

CHAPTER 4

INMATE DISCIPLINE

Authority

N.J.S.A. 30:1B-6 and 30:1B-10.

Source and Effective Date

R.2011 d.157, effective May 4, 2011.
See: 43 N.J.R. 366(a), 43 N.J.R. 1343(a).

Chapter Expiration Date

Chapter 4, Inmate Discipline, expires on May 4, 2018.

Chapter Historical Note

Chapter 4, Inmate Discipline, was adopted as R.1986 d.283, effective July 21, 1986. See: 18 N.J.R. 27(a), 18 N.J.R. 1465(a).

Subchapter 13, Resident Discipline Program for the Training School for Boys at Skillman, was repealed by R.1988 d.239, effective June 6, 1988. See: 20 N.J.R. 496(a), 20 N.J.R. 1224(a).

Subchapter 12, Appeal to Office of Administrative Law (OAL), was repealed by R.1988 d.543, effective November 21, 1988. See: 20 N.J.R. 496(b), 20 N.J.R. 2928(a).

Pursuant to N.J.S.A. 30:7-1, the following correctional facilities in Chapter 4 were redesignated: Training School for Juveniles at Jamesburg to the New Jersey Training School for Boys; Girls Unit and The Boys Unit of the Training School for Boys at Skillman to the Lloyd McCorkle Training School for Boys and Girls; Clinton Correctional Institution to the Edna Mahan Facility for Women; Trenton State Prison to the New Jersey State Prison. See: 21 N.J.R. 558(a).

Pursuant to Executive Order No. 66(1978), Chapter 4, Inmate Discipline, was readopted as R.1991 d.276, effective May 7, 1991. See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Pursuant to Executive Order No. 66(1978), Chapter 4, Inmate Discipline, was readopted as R.1996 d.237, effective April 26, 1996. See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b). Pursuant to Executive Order No. 66(1978), Chapter 4, Inmate Discipline, expired on April 26, 2001.

Chapter 4, Inmate Discipline, was adopted as new rules by R.2001 d.221, effective July 2, 2001. See: 33 N.J.R. 1289(a), 33 N.J.R. 2291(a).

Subchapter 12, Zero Tolerance Policies of the Department of Corrections, was adopted as emergency new rules by R.2005 d.435, effective November 15, 2005, to expire on January 14, 2006. See: 37 N.J.R. 4575(a). Subchapter 12, Zero Tolerance Policies of the Department of Corrections, was adopted as concurrent new rules by R.2006 d.58, effective January 11, 2006. See: 37 N.J.R. 4575(a), 38 N.J.R. 993(a).

Chapter 4, Inmate Discipline, was readopted as R.2006 d.398, effective October 24, 2006. As a part of R.2006 d.398, Subchapter 1, Introduction, was renamed General Provisions, effective November 20, 2006. See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 4, Inmate Discipline, was scheduled to expire on April 21, 2014. See: 43 N.J.R. 1203(a).

Chapter 4, Inmate Discipline, was readopted as R.2011 d.157, effective May 4, 2011. See: Source and Effective Date. See, also, section annotations.

Petition for Rulemaking. See: 47 N.J.R. 834(a), 1027(b).

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SUBCHAPTER 1. GENERAL PROVISIONS

10A:4-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish policies to assure that inmate discipline and control are consistent with the correctional objectives of the Department of Corrections and the correctional facility;

2. Establish a comprehensive code of offenses and set of permissible punishments in order that prescribed behavior may be known by both inmates and staff;

3. Establish administrative due process safeguards in the disciplinary process as required by the United States Supreme Court in *Wolff v. McDonnell*, 418 U.S. 539 (1974) and the New Jersey Supreme Court in *Avant v. Clifford*, 67 N.J. 496 (1975);

4. Enforce rules and impose appropriate sanctions for infractions;

5. Stimulate application of disciplinary procedures which encourage future voluntary acceptance of certain behavior limitations that are necessarily being imposed upon the inmate;

6. Build and maintain morale among inmates and between staff and inmates by providing impartial and fair procedures throughout the disciplinary process.

Amended by R.1991 d. 276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Corrected reference to Chapter in (a).

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Case Notes

Correctional institution regulations held constitutional (citing former N.J.A.C. 10:35). *Avant v. Clifford*, 67 N.J. 496, 341 A.2d 629 (1975).

10A:4-1.2 Scope

(a) This chapter shall be applicable to the Division of Operations unless otherwise indicated.

(b) This chapter shall apply to State sentenced inmates incarcerated at adult county correctional facilities.

Amended by R.1987 d. 506, effective December 21, 1987.

See: 19 N.J.R. 1531(a), 19 N.J.R. 2403(a).

Added "the Girls Unit ... Boys at Skillman".

Amended by R.1988 d. 239, effective June 6, 1988.

See: 20 N.J.R. 496(a), 20 N.J.R. 1224(a).

Added Boys Unit to the Girls Unit.

Administrative correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1994 d.182, effective April 4, 1994.

See: 26 N.J.R. 727(a), 26 N.J.R. 1506(a).

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

10A:4-1.3 Definitions

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

"Adjustment Committee" means the committee within a correctional facility that is authorized to hear and adjudicate inmate violations of prohibited acts.

"Administrative Close Supervision Unit" means a close custody unit to which an inmate may be assigned because of

one or more disciplinary infractions or other administrative considerations.

“Bodily fluid” shall mean saliva, blood, urine, feces, seminal fluid or any other bodily fluid (see N.J.S.A. 2C:12-12).

“Bodily injury” shall mean physical pain, illness or any impairment of physical condition (see N.J.S.A. 2C:11-1).

“Extra duty” shall mean a task(s) other than those related to an inmate’s work or program assignment(s) to which an inmate has been assigned as a result of a violation of a prohibited act.

“Fact witness” means a witness who provides a factual account of the incident based upon his or her being personally involved in, or having personally observed the incident or aspects thereof. For example, a Department of Corrections staff member who administers a test for prohibited substances may be considered a fact witness if a question of fact exists with regard to the taking, initial testing or custody of the specimen.

“Major violations” shall mean the violation of a prohibited act that is preceded by an asterisk.

“Minor violations” shall mean the violation of a prohibited act that is not preceded by an asterisk.

“Repetitive witness” means a witness who is expected to provide substantially the same testimony as a previous witness.

“Serious bodily injury” shall mean bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ (see N.J.S.A. 2C:11-1).

“Special Classification Committee” (S.C.C.) shall mean the body composed of representatives from the Prison and Youth Complexes within the Division of Operations, which considers the transfer of inmates between complexes.

“Unavailable witness” is a witness who is unable, for medical, leave or other valid reason, to attend the disciplinary hearing.

Amended by R.1991 d.276, effective June 3, 1991.
See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Added definitions for “administrative close supervision unit”, “Capital sentence unit” and “counsel substitute”; amended definition for “superintendent”.

Amended by R.1994 d.182, effective April 4, 1994.
See: 26 N.J.R. 727(a), 26 N.J.R. 1506(a).
Amended by R.1996 d.237, effective May 20, 1996.
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Deleted “Superintendent” and “Vroom Readjustment Unit”, added “Inmate handbook”, and amended “Extra duty”, “Handbook on Discipline” and “Special Classification Committee”.

Amended by R.2004 d.180, effective May 3, 2004.
See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

Deleted “Institutional Classification Committee (I.C.C.)” and “Inter-Institutional Classification Committee (I.I.C.C.)”

Amended by R.2004 d.293, effective August 2, 2004.
See: 36 N.J.R. 1867(a), 36 N.J.R. 3551(a).

Inserted “Fact witness”, “Repetitive witness” and “Unavailable witness”.

Amended by R.2006 d.151, effective May 1, 2006.
See: 38 N.J.R. 96(a), 38 N.J.R. 1836(a).

Deleted a comma in the introductory paragraph; deleted the definitions for “Asterisk offense”, “Capital Sentence Unit”, “Close custody unit”, “Commissioner”, “Custody status”, “Department”, “Disciplinary Hearing Officer”, “Disciplinary report”, “Disciplinary Sanction”, “Handbook on Discipline”, “Inmate handbook”, “On-the-spot correction”, “Prehearing detention”, “Prison Complex”, “Prohibited acts” and “Youth Complex”.

Amended by R.2007 d.198, effective July 2, 2007.
See: 39 N.J.R. 834(b), 39 N.J.R. 2538(a).

Deleted definitions “Counsel substitute” and “Disciplinary Detention”.

Amended by R.2008 d.190, effective July 21, 2008.
See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

Deleted definition “Administrative Segregation”.
Amended by R.2011 d.157, effective June 6, 2011.

See: 43 N.J.R. 366(a), 43 N.J.R. 1343(a).

Deleted definition “Weapon”.

Amended by R.2014 d.027, effective February 3, 2014.
See: 45 N.J.R. 13(a), 46 N.J.R. 297(a).

In definition “Administrative Close Supervision Unit”, deleted “long term” preceding “close”; and in definition “Adjustment Committee”, substituted “means” for “shall mean”, and inserted “correctional”.

10A:4-1.4 Forms

(a) The following forms related to Inmate Discipline are printed by the Bureau of State Use Industries—DEPTCOR and each correctional facility shall purchase a supply of these forms by contacting the Bureau:

1. 253-I On-The-Spot Disciplinary Report/Adjudication;
2. 254-I Discipline Record Card;
3. 259 Disciplinary Report;
4. 259A Adjudication of Disciplinary Report.

(b) The following forms related to Inmate Discipline are available by accessing the Department of Corrections computer network (DOCNet). Interested individuals who do not have access to DOCNet may obtain copies of forms by contacting the Administrative Rules Unit, New Jersey Department of Corrections:

1. 251-I Chronic Violator Notice;
2. 251-II Chronic Violator Adjudication Notice;
3. 252 Inmate Disciplinary Hearing Attendance Refusal Notice;
4. 255-I Authorization for Prehearing Detention;
5. 256-I Appeal of Disciplinary Decision;
6. 256-II Disposition of Disciplinary Appeal.

(c) The following form related to inmate discipline shall be reproduced by each correctional facility from an original that is available by contacting the Health Services Unit:

1. HSU-010 Request for Psychological/Psychiatric Evaluation.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.1999 d.187, effective June 7, 1999 (operative July 1, 1999).

See: 31 N.J.R. 831(a), 31 N.J.R. 1487(b).

Added (c).

Administrative change.

See: 35 N.J.R. 1137(a).

Amended by R.2006 d.419, effective December 4, 2006.

See: 38 N.J.R. 3226(a), 38 N.J.R. 5161(a).

Added new (a)1; recodified former (a)1 through (a)3 as (a)2 through (a)4; in the introductory paragraph of (b), deleted "shall be reproduced by each correctional facility from originals that" preceding "are available", inserted "by accessing the Department of Corrections computer network (DOCNet). Interested individuals who do not have access to DOCNet may obtain copies of forms" and "New Jersey Department of Corrections"; deleted former (b)4; and recodified former (b)5 through (b)7 as new (b)4 through (b)6.

SUBCHAPTER 2. PUBLICATION OF RULES

10A:4-2.1 Notification of inmates about rules and regulations

(a) At the time of reception into the New Jersey Department of Corrections, each inmate shall receive a copy of the Handbook on Discipline and thereby be advised in writing of his or her rights and responsibilities, the acts and activities which are prohibited, the rules which must be followed and the disciplinary process within the correctional facilities of the Department of Corrections. Each inmate shall be required to sign a form acknowledging receipt of the Handbook on Discipline. A refusal by the inmate to sign shall be noted on the form by the issuing staff member.

(b) At the time of arrival at a correctional facility, each inmate shall receive a copy of the correctional facility Inmate Handbook which contains correctional facility rules, procedures and information about services and programs. The correctional facility Inmate Handbook shall be provided as part of the admission-orientation program in accordance with N.J.A.C. 10A:8. Each inmate shall be required to sign a form acknowledging receipt of the correctional facility Inmate Handbook. A refusal by the inmate to sign shall be noted on the form by the issuing staff member.

(c) All changes in disciplinary rules shall be posted in housing units and other areas of the correctional facility and incorporated into the next revision of the Handbook on Discipline and when appropriate, in the correctional facility Inmate Handbook.

(d) When a correctional facility has a large number of inmates in the population who speak a foreign language, the rules shall be printed and presented verbally in the foreign language.

(e) For illiterate inmates or inmates otherwise unable to read or write due to a physical/medical inability, the rules shall be verbally communicated and assistance shall be provided to those inmates unable to provide written acknowledgement.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Corrected internal N.J.A.C. cite to Handbook.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

10A:4-2.2 Review of inmate rules

The Administrator of the correctional facility shall be responsible for maintaining an ongoing rule review process to ensure that the rules are current and appropriate.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

10A:4-2.3 Promulgation of rules

(a) The rules of a correctional facility shall be published and promulgated only upon the approval of the Administrator.

(b) The disciplinary rules shall be published and promulgated only upon the approval of the Commissioner, New Jersey Department of Corrections.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Added requirement of approval by Commissioner.

Case Notes

Department of Corrections is not exempt from the requirements of the Administrative Procedure Act (citing rule proposal at 18 N.J.R. 27(a)). Dep't of Corrections v. McNeil, 209 N.J.Super. 120, 506 A.2d 1291 (App.Div.1986) certification denied 104 N.J. 422, 517 A.2d 418 (1986).

SUBCHAPTER 3. INMATE RIGHTS AND RESPONSIBILITIES**10A:4-3.1 Notification of inmates of their rights and responsibilities**

(a) The following rights are found in the Handbook on Discipline that is provided to each inmate as part of reception into the Department of Corrections.

1. You have the right to be treated respectfully, impartially and fairly by all personnel.
2. You have the right to be informed of the rules, procedures and schedules concerning the operation of the correctional facility.
3. You have the right to freedom of religious affiliation and voluntary religious worship within the correctional facility.
4. You have the right to health care which includes nutritious meals, proper bedding and clothing, a laundry schedule for cleanliness of same, an opportunity to shower regularly, sufficient warmth, proper ventilation, fresh air, a regular exercise period, toilet articles and medical and dental treatment.
5. You have the right to correspond with and receive visits from family members, friends and other persons where there is no threat to security or order in keeping with the rules and schedules of the correctional facility.
6. You have the right to unrestricted and confidential access to the courts by correspondence.
7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence. You have the right to receive help when it is available through a legal assistance program.

8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems.

9. You have the right to a wide range of reading material for educational purposes and for your own enjoyment.

10. You have the right to participate in counseling, education, vocational training, and employment as far as resources are available and in keeping with your interests, needs and abilities.

(b) The following responsibilities are found in the Handbook on Discipline that is provided to each inmate as a part of reception into the Department of Corrections.

1. You have the responsibility to treat others, both employees and inmates, respectfully, impartially and fairly.
2. You have the responsibility to know and abide by the rules, procedures and schedules concerning the operation of the correctional facility.
3. You have the responsibility to recognize and respect the rights of others to freedom of religious affiliation and voluntary religious worship within the correctional facility.
4. It is your responsibility to follow the laundry and shower schedules, to maintain neat and clean living quarters, to seek medical and dental care as you may need it, and not to waste food.
5. It is your responsibility to keep your living area and possessions free of contraband. Each inmate, regardless of housing assignment shall be responsible for contraband found within the confines of that living area.
6. It is your responsibility to conduct yourself properly during visits, to refuse to accept or pass contraband, and to comply with Department rules and State or Federal laws through your correspondence.
7. You have the responsibility to present honestly and fairly your petitions, questions and problems to the court.
8. It is your responsibility to use the services of an attorney honestly and fairly.
9. It is your responsibility to use the law library resources in keeping with the correctional facility procedures and schedule prescribed and to respect the rights of other inmates in the use of this legal material.
10. It is your responsibility to seek and utilize reading material for your personal benefit, without depriving others of their right to use same.
11. You have the responsibility to take advantage of activities (such as counseling, education, vocational training and employment) which may help you live a successful and law abiding life within the correctional facility and in the community. You will be expected to abide by the regulations governing the use of such activities.

Administrative Correction: Responsibilities have been substantially amended.

See: 19 N.J.R. 1573(a).

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Petition for Rulemaking.

See: 32 N.J.R. 3499(a).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In introductory paragraphs of (a) and (b), substituted "that" for "which"; inserted new (b)5; and recodified former (b)5 through (b)10 as (b)6 through (b)11.

SUBCHAPTER 4. INMATE PROHIBITED ACTS

10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee with the exception of those violations disposed of by way of an on-the-spot correction. Prohibited acts preceded by an asterisk (*) are considered the most serious and result in the most severe sanctions (see N.J.A.C. 10A:4-5, Schedule of sanctions for prohibited acts).

- *.001 killing
- *.002 assaulting any person
- *.003 assaulting any person with a weapon
- *.004 fighting with another person
- *.005 threatening another with bodily harm or with any offense against his or her person or his or her property
- *.006 extortion, blackmail, protection: demanding or receiving favors, money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing
- *.007 hostage taking
- *.008 abuse/cruelty to animals
- *.009 misuse, possession, distribution, sale, or intent to distribute or sell, an electronic communication device, equipment or peripheral that is capable of transmitting, receiving or storing data and/or electronically transmitting a message, image or data that is not authorized for use or retention (see "electronic communication device" definition at N.J.A.C. 10A:1-2.2)
- .009A misuse, possession, distribution, sale or intent to distribute or sell, an electronic communication device, equipment or peripheral that is capable of transmitting, receiving or storing data and/or electronically transmitting a message, image or data that is not authorized for use or retention by an inmate who is assigned to a Residential Community Release Program (see "electronic communication device" definition at N.J.A.C. 10A:1-2.2).
- *.010 participating in an activity(ies) related to a security threat group
- *.011 possession or exhibition of anything related to a security threat group

- *.012 throwing bodily fluid at any person or otherwise purposely subjecting such person to contact with a bodily fluid
- .013 unauthorized physical contact with any person, such as, but not limited to, physical contact not initiated by a staff member, volunteer or visitor
- *.014 unauthorized physical contact with any person with an article, item or material such as anything readily capable of inflicting bodily injury
- *.050 sexual assault
- .051 engaging in sexual acts with others
- .052 making sexual proposals or threats to another
- .053 indecent exposure
- *.054 refusal to register as a sex offender or any refusal to register as required by law
- *.101 escape
- *.102 attempting or planning escape
- .103 wearing a disguise or mask
- *.150 tampering with fire alarms, fire equipment or fire suppressant equipment
- *.151 setting a fire
- .152 destroying, altering, or damaging government property, or the property of another person
- *.153 stealing (theft)
- *.154 tampering with or blocking any locking device
- *.155 adulteration of any food or drink
- *.201 possession or introduction of an explosive, incendiary device or any ammunition
- *.202 possession or introduction of a weapon, such as, but not limited to, a sharpened instrument, knife or unauthorized tool
- *.203 possession or introduction of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff
- *.204 use of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff
- .204A use by an inmate who is assigned to a Residential Community Program of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff
- *.205 misuse of authorized medication
- .206 possession of money or currency (\$50.00 or less) unless specifically authorized
- *.207 possession of money or currency (in excess of \$50.00) unless specifically authorized
- .208 possession of property belonging to another person
- .209 loaning of property or anything of value
- .210 possession of anything not authorized for retention or receipt by an inmate or not issued to him or her through regular correctional facility channels
- .211 possessing any staff member's clothing and/or equipment
- .212 possessing unauthorized clothing
- .213 mutilating or altering clothing issued by the government
- *.214 possession of unauthorized keys or other security equipment
- *.215 possession with intent to distribute or sell prohibited substances such as drugs, intoxicants or related paraphernalia

- *.216 distribution or sale of prohibited substances such as drugs, intoxicants or related paraphernalia
- *.251 rioting
- *.252 encouraging others to riot
- *.253 engaging in, or encouraging, a group demonstration
- .254 refusing to work, or to accept a program or housing unit assignment
- *.255 encouraging others to refuse to work or to participate in work stoppage
- .256 refusing to obey an order of any staff member
- .257 violating a condition of any community release program
- *.258 refusing to submit to testing for prohibited substances
- *.259 failure to comply with an order to submit a specimen for prohibited substance testing (see N.J.A.C. 10A:3-5)
- *.260 refusing to submit to mandatory medical or other testing such as, but not limited to, mandatory testing required by law or court order
- *.261 tampering with a test specimen
- .301 unexcused absence from work or any assignment; being late for work
- .302 malingering, feigning an illness
- .303 failing to perform work as instructed by a staff member
- .304 using abusive or obscene language to a staff member
- .305 lying, providing a false statement to a staff member
- *.306 conduct which disrupts or interferes with the security or orderly running of the correctional facility
- .351 counterfeiting, forging or unauthorized reproduction or use of any document not enumerated in prohibited act *.352
- *.352 counterfeiting, forging or unauthorized reproduction or use of any classification document, court document, psychiatric, psychological or medical report, money or any other official document
- *.360 unlawfully obtaining or seeking to obtain personal information pertaining to an inmate's victim or the victim's family
- .401 participating in an unauthorized meeting or gathering
- .402 being in an unauthorized area
- .451 failure to follow safety or sanitation regulations
- .452 using any equipment or machinery which is not specifically authorized
- .453 using any equipment or machinery contrary to instructions or posted safety standards
- .501 failing to stand count
- .502 interfering with the taking of count
- *.551 making intoxicants, alcoholic beverages or prohibited substances such as narcotics and controlled dangerous substances or making related paraphernalia
- *.552 being intoxicated
- .552A being intoxicated while the inmate is assigned to a Residential Community Program
- .553 smoking where prohibited
- .554 possession of tobacco products or matches where not permitted
- .601 gambling
- .602 preparing or conducting a gambling pool
- .603 possession of gambling paraphernalia
- .651 being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards
- .652 tattooing or self-mutilation
- .701 unauthorized use of mail or telephone
- .702 unauthorized contacts with the public
- .703 correspondence or conduct with a visitor in violation of regulations
- *.704 perpetrating frauds, deceptions, confidence games, riots or escape plots
- .705 commencing or operating a business or group for profit or commencing or operating a nonprofit enterprise without the approval of the Administrator
- .706 soliciting funds and/or noncash contributions from donors within or without the correctional facility except where permitted by the Administrator.
- .707 failure to keep a scheduled appointment with medical, dental or other professional staff
- *.708 refusal to submit to a search
- .709 failure to comply with a written rule or regulation of the correctional facility
- *.751 giving or offering any official or staff member a bribe or anything of value
- .752 giving money or anything of value to, or accepting money or anything of value from, another inmate
- .753 purchasing anything on credit
- .754 giving money or anything of value to, or accepting money or anything of value from, a member of another inmate's family or another inmate's friend with an intent to circumvent any correctional facility or Departmental rule, regulation or policy or with an intent to further an illegal or improper purpose
- .802 attempting to commit any of the above acts, aiding another person to commit any of the above acts or making plans to commit any of the above acts shall be considered the same as a commission of the act itself
- *.803 attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act or making plans to commit such acts shall be considered the same as a commission of the act itself

Notice of Correction: Asterisk was omitted for *.306.

See: 18 N.J.R. 2138(d).

Amended by R.1987 d.154, effective April 6, 1987.

See: 19 N.J.R. 178(a), 19 N.J.R. 534(a).

Added *.008 abuse/cruelty to animals.

Notice of Correction: .352 was omitted from the end of .351.

See: 19 N.J.R. 1658(c).

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Added .150 and amended *.151.

Administrative Corrections in (a): In .150 corrected suppressant.

See: 24 N.J.R. 2731(a).

Amended by R.1993 d.488, effective October 4, 1993.

See: 25 N.J.R. 3416(a), 25 N.J.R. 4599(a).

Administrative Correction.

See: 26 N.J.R. 1228(a).

Amended by R.1994 d.254, effective May 16, 1994.

See: 26 N.J.R. 1286(a), 26 N.J.R. 2129(a).

Amended by R.1994 d.264, effective June 6, 1994.

See: 26 N.J.R. 1287(a), 26 N.J.R. 2285(b).

Amended by R.1995 d.237, effective May 1, 1995.

See: 27 N.J.R. 436(a), 27 N.J.R. 1801(c).

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).

In (a) added refusing a breathalyzer test.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (a) added exception for on-the-spot corrections, in .254 added refusal of housing unit assignment, and deleted provision for transfer to the Vroom Readjustment Unit.

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking.

See: 29 N.J.R. 813(b), 29 N.J.R. 948(a).

Amended by R.1997 d.225, effective June 2, 1997.

See: 29 N.J.R. 834(a), 29 N.J.R. 2562(b).

In (a), inserted “*.260 refusing to submit to mandatory medical testing”.

Amended by R.1997 d.276, effective July 7, 1997.

See: 29 N.J.R. 1663(a), 29 N.J.R. 2836(a).

In Schedule of Prohibited Acts, added .261 (tampering with a urine specimen).

Amended by R.1997 d.325, effective August 4, 1997.

See: 29 N.J.R. 2542(a), 29 N.J.R. 3452(a).

In (a), upgraded .150 (tampering with fire alarms, fire equipment or fire suppressant equipment) and .154 (tampering with or blocking any locking device) into asterisk offenses.

Amended by R.1998 d.366, effective July 20, 1998.

See: 30 N.J.R. 1719(a), 30 N.J.R. 2619(a).

Inserted new prohibited acts .010 and .011.

Amended by R.1999 d.333, effective October 4, 1999.

See: 31 N.J.R. 1847(a), 31 N.J.R. 2891(a).

In (a), in prohibited act .351, inserted an asterisk preceding “.352”, and inserted prohibited act .360.

Petition for Rulemaking.

See: 32 N.J.R. 3668(a).

Amended by R.2004 d.3, effective January 5, 2004.

See: 35 N.J.R. 4168(a), 36 N.J.R. 195(a).

Amended prohibited act 260 to include references to mandatory testing.

Amended by R.2004 d.294, effective August 2, 2004.

See: 36 N.J.R. 1657(a), 36 N.J.R. 3552(a).

Inserted “.204A” and “.552A”.

Emergency amendment, R.2005 d.435, effective November 15, 2005, (to expire January 14, 2006).

See: 37 N.J.R. 4575(a).

In (a), prohibited act *.009, substituted “,” for “or” in two places and added “distribution, sale, or intent to distribute or sell, an” “communication device,” “or peripheral that is capable of transmitting, receiving or storing data and/or electronically transmitting a message, image or data that is” and “(see “electronic communication device” definition at N.J.A.C. 10A:1-2.2).”

Adopted concurrent amendment, R.2006 d.58, effective January 11, 2006.

See: 37 N.J.R. 4575(a), 38 N.J.R. 993(a).

Provisions of R.2005, d.435, adopted without change.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In entry “.652” in table in (a), substituted “self-mutilation” for “self mutilation”, and in entry “.705” in table in (a), substituted “Administrator” for “Superintendent”.

Amended by R.2009 d.237, effective August 3, 2009.

See: 41 N.J.R. 1645(a), 41 N.J.R. 2925(a).

In the entry for “*.054” in (a), inserted “or any refusal to register as required by law”.

Amended by R.2009 d.236, effective August 3, 2009.

See: 41 N.J.R. 1649(a), 41 N.J.R. 2927(a).

In (a), added the entry for “.009A”.

Petition for Rulemaking.

See: 47 N.J.R. 233(e), 300(b).

Cross References

Possession of inter-office envelopes, see N.J.A.C. 10A:18-2.26, 10A:18-3.13.

Case Notes

Punishment of Christian Scientist inmate who refused to submit to tuberculosis test furthered compelling state interest in preventing spread of tuberculosis in prison, as would justify such test’s substantial burden on inmate’s right of free exercise of religion under Religious Freedom Restoration Act. *Karolis v. New Jersey Dept. of Corrections*, D.N.J. 1996, 935 F.Supp. 523.

Department of Corrections was authorized to discipline a prisoner, who tested positive for cocaine and opiates upon his return to a State prison after escaping from a halfway house, for violating the Department’s regulation prohibiting the use of drugs; under N.J.S.A. 30:1B-3 and N.J.S.A. 30:4-91.3, the Commissioner of Corrections maintains authority over adult offenders committed to State correctional institutions, even at times when they are physically outside prison walls. *Ries v. Dep’t of Corr.*, 396 N.J. Super. 235, 933 A.2d 638, 2007 N.J. Super. LEXIS 328 (App.Div. 2007).

Contact-visit loss component of zero tolerance drug-alcohol policy was enforceable against inmate who violated disciplinary rule prohibiting possession of drugs after announcement of policy but before formal amendment of regulation. *Walker v. Department of Corrections*, 324 N.J.Super. 109, 734 A.2d 795 (N.J.Super.A.D. 1999).

Standard embodied in inmate disciplinary rule prohibiting using abusive or obscene language to staff member was not valid basis for imposing disciplinary punishment for inmate’s vulgar and offensive statement in context of psychotherapy that was not threatening or exhortative of disobedience or violence. *Pryor v. New Jersey Dept. of Corrections*, 288 N.J.Super. 355, 672 A.2d 717 (A.D.1996).

Amendment to administrative code that added refusal to register as sex offender to list of prohibited acts was not unconstitutional. *A.F. v. Fauver*, 287 N.J.Super. 354, 671 A.2d 155 (A.D.1996).

Determination whether remark constitutes threat; objective analysis whether remark conveys basis for fear. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Finding that inmate threatened guard with bodily harm was supported by evidence. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Prison officials’ decision to place inmate in nonpunitive management control unit was supported by record. *Taylor v. Beyer*, 265 N.J.Super. 345, 627 A.2d 166 (A.D.1993).

State prison sanctions for infractions only applicable if county inmate notified of infractions. *Bryan v. Department of Corrections*, 258 N.J.Super. 546, 610 A.2d 889 (A.D.1992).

Procedural safeguards not properly applied in prison disciplinary proceeding involving confidential informant. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

Information provided by confidential informant for use in prison disciplinary hearing must be part of confidential record. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

New prison disciplinary hearing required when procedural safeguards were absent in first hearing or in presence of newly discovered evidence. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

10A:4-4.2 Reports to the prosecutor on prohibited acts

All prohibited acts which may constitute crimes of the first, second, third or fourth degree under the Criminal Code of the State of New Jersey (N.J.S.A. 2C:1-1 et seq.) shall be referred to the prosecutor of the county in which the correctional facility is located. (See N.J.A.C. 10A:21 Reporting Violations of the Criminal Statutes.)

**SUBCHAPTER 5. SCHEDULE OF SANCTIONS FOR
PROHIBITED ACTS****10A:4-5.1 Schedule of sanctions for prohibited acts
committed at the Prison Complex**

(a) A finding of guilt for any offense preceded by an asterisk (*) shall render the offender subject to one or more of the following sanctions:

1. Up to 15 calendar days of Disciplinary Detention;
2. Loss of one or more correctional facility privileges up to 30 calendar days;
3. Administrative Segregation for a specified time not to exceed one year, subject to confirmation by the Institutional Classification Committee;
4. Loss of commutation time up to 365 calendar days, subject to confirmation by the Administrator (inmates serving indeterminate sentences do not earn commutation time and are therefore not subject to this sanction);
5. Loss of furlough privileges for up to two months;
6. Up to two weeks confinement to room or housing area;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7);
8. Confiscation;
9. Up to 14 hours extra duty, to be performed within a maximum of two weeks;
10. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 calendar days; and/or
11. Referral to the Mental Health Unit for appropriate care/treatment.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1. Up to 15 calendar days of Disciplinary Detention;
2. Loss of one or more correctional facility privileges up to 30 calendar days;
3. Up to 60 calendar days loss of commutation time, subject to confirmation by the Administrator;
4. Administrative Segregation for a specified time not to exceed 90 calendar days subject to confirmation by the Institutional Classification Committee;
5. Loss of furlough privileges for up to two months;
6. Up to two weeks confinement to room or housing area;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7);
8. Confiscation;
9. Up to 14 hours extra duty, to be performed within a maximum of two weeks;
10. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 calendar days; and/or

11. Referral to the Mental Health Unit for appropriate care/treatment.

(c) Pursuant to the "Zero Tolerance Drug/Alcohol Policy" as defined in N.J.A.C. 10A:1-2.2, a finding of guilt to any of the following prohibited acts shall result in termination of contact visit privileges and ineligibility for consideration for any custody status lower than medium custody until after contact visit privileges are reinstated.

1. *.203 possession or introduction of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff;
2. *.204 use of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff;
3. *.215 possession with intent to distribute or sell prohibited substances such as drugs, intoxicants or related paraphernalia;
4. *.216 distribution or sale of prohibited substances such as drugs, intoxicants or related paraphernalia;
5. *.258 refusing to submit to testing for prohibited substances;
6. *.259 failure to comply with an order to submit a specimen for prohibited substance testing (see N.J.A.C. 10A:3-5);
7. *.261 tampering with a test specimen;
8. *.551 making intoxicants, alcoholic beverages or prohibited substances such as narcotics and controlled dangerous substances or making related paraphernalia;
9. *.552 being intoxicated;
10. *.708 refusal to submit to a search (when the inmate has been given advance verbal notice that the search is being conducted due to reasonable suspicion related to possession, sale or use of prohibited substances such as drugs, alcohol or intoxicants and the advance notice has been documented on Form 259 Disciplinary Report); and
11. *.803 attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act or making plans to commit such acts shall be considered the same as a commission of the act itself.

(d) Pursuant to the "Zero Tolerance Drug/Alcohol Policy" as defined in N.J.A.C. 10A:1-2.2, a finding of guilt to prohibited act *.205 misuse of authorized medication (such as narcotics and controlled dangerous substances), as determined by the Disciplinary Hearing Officer or Adjustment Committee, may result in termination of contact visit privileges and ineligibility for consideration for any custody status lower than medium custody until after contact visit privileges are reinstated.

(e) Pursuant to the "Zero Tolerance for Misuse or Possession of an Electronic Communication Device Policy" as

defined at N.J.A.C. 10A:1-2.2, a finding of guilt to prohibited act *.009 as determined by the Disciplinary Hearing Officer or Adjustment Committee, shall result in:

1. The termination of contact visit privileges;
 2. Ineligibility for consideration for any custody status lower than medium custody until after the contact visit privileges are reinstated;
 3. Any administrative action and program requirements deemed necessary in accordance with this section; and
 4. Referral to the prosecutor of the county in which the correctional facility is located pursuant to N.J.A.C. 10A:4-4.2 and in accordance with N.J.S.A. 2C:29-10.
- (f) In accordance with N.J.S.A. 30:4-140.1, a finding of guilt to *.360 unlawfully obtaining or seeking to obtain personal information pertaining to an inmate's victim or the victim's family shall subject an inmate to the forfeiture of up to 365 accumulated commutation credits and up to 72 work time credits.
- (g) In addition to the sanctions in this section, administrative action may be taken when approved by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Administrator or designee. Such administrative action may include, but not be limited to, the following:
1. Recommending transfer to a more appropriate correctional facility or unit (excluding units not considered punitive, such as, but not limited to, a Protective Custody Unit);
 2. Increasing custody status;
 3. Changing work or housing assignments;
 4. Assigning to a treatment program;
 5. Assessing restitution for damage, alteration or destruction of State property, the property of another person, or violation of prohibited act .707 which results in undue expenditure of State funds;
 6. Recommending loss of telephone, radio and/or television privileges for up to one year;
 7. Recommending loss of contact visit privileges for up to one year provided the offense is specifically related to, or concerned with a visit program, except in the case of a termination of contact visits sanction as established in N.J.A.C. 10A:4-5.1(c) through (e);
 8. Recommending loss of recreation privileges for up to 180 calendar days provided the offense is specifically related to, or concerned with a recreation privilege;
 9. Disposal of an item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.3(b)2, 3 and 4; and/or
 10. For New Jersey State Prison only: placing in a "DRY" cell during prehearing and lockup status.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Added sanctions of up to 14 hrs. extra duty and up to 2 weeks of confinement to room or housing area.

Amended by R.1993 d.584, effective November 15, 1993.

See: 25 N.J.R. 4435(a), 25 N.J.R. 5169(a).

Amended by R.1994 d.254, effective May 16, 1994.

See: 26 N.J.R. 1286(a), 26 N.J.R. 2129(a).

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Deleted reference to the Adult Diagnostic and Treatment Center and the Edna Mahan Correctional Facility for Women, in (c)5 added damage to property of another person, and in (c)6 added loss of telephone, radio and television privileges.

Administrative correction.

See: 29 N.J.R. 2563(a).

In (c)7, changed N.J.A.C. reference.

Amended by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

Added a new (c); and rewrote and recodified former (c) as (d).

Amended by R.1999 d.187, effective June 7, 1999 (operative July 1, 1999).

See: 31 N.J.R. 831(a), 31 N.J.R. 1487(b).

Substituted references to the Administrator for references to the Superintendent throughout; and in (a) and (b), added 11.

Amended by R.2000 d.143, effective April 3, 2000.

See: 32 N.J.R. 166(a), 32 N.J.R. 1216(a).

Inserted a new (d); and recodified former (d) as (e), and made an internal reference change in the introductory paragraph.

Petition for Rulemaking.

Amended by R.2002 d.99, effective April 1, 2002.

See: 33 N.J.R. 4194(a), 34 N.J.R. 1426(a).

In (c), added "and ineligibility for consideration for any custody status lower than medium custody until after contact visit privileges are reinstated;" following "privileges" in the introductory paragraph.

Amended by R.2004 d.180, effective May 3, 2004.

See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

In (e), substituted "of" for "or" following "upon the recommendation" in the introductory paragraph and deleted ". (This shall be subject to confirmation by the Inter-Institutional Classification Committee.)" in 1.

Amended by R.2004 d.294, effective August 2, 2004.

See: 36 N.J.R. 1657(a), 36 N.J.R. 3552(a).

In (c), deleted former 3 and recodified former 4 through 12 as 3 through 11; added a new (d) and recodified former (d) through (e) as (e) through (f).

Amended by R.2005 d.132, effective May 2, 2005.

See: 37 N.J.R. 196(a), 37 N.J.R. 1522(a).

In (f), inserted "when approved" following "administrative action may be taken" in the introductory paragraph, inserted "and/or" preceding "television", deleted ", and contact visit" preceding "privileges" in 6, added new 7, 8, recodified existing 7, 8 as 9, 10.

Emergency amendment, R.2005 d.435, effective November 15, 2005, (to expire January 14, 2006).

See: 37 N.J.R. 4575(a).

Added new (e); recodified former (e) as (f); in (f), corrected typographical errors in two places, added "the" following "victim or"; recodified former (f) as (g); in the introductory paragraph of (g), substituted "this section" for "(a), (b), (c), (d) and (e) above"; in (g)7 added "through (e)" in two places.

Adopted concurrent amendment, R.2006 d.58, effective January 11, 2006.

See: 37 N.J.R. 4575(a), 38 N.J.R. 993(a).

Provisions of R.2005, d.435, adopted without change.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Inserted "calendar" preceding "days" throughout; in (a)1 and (b)1, inserted "of"; rewrote (a)4, (a)6, (a)10, (b)6 and (b)10; and in (g)7, updated N.J.A.C. reference.

Amended by R.2008 d.118, effective May 5, 2008.

See: 40 N.J.R. 84(a), 40 N.J.R. 2278(a).

In the introductory paragraph of (c) and (d), enclosed "Zero Tolerance Drug/Alcohol Policy" in quotes; in (d), inserted "prohibited act"; and rewrote (e).

Amended by R.2011 d.157, effective June 6, 2011.

See: 43 N.J.R. 366(a), 43 N.J.R. 1343(a).

In (g)1, substituted "Protective Custody" for "Security Threat Group Management".

10A:4-5.2 (Reserved)

Amended by R.1987 d.155, effective April 6, 1987.

See: 19 N.J.R. 178(b), 19 N.J.R. 534(b).

Added new (b)3; recodified old (b)3-.8. to (b)4.-9.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Language added to clarify to whom the loss of commutation time applies; added recommending loss of privileges at (c)5.

Amended by R.1993 d.584, effective November 15, 1993.

See: 25 N.J.R. 4435(a), 25 N.J.R. 5169(a).

Amended by R.1994 d.254, effective May 16, 1994.

See: 26 N.J.R. 1286(a), 26 N.J.R. 2129(a).

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (c)3 added damage to property of another person, and in (c)6 added loss of telephone, radio and television privileges.

Amended by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

Added a new (c); and rewrote and recodified former (c) as (d).

Amended by R.1999 d.187, effective June 7, 1999 (operative July 1, 1999).

See: 31 N.J.R. 831(a), 31 N.J.R. 1487(b).

Substituted references to the Administrator for references to the Superintendent throughout; in (a) and (b), added 11; and in (d)7, changed N.J.A.C. reference.

Amended by R.2000 d.143, effective April 3, 2000.

See: 32 N.J.R. 166(a), 32 N.J.R. 1216(a).

Inserted a new (d); and recodified former (d) as (e), and made an internal reference change in the introductory paragraph.

Petition for Rulemaking.

See: 34 N.J.R. 784(b).

Amended by R.2002 d.99, effective April 1, 2002.

See: 33 N.J.R. 4194(a), 34 N.J.R. 1426(a).

In (c), added "and ineligibility for consideration for any custody status lower than medium custody until after contact visit privileges are reinstated;" following "privileges" in the introductory paragraph.

Amended by R.2004 d.180, effective May 3, 2004.

See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

Rewrote (a)8; in (e)4, deleted "and subject to confirmation by the Inter-Institutional Classification Committee" after "Security Threat Group Management Unit".

Amended by R.2004 d.294, effective August 2, 2004.

See: 36 N.J.R. 1657(a), 36 N.J.R. 3552(a).

In (c), deleted former 3 and recodified former 4 through 12 as 3 through 11; added a new (d) and recodified former (d) through (e) as (e) through (f).

Amended by R.2005 d.132, effective May 2, 2005.

See: 36 N.J.R. 196(a), 37 N.J.R. 1522(a).

In (f), inserted "when approved" following "administrative action may be taken" in the introductory paragraph, inserted "and/or" preceding "television", deleted ", and contact person" preceding "privileges" in 6, added new 7, 8, recodified existing 7 as 9.

Emergency amendment, R.2005 d.435, effective November 15, 2005, (to expire January 14, 2006).

See: 37 N.J.R. 4575(a).

Added new (e); recodified former (e) as (f); in (f), corrected typographical errors in two places, added "the" following "victim or"; recodified former (f) as (g); in the introductory paragraph of (g), substituted "this section" for "(a), (b), (c), (d) and (e) above"; in (g)7 added "through (e)" in two places.

Adopted concurrent amendment, R.2006 d.58, effective January 11, 2006.

See: 37 N.J.R. 4575(a), 38 N.J.R. 993(a).

Provisions of R.2005, d.435, adopted without change.

Repealed by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Section was "Schedule of sanctions for prohibited acts committed at the Youth Complex".

10A:4-5.3 Limitation on sanctions

(a) All disciplinary charges pending when the inmate begins serving time in Disciplinary Detention must be adjudicated prior to the completion of the inmate's Disciplinary Detention time. No inmate may receive more than 15 calendar days in Disciplinary Detention as a result of a single disciplinary charge except as established in N.J.A.C. 10A:4-6, Chronic violator.

1. If an inmate is found guilty of more than one disciplinary charge arising out of one incident, the inmate may receive up to 15 calendar days for each disciplinary charge provided that the total time to be served in the Disciplinary Detention does not exceed 30 calendar days.

2. If an inmate is found guilty of more than one disciplinary charge arising out of separate incidents and occurring before the inmate begins serving time in Disciplinary Detention, the inmate may receive up to 15 calendar days for each disciplinary charge provided that the total time to be served in Disciplinary Detention does not exceed 30 calendar days.

3. If an inmate receives one or more disciplinary charges while serving in Disciplinary Detention, the inmate may receive up to 15 additional calendar days in Disciplinary Detention per charge provided that the total time in Disciplinary Detention does not exceed a total of 30 calendar days.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (a) added exception as established in 10A:4-6.

Recodified from N.J.A.C. 10A:4-5.4 by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

Former N.J.A.C. 10A:4-5.3 was repealed. Section was "Schedule of sanctions for prohibited acts committed at the New Jersey Training School for Boys and the Juvenile Medium Security Facility".

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Inserted "calendar" preceding "days" throughout.

10A:4-5.4 (Reserved)

Recodified to N.J.A.C. 10A:4-5.3 by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

Section was "Limitation on Sanctions".

SUBCHAPTER 6. CHRONIC VIOLATOR

10A:4-6.1 Scope

The rules in this subchapter apply to all inmates serving prison sentences within the Division of Operations.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.
 Amended by R.1996 d.237, effective May 20, 1996.
 See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).
 Rewrote section.

10A:4-6.2 Criteria for designating a chronic violator

An inmate may be designated a chronic violator if, while currently serving the maximum time in detention (30 calendar days), the inmate continues to exhibit seriously assaultive or destructive behavior such as to constitute a continuing danger to other persons, and where alternative disciplinary sanctions or housing assignments would be inappropriate or ineffective.

Administrative Correction, effective January 27, 1989.
 See: 21 N.J.R. 558(a).

Institutional name change.
 Amended by R.1996 d.237, effective May 20, 1996.
 See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).
 Substituted detention for lockup.
 Amended by R.2006 d.398, effective November 20, 2006.
 See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).
 Inserted "calendar".

10A:4-6.3 Procedures for designation of a chronic violator

(a) Disciplinary charges lodged against an inmate during the time the inmate is currently serving a 30 calendar-day term for other disciplinary violations shall be given directly to the Administrator in charge of the Administrative Close Supervision Unit (ACSU). A copy of each charge shall be given to the inmate within 48 hours unless exceptional circumstances exist.

(b) The Administrator in charge of the Administrative Close Supervision Unit (ACSU) shall be responsible for ordering that each charge be investigated and the Administrator shall review each charge and investigation to personally obtain all relevant information.

(c) If after review of all the reports and personal interviews with reporting staff that is deemed necessary to clarify facts or circumstances, the Administrator in charge of the Administrative Close Supervision Unit (ACSU) concludes that the inmate would pose a serious threat to persons or to the security or orderly operation of the Unit or correctional facility if released from detention, the Administrator shall schedule the case for a due process hearing before the Department's Disciplinary Hearing Officer.

(d) Prior to the hearing, the inmate shall be examined by a psychiatrist or psychologist to ascertain the inmate's mental condition, need for treatment or indication of need for transfer to a psychiatric facility (See N.J.A.C. 10A:16-13, Commitment for Psychiatric Treatment). The psychiatrist or psychologist shall visit the inmate at least once per month during the inmate's continued confinement in detention, and shall file a written report after each visit as to the inmate's mental condition and adjustment.

(e) The inmate shall receive at least 24 hours advance written notice on Form 251-I Chronic Violator Notice that the

inmate is under consideration for designation as a chronic violator and that the inmate may have the assistance of an inmate paralegal at the scheduled hearing (See N.J.A.C. 10A:4-9, Disciplinary procedures and Form 251-I). The notice shall include a copy of the disciplinary charges which form the basis for this action.

(f) The hearing shall be held in accordance with N.J.A.C. 10A:4-9 and may be held before the expiration of the inmate's 30 calendar-day term.

(g) If after review of all reports and testimony, the Disciplinary Hearing Officer or Adjustment Committee concludes that the inmate cannot safely be released from detention at the expiration of the 30 calendar-day term, the inmate shall be designated a chronic violator. The decision of the Disciplinary Hearing Officer/Adjustment Committee shall be referred to the appropriate Institutional Classification Committee (I.C.C.) for review and approval. The inmate shall remain in Disciplinary Detention until, at a subsequent hearing, the Disciplinary Hearing Officer determines that the inmate has demonstrated that the inmate will control his or her behavior and will refrain from repetitive acts of assault or destruction of property.

(h) A due process hearing shall be held every 15 calendar days to review the inmate's conduct and adherence to correctional facility regulations. The Disciplinary Hearing Officer shall review all disciplinary reports and shall ascertain from the reports, investigations, psychiatric evaluation and testimony where deemed