

8. When the Administrator, Associate Administrator, Assistant Superintendent or the Director of Custody Operations orders all inmates of a particular housing unit, work detail or other functional unit to be tested;

9. When a custody staff member of the rank of Sergeant or above orders testing upon any inmate's return from furlough or other unsupervised temporary release from custody; or

10. When a Disciplinary Hearing Officer/Adjustment Committee orders testing as part of a sanction for a prohibited substance related infraction.

(c) An inmate's refusal to submit to testing, or failure to comply with an order to submit a specimen shall result in disciplinary action in accordance with N.J.A.C. 10A:4.

(d) When an inmate is scheduled for release on parole and either the initial test result is positive, or the inmate refuses to submit to testing, or the inmate fails to comply with an order to submit a specimen, the initial positive test result or documentation of the inmate's refusal to provide or failure to comply shall be forwarded to the New Jersey State Parole Board. If an inmate scheduled for release on parole receives a disciplinary charge(s) based upon either positive test results, or refusal to be tested or a failure to comply with an order to submit a specimen, the disciplinary adjudication result(s) shall be forwarded to the New Jersey State Parole Board.

Recodification: this section was recodified from N.J.A.C. 10A:3-5.8.

See: 19 N.J.R. 1175(a), 19 N.J.R. 1813(a).

Recodified from 10A:3-5.9 and amended by R.1997 d.41, effective January 21, 1997.

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

Substituted a general reference to drug use for more specified references, in (a); substituted "use by the inmate" for "use by the correctional facility staff"; and in (b), substituted "shall" for "may". Former rule recodified to N.J.A.C. 10A:3-5.11.

Amended by R.2000 d.33, effective January 18, 2000.

See: 31 N.J.R. 3577(a), 32 N.J.R. 303(b).

Rewrote the section.

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (b)6, inserted "a non-alcoholic" following "possessing"; in (b)7, substituted "facility" for "facilities" throughout, and inserted "a non-alcoholic" following "possessing".

Case Notes

Evidence of chain of custody of inmate's urine sample met constitutional requirements. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Sanctions against prison officials for violation of court ordered chain-of-custody requirements unwarranted. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Inmate not entitled to compensation for prison's failure to comply with court-ordered chain-of-custody requirements. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Random urinalysis program did not violate due process. *Laird v. McBride*, N.D.Ind.1993, 858 F.Supp. 822.

Failure to follow chain of custody procedures set forth on random urinalysis program form did not violate due process. *Laird v. McBride*, N.D.Ind.1993, 858 F.Supp. 822.

10A:3-5.11 Collection, storage and analysis of specimens

(a) Testing shall be conducted by staff who have been trained to perform the test(s).

(b) Specimens shall be collected, labeled, handled and, when necessary, sealed, stored, and transported in accordance with the instructions/standards provided by the manufacturer of the test.

(c) Testing shall be conducted using methods deemed reliable by the Department of Corrections.

(d) If the initial test result is positive, the specimen shall be subject to a confirmation test of equal or greater sensitivity than the initial test.

(e) Each time a specimen is collected for the reasons stated in N.J.A.C. 10A:3-5.10, a continuity of evidence form shall be completed and maintained with the specimen.

(f) If testing is conducted through urinalysis, specimens taken from inmates shall be voided directly into an approved specimen container and immediately labeled in the presence of the inmate and at least one custody staff member or other authorized staff member of the same gender as the inmate.

1. A minimum of 30 milliliters must be voided to ensure a sufficient quantity for all required testing.

2. Urine specimen testing shall be performed on-site or at a licensed laboratory as determined by the Commissioner or designee.

3. For initial on-site and confirmatory on-site testing of a urine specimen, the labeled specimen shall be tested and handled in accordance with the instructions/standards provided by the manufacturer of the on-site test. Chain of custody of the specimen shall be maintained.

4. For initial laboratory and confirmatory laboratory testing of a urine specimen, the labeled specimen shall immediately be closed and sealed in the presence of the inmate by the custody staff member or other authorized staff member. Chain of custody of the specimen shall be maintained.

