additional ammunition shall be brought into the correctional facility or carried onto Department property.

(b) The employee must present his or her official photo identification card of the New Jersey Department of Corrections when checking the firearm out of the weapons collection station.

(c) Employees are prohibited from storing off-duty weapons or ammunition in their personal vehicles while on Department property.

(d) Employees assigned to satellite units or other Department residential facilities must store their firearms at the main correctional facility or an approved authorized weapons storage unit.

(e) Personal firearms shall be checked in and out on the employee's own time. It is the employee's responsibility to allow sufficient time for this procedure so that he or she will be on time to work.

(f) Under no circumstances may an employee carry a personally owned firearm into the correctional facility beyond the weapons collection station. Personally owned firearms shall not be carried or used while on-duty except when authorized by the Superintendent and approved by the Assistant Commissioner, Division of Operations. In those instances, only firearms approved by the Department may be used by qualified officers.

Recodified from 10A:3-4.5 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Deleted (g), relating to a master list of employees authorized to carry off-duty firearms. Former rule recodified to N.J.A.C. 10A:3-4.7.

10A:3-4.7 Use of force while off-duty

(a) Although N.J.S.A. 2A:154-4 authorizes peace officers to exercise law enforcement powers, no correction officer is required to exercise those powers or to carry arms during off-duty hours.

(b) Correction officers, while off-duty, should not become involved with routine law enforcement duties as they apply to local law enforcement agencies. When a correction officer observes what he or she believes to be a violation of the law, he or she should take note of vehicle description, license plate numbers, identifying characteristics of persons involved and other relevant information and report such information to the local law enforcement agency having jurisdiction and to the Central Communication Unit, New Jersey Department of Corrections. Officers should avoid stopping or detaining vehicles or persons, or becoming involved in high speed chases.

(c) In cases where correction officers have passed the qualifying firearms examination and do elect to carry a firearm off-duty, the utmost discretion shall be exercised by the correction officer to determine when and under what conditions to use force. Whenever he or she believes that possible criminal action is taking place and that a reasonable alternative to use force exists, the correction officer must

take the action which is calculated to be least dangerous or harmful to persons or property.

(d) Any use of force while off-duty shall be in accordance with the requirements of this Subchapter.

(e) A correctional employee shall be deemed to have acted within the scope of his or her employment or in the law and enforcement interest of the State of New Jersey if he or she exercises police powers in accordance with the provisions of this Subchapter and post orders promulgated in connection therewith.

Recodified from 10A:3-4.6 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Former rule recodified to N.J.A.C. 10A:3-4.8.

10A:3-4.8 Use of non-deadly force while off-duty

(a) Whenever non-deadly force is used off-duty, the reasonable amount of force possible under the circumstances shall be used.

(b) Non-deadly force may be used off-duty by authorized persons when it is believed to be immediately necessary to:

1. Protect self or others against the unlawful use of force;
2. Protect self and/or others against death or serious bodily harm;
3. Prevent a suicide or attempted suicide;
4. Thwart the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace;
5. Prevent an escape; or
6. Effect an arrest for any offense or crime under the laws of the State of New Jersey subject to (c) below.

(c) The use of non-deadly force to effect an arrest is only justifiable if:

1. The correction officer makes known his or her identity and the purpose of the arrest; or
2. The correction officer reasonably believes that his or her identity and purpose are otherwise known by, or cannot reasonably be made known to, the person to be arrested; and
3. When the arrest is made under a warrant and the warrant is valid or reasonably believed by the correction officer to be valid.

Recodified from 10A:3-4.7 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

In (a), substituted reference to using reasonable amount of force for reference to use of minimum amount of force; in (b)1, substituted reference to unlawful use of force for reference to any physical assault; inserted (b)2; recodified former (b)2 through (b)5 as (b)3 through

(b)6; in (b)3, deleted reference to infliction of serious bodily harm and inserted reference to attempted suicide; inserted (c)2; and recodified former (c)2 as (c)3. Former rule recodified to N.J.A.C. 10A:3-4.9.

10A:3-4.9 Use of deadly force while off-duty

(a) Deadly force includes, but is not limited to, the use of firearms and other lethal weapons.

(b) Deadly force may be used in the following situations under limitations consistent with the provisions of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq.

1. When the correction officer reasonably believes that deadly force is imminently necessary to protect himself or herself against the use of unlawful force which he or she believes may result in death or serious bodily harm;

2. When the correction officer reasonably believes that deadly force is imminently necessary to protect another against the use of unlawful force which he or she believes may result in death or serious bodily harm. However, deadly force is not justifiable if the correction officer can otherwise secure the complete safety of the protected person;

3. When the correction officer reasonably believes that deadly force is imminently necessary to prevent or stop the suspect from committing or continuing a criminal offense which would endanger human life or inflict serious bodily harm upon another person unless the commission or the consummation of the crime is prevented;

4. When the correction officer has probable cause to believe that the suspect will pose an imminent threat of death or serious bodily harm to human life should the officer not take immediate action by deadly force to effect an arrest or to prevent the escape of a fleeing suspect; and

5. Where the correction officer reasonably believes that deadly force is imminently necessary to prevent the escape of a person committed to a correctional facility for the detention of persons charged with, or convicted of an offense, provided that the officer reasonably believes that the force employed creates no substantial risk of injury to innocent persons.

(c) Where feasible, before using a firearm, the correction officer shall attempt to identify himself or herself as an officer and state his or her intent to shoot. Warning shots are not authorized.

(d) The correction officer shall not discharge a firearm if there is a substantial risk of injury to innocent persons.

Recodified from 10A:3-4.8 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Substantially amended section. Former rule recodified to N.J.A.C. 10A:3-4.10.

10A:3-4.10 Unauthorized use of personal weapons while off-duty

(a) An employee shall not be authorized to carry an off-duty firearm in the following instances:

1. Where N.J.S.A. 2C:39-7 (Persons Convicted of Certain Crimes) is applicable;

2. Where 18 U.S.C. 1202 Appx.—Appendix to the United States Code (Persons Convicted of Certain Crimes) is applicable;

3. When an employee has been suspended from duty for any violation by the Superintendent or a higher official of the Department;

4. When there are pending charges or ongoing investigations of alleged incidents involving the misuse of a firearm;

5. When otherwise required by law or regulation; or

6. Any other situation where the Superintendent/Unit Chief or their designee may exercise their authority to withdraw off-duty firearms privileges, subject to the review of the Assistant Commissioner, Division of Operations, Chief of Staff, or Commissioner, Department of Corrections.

(b) In any of the instances in (a) above, the State of New Jersey, Firearms Unit Weapons Card shall be turned in to the Superintendent/Unit Chief, or their designee.

Recodified from 10A:3-4.9 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Inserted (a)5; and recodified former (a)5 as (a)6. Former rule recodified to N.J.A.C. 10A:3-4.11.

10A:3-4.11 Possession of firearms within a casino or casino simulcasting facility

Pursuant to N.J.A.C. 19:45-1.13, an employee shall not possess or be permitted to possess a firearm within a casino or casino simulcasting facility.

Recodified from 10A:3-4.10 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Substituted references to possession of firearms for a reference to carrying firearms and added reference to simulcast facility. Former rule recodified to N.J.A.C. 10A:3-4.12.

10A:3-4.12 Reporting incidents

(a) When an authorized off-duty firearm is believed to have been lost or stolen, the employee shall report this fact to the local law enforcement authorities and to the correctional facility Central Control or the New Jersey Department of Corrections Central Communications Unit within three hours from the time he or she is aware that the firearm is missing.

(b) As soon as practicable, when a State of New Jersey, Firearms Unit Weapons Card, official photo identification card or badge of the New Jersey Department of Corrections is believed to have been lost or stolen, the employee shall notify the local law enforcement authorities and the Superintendent/Unit Chief or their designee.

(c) Except as outlined in N.J.A.C. 10A:3-4.3(b)1 through 3, the employee shall immediately and without exception report to the local law enforcement authorities and the correctional facility Superintendent/Unit Chief or their designee:

1. Any incident where the employee displayed, drew or fired his or her off-duty firearm; or
2. Any incident or injury which occurred from the use of the employee's firearm.

(d) On the next working day after any incident as described in this section, the employee shall report in writing to the Superintendent /Unit Chief or their designee the incident and identifying particulars of the incident. The Superintendent/Unit Chief or their designee shall then forward the report for review to the Chief of Staff, the Office of Public Information, and the Central Office Special Investigations Division.

(e) The employee shall, within three days, report to the correctional facility Superintendent/Unit Chief, or their designee in writing whenever a registered authorized off-duty firearm has been sold or is no longer in use.

Recodified from 10A:3-4.11 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Substantially amended section. Former rule recodified to N.J.A.C. 10A:3-4.13.

Administrative change.

See: 32 N.J.R. 303(a).

10A:3-4.13 Penalties for violation

(a) Employee actions which do not conform to the provisions of this subchapter and any post orders or procedures implemented in connection with this subchapter may result in the following:

1. Disciplinary action pursuant to N.J.A.C. 4A:2;
2. Personal, civil or criminal liability;
3. Denial of indemnification; and/or
4. Refusal by the Office of the Attorney General to represent the officer.

(b) Decisions regarding (a)3 and 4 above will be made by the Attorney General after reviewing the facts of the case.

Recodified from 10A:3-4.12 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

In (a), inserted reference to post procedures; in (a)1, inserted N.J.A.C. reference; and deleted (c), relating to uses of force which

allow denial of indemnification and representation. Former rule recodified to N.J.A.C. 10A:3-4.14.

10A:3-4.14 Post orders and procedures

(a) Each correctional facility shall be responsible for developing written post orders and procedures consistent with this subchapter.

(b) All written post orders and procedures shall be forwarded to the Office of the Chief of Staff for review and approval on or before February 15 of each year.

Recodified from 10A:3-4.13 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

SUBCHAPTER 5. SEARCHES OF INMATES AND FACILITIES

10A:3-5.1 Purpose

Facilities and inmates may be searched as provided by this subchapter for the purpose of controlling and deterring the introduction and concealment of contraband. The definition of contraband and all procedures for disposition of contraband set forth in N.J.A.C. 10A:3-6, CONTRABAND AND DISPOSITION OF CONTRABAND are fully applicable to this subchapter.

10A:3-5.2 Search plan

(a) Each correctional facility shall develop and implement a comprehensive written plan governing routine and random searches of facilities and inmates. Each plan shall be submitted to the Office of the Chief of Staff for review and approval on or before February 15 of each year.

(b) Each correctional facility shall appoint a custody staff member, at a rank no less than Captain, as Institutional Search Plan Coordinator.

(c) The Institutional Search Plan Coordinator shall submit a monthly written report, on the appropriate implementation of the Institutional Search Plan and search results, to the Administrator.

(d) The Administrator of each correctional facility shall report search results on a monthly basis to the Chief of Staff or designee.

Amended by R.1988 d.582, effective December 19, 1988.

See: 20 N.J.R. 2441(a), 20 N.J.R. 3155(a).

Added (b)-(d).

Amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Amended by R.2001 d.197, effective June 18, 2001.

See: 32 N.J.R. 2637(a), 33 N.J.R. 2082(a).

In (a), inserted "routine and random" preceding "searches"; in (b), substituted "a custody staff member" for "an officer"; in (c), inserted

"and search results" following "Institutional Search Plan", and substituted "Administrator" for "Superintendent"; rewrote (d).

10A:3-5.3 Searches of inmates and facilities

(a) All facility residential, work, training, visit areas and other areas to which inmates have access shall be searched thoroughly for contraband on a routine, continuing basis. Searches shall be unannounced and irregularly timed, and may be limited to a specific building or area.

(b) Procedures to be utilized in conducting searches shall be as set forth in an internal management document prepared by each correctional facility Administrator or designee to be promulgated pursuant to the search plan required by N.J.A.C. 10A:3-5.2. Such procedures may provide that an inmate may be excluded from entry into an area being searched to facilitate the safe and effective performance of the search.

(c) Searches of inmates shall be conducted in a professional and dignified manner, with maximum courtesy and respect for the inmate's person, and under sanitary conditions.

(d) No inmate shall be searched as punishment or discipline except as provided by N.J.A.C. 10A:3-5.10.

Amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Added (c) and (d).

Amended by R.2001 d.197, effective June 18, 2001.

See: 32 N.J.R. 2637(a), 33 N.J.R. 2082(a).

In (a), substituted "inmate" for "facility" preceding "residential" and inserted "visit" preceding "areas and other areas"; in (b), inserted "in an internal management document prepared" following "as set forth" and substituted a reference to Administrator or designee for a reference to Standard Operating Procedures.

10A:3-5.4 Inspection of security devices

(a) All bars and sashes, locks, windows, doors, lock boxes and other security devices shall be inspected daily to detect any tampering or defect.

(b) Emergency keys shall be checked at least quarterly to determine that they work properly.

(c) Inspections of security devices shall be conducted continuously and systematically but scheduled to avoid an observable or predictable routine. The results of all inspections shall be submitted in writing to the shift supervisor for review by the Director of Custody Operations.

10A:3-5.5 Use of scanning/testing devices

(a) Searches of inmates, areas and objects by the use of scanning/testing devices may be done routinely and randomly where necessary for security purposes. This may be, but is not limited to, a walk-through device or a handheld device which is passed over the fully clothed body of the inmate. A scanning/testing device may also be utilized in conjunction with a strip search.

(b) Scanning/testing device searches of inmates may be conducted by male or female custody staff members or scanning/testing device operators subject to the limitations set forth in N.J.A.C. 10A:3-5.7 and 5.8.

Amended by R.2001 d.197, effective June 18, 2001.

See: 32 N.J.R. 2637(a), 33 N.J.R. 2082(a).

Rewrote the section.

10A:3-5.6 Pat search

(a) A pat search shall be conducted while the inmate is fully clothed. A pat search includes both the touching of the inmate's body through clothing, including hair, dentures, etc., and a thorough examination into pockets, cuffs, seams, etc., and all personal property in the inmate's possession.

(b) Pat searches of inmates may be conducted at any time in the following circumstances:

1. Prior to the departure or return of the inmate to or from any area where the inmate has had access to dangerous or valuable items;
2. Prior to entering or departing the visiting room; or
3. Under any other circumstances where conditions indicate a need for such searches, as, for example, upon departure of inmates from kitchen or dining areas.

(c) In addition to the foregoing routine searches, a pat search may be conducted at any time when there is a reasonably clear indication that the inmate is carrying contraband. Factors which may form the basis for such search may include:

1. Personal observations of activities or conditions which may be interpreted in light of the custody staff member's experience and knowledge of the inmate as indicating the possession of contraband; or
2. Information received from a third party who is believed to be reliable.

(d) Pat searches may be conducted by either male or female custody staff members regardless of the gender of the inmate.

Amended by R.1988 d.406, effective September 6, 1988.

See: 20 N.J.R. 1331(a), 20 N.J.R. 2294(a).

Changed frisk to pat.

Amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

In (b)1 inserted reference to returning inmates; and in (b)2, inserted reference to departing visiting rooms.

Amended by R.1997 d.343, effective August 18, 1997.

See: 29 N.J.R. 2614(b), 29 N.J.R. 3732(a).

In (c), deleted prior approval requirement.

Amended by R.2001 d.197, effective June 18, 2001.

See: 32 N.J.R. 2637(a), 33 N.J.R. 2082(a).

In (c)1, substituted "custody staff member's" for "correction officer's"; in (d), substituted "custody staff members" for "officers" and "gender" for "sex".

(b) Money orders and certified checks shall be the only approved form of money received through the mail which can be accepted by the correctional facility for deposit in inmates' accounts.

(c) All personal checks, whether received in the mail or brought in by visitors, shall be deemed contraband and shall not be accepted by the facility for deposit in inmates' accounts.

(d) All cash received through the mail shall be deemed contraband and shall not be accepted by the facility for deposit in inmates' accounts.

(e) Money orders and certified checks shall be the only approved form of money a visitor may bring to the correctional facility for deposit in an inmate's account. Cash shall not be accepted.

(f) Facilities desiring to do so shall be permitted to place an upper limit on the total amount of funds which an inmate is permitted to receive, per day, from one visitor or a combination of visitors.

(g) The following procedures shall be utilized for disposing of the items defined as contraband:

1. All personal checks shall be refused if brought in by a visitor. Personal checks received through the mail shall be returned to the sender, at the correctional facility's expense. Personal checks returned via the mail shall include a note to the sender indicating that Department policy prohibits acceptance. In addition, Form 171-I (Seizure of Contraband Report) shall be filled out and a copy sent to the inmate.

2. All cash received through the mail shall be sent to the facility's Business Office whereupon a check, for each amount of cash received, shall be issued to the sender and mailed to the sender at the facility's expense. Accompanying the check shall be a note to the sender indicating that Department policy prohibits the acceptance of cash through the mail and explaining that the money is being returned in check form to protect against theft. In addition, Form 171-I (Seizure of Contraband Report) shall be filled out and a copy sent to the inmate.

Administrative Correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

Amended by R.1995 d.402, effective July 17, 1995.

See: 27 N.J.R. 1945(a), 27 N.J.R. 2692(a).

Recodified from 10A:3-6.7 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

In (b), required checks be certified; rewrote (e); and in (f), substituted "funds" for "cash". Former rule recodified to N.J.A.C. 10A:3-6.5. Administrative change.

See: 32 N.J.R. 303(a).

Cross References

Cash and personal checks as contraband, see N.J.A.C. 10A:18-2.13.

10A:3-6.7 Disciplinary reports

(a) When disciplinary reports are issued resulting from application of this Subchapter, such reports shall be issued and adjudicated in accordance with Chapter 4, INMATE DISCIPLINE.

(b) Specific prohibited acts which involve contraband are enumerated in N.J.A.C. 10A:4-4.1 and in the Department of Corrections, Handbook on Discipline.

Administrative Correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

Recodified from 10A:3-6.8 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

In (b), deleted reference excepting Lloyd McCorkle Training School for Boys and Girls and amended and deleted handbook references; and deleted (c). Former rule recodified to N.J.A.C. 10A:3-6.6.

10A:3-6.8 Introduction or discharge of contraband into or from a facility by a visitor

(a) Any visitor present within the correctional facility or on its grounds shall surrender any item, article, or material which the Superintendent or his or her designee shall determine to be contraband.

1. The correction officer or staff member seizing any item, article or material determined to be contraband, possession of which does not appear to violate any Federal or State statute, shall give the visitor an itemized, dated and signed receipt. When the visitor exits the facility, the employee shall, in return for the receipt, return the item to the visitor.

2. If there shall be reason to believe that possession of the contraband violates a Federal or State statute, the employee shall detain such a visitor and notify the correctional facility Special Investigations Division.

(b) If there shall be reason to believe that a visitor has willfully introduced or was attempting to introduce contraband into the facility, such person shall be detained in the facility and the correctional facility Special Investigations Division shall be notified.

(c) Visitors may be subject to denial of future visits as specified by the Superintendent because of the presence of contraband in their possession or under their control. Where warranted, the case may be referred to the appropriate law enforcement authority for criminal prosecution.

Recodified from 10A:3-6.9 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

In (a)2 and (b), substituted "correctional facility Internal Affairs Unit" for "appropriate police agency"; and in (c), inserted "to the appropriate law enforcement authority". Former rule recodified to N.J.A.C. 10A:3-6.7.

Administrative change.

See: 32 N.J.R. 303(a).

10A:3-6.9 Introduction or discharge of contraband into or from a facility by the mail

(a) Incoming correspondence and publications shall always be inspected for contraband. Any discovery of contraband in correspondence or publications shall be handled in accordance with N.J.A.C. 10A:18, MAIL, VISITS AND TELEPHONE.

(b) Unauthorized money or currency found in correspondence or publications shall be handled in accordance with N.J.A.C. 10A:3-6.6.

Recodified from 10A:3-6.10 and amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Former rule recodified to N.J.A.C. 10A:3-6.8.

SUBCHAPTER 7. POLYGRAPH EXAMINATIONS**10A:3-7.1 Use of polygraph examinations with inmates**

(a) A polygraph examination may be requested by the Superintendent:

1. When there are issues of credibility regarding serious incidents or allegations which may result in a disciplinary charge; or

2. As part of a reinvestigation of a disciplinary charge, when the Superintendent is presented with new evidence or finds serious issues of credibility.

(b) The polygraph shall not be used in place of a thorough investigation, but to assist an investigation when appropriate.

(c) Agreement by the inmate to take a polygraph examination shall not be a pre-condition for ordering a reinvestigation. An inmate's request for a polygraph examination shall not be sufficient cause for granting the request.

Case Notes

Inmate's request for polygraph not sufficient cause for granting request. *Johnson v. New Jersey Dept. of Corrections*, 298 N.J.Super. 79, 688 A.2d 1123 (A.D.1997).

10A:3-7.2 Use of polygraph examinations with staff

Pursuant to N.J.S.A. 2A:170-90.1, no employee may be forced to consent to a polygraph examination as a prerequisite to employment or as a condition of retaining employment.

10A:3-7.3 Requesting a polygraph examination

The Superintendent shall request all polygraph examinations from the Department's Special Investigations Division, Polygraph Section, using Form 285-I, Request for Polygraph Examination. The Special Investigations Division, Polygraph Section, must approve all requests. If the polygraph involves a case in litigation, the request must be approved by the Commissioner or Chief of Staff prior to being referred to the Polygraph Section.

Amended by R.1997 d.41, effective January 21, 1997.

See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Administrative change.

See: 32 N.J.R. 303(a).

10A:3-7.4 Scheduling polygraph examinations

(a) Polygraph examinations shall be scheduled by the Department's Special Investigations Division, Polygraph Section. If the Department's polygraphists are not available, the Special Investigations Division shall make arrangements to obtain the services of a State Police polygraphist.

(b) The only polygraph examinations acceptable to the Department shall be those performed by the Department's polygraphists or those assigned to the State Police Polygraph Unit. No action of any kind shall be taken based on the results of independently performed polygraph examinations.

(c) Because polygraph examinations may be inappropriate under certain circumstances, the final decision on whether a polygraph examination will be given at a particular time shall be made by the polygraphist assigned to each individual case.

Administrative change.

See: 32 N.J.R. 303(a).

10A:3-7.5 Procedural limitations

(a) The inmate must be advised that the test is being administered as part of an official investigation.

(b) No examination shall be conducted unless the inmate has knowingly and without duress signed a written consent form. Under no circumstances shall any inmate be threatened or coerced into taking a polygraph examination. No inmate shall receive a disciplinary charge for refusal to take a polygraph examination.

(c) Whenever possible, the examination shall be conducted at the correctional facility where the inmate resides. However, the polygraphist may choose any other competent testing facility.

10A:3-7.6 Use of polygraph examinations with juveniles

(a) A juvenile under the age of 18 who consents to take a polygraph examination shall take the examination only with the express written consent of his or her parent or guardian, or if there is an appropriately executed court order.

(b) All other factors relating to administering polygraph examinations to juveniles shall be handled in the same manner as to an adult inmate.

SUBCHAPTER 8. (RESERVED)**Subchapter Historical Note**

Subchapter 8, Fingerprinting and Photographing Juvenile Inmates, was repealed by R.2001 d.197, effective June 18, 2001. See: 32 N.J.R. 2637(a), 33 N.J.R. 2082(a).

SUBCHAPTER 9. TRANSPORTATION OF
INMATES**10A:3-9.1 Use of State-owned and privately-owned vehicles**

(a) Transporting of inmates shall be done only in State-owned vehicles, except when emergencies or other unusual circumstances require the use of privately-owned vehicles.

(b) If it is necessary for an inmate to ride in an employee's private vehicle, the employee must secure approval

from the Superintendent or his or her designee of the facility responsible for the inmate prior to such transportation.

1. If approval is granted, the employee shall be made aware of Departmental policy regarding the use of private vehicles and the liability provisions currently applicable as established by the Department of the Treasury, Division of Budget and Accounting.