5. The specimen label shall include the inmate's name and number, the correctional facility to which the inmate is assigned, the name of the custody staff member or other authorized staff member who witnessed the voiding of the specimen, the date and time the specimen was voided, the current use or non-use of prescription medication by the inmate, and the inmate's signature. Should the inmate refuse to sign, the custody staff member or other authorized staff member who witnessed the voiding of the specimen shall indicate the refusal on the label and on the continuity of evidence form.

6. When an initial urine test result is positive, the custody staff member or other authorized staff member who signs the label as witness shall, as soon as reasonably practicable, deliver the urine specimen to the Special Investigations Division Investigator or other custody staff member responsible for maintaining custody over evidence.

7. For laboratory confirmatory testing, the urine specimen shall be placed in a locked and secure refrigerator or freezer by the custody staff member or other authorized staff member responsible for maintaining custody over evidence as soon as reasonably practical, but in no event later than eight hours after the specimen was voided.

8. The custody staff member or other authorized staff member who receives custody of the urine specimen shall record on the continuity of evidence form the date and time the specimen was received, the name of the staff member from whom it was received, and the date and time of specimen placement into the evidence locker and/or locked refrigerator.

9. Inmate urine specimens transported out of the correctional facility for laboratory testing shall be transported, where reasonably practical, in an iced cooler or similar device. The date and time of the removal of the urine specimen from the correctional facility, as well as the date and time of specimen receipt by the testing facility shall be noted on the continuity of evidence form by the person(s) performing these functions.

10. Laboratory testing of urine specimens shall be conducted only when the urine specimen arrives at the testing facility in a sealed and approved urine specimen container.

(g) Inmates charged with the use of prohibited substances not prescribed by the medical staff based upon the results of testing shall be advised of the results of any tests at least 24 hours prior to any disciplinary hearing ordered because of those charges.

(h) All testing shall be accomplished in a professional and dignified manner with maximum courtesy and respect for the inmate's person.

(i) No inmate shall be disciplined for refusing to provide a specimen or failing to comply with an order to submit a specimen unless that inmate has been given a reasonable physical opportunity to comply with such order.

1. For the purposes of urine testing, a reasonable physical opportunity shall constitute a two-hour period from the time of the initial order. The inmate maybe required to remain in isolation during this two-hour period.

2. The inmate shall not be deemed to have complied with the order to submit a specimen unless he or she provides a specimen in the presence of a custody staff member or other authorized staff member.

Recodification: This section was recodified from N.J.A.C. 10A:3-5.9.

See: 19 N.J.R. 1175(a), 19 N.J.R. 1813(a).

Amended by R.1989 d.140 effective March 20, 1989.

See: 21 N.J.R. 10(a), 21 N.J.R. 765(c).

At (b)1. . . . "in the presence of the inmate" . . . , added.

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

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

Established minimum amount of urine necessary to provide an adequate sample for analysis.

Recodified from 10A:3-5.10 and amended by R.1997 d.41, effective January 21, 1997.

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

In (b)3, inserted inmate signature requirement and procedure upon inmate's refusal to sign. Former rule recodified to N.J.A.C. 10A:3-5.12.

Petition for Rulemaking.

See: 30 N.J.R. 3340(a), 30 N.J.R. 3703(a).

Amended by R.2000 d.33, effective January 18, 2000.

See: 31 N.J.R. 3577(a), 32 N.J.R. 303(b).

Rewrote the section.

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Case Notes

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Failure to follow chain of custody procedures set forth on random urinalysis program form did not violate due process. *Laird v. McBride*, N.D.Ind.1993, 858 F.Supp. 822.

10A:3-5.12 (Reserved)

New Rule, 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).

Recodified from 10A:3-5.11 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:3-5.12.

Repealed by R.2000 d.33, effective January 18, 2000.

See: 31 N.J.R. 3577(a), 32 N.J.R. 303(b).

Section was "Breathalyzer testing of inmates".

10A:3-5.13 Orientation and training

(a) Each Administrator shall be responsible for ensuring that the requirements and guidelines set forth in this subchapter are followed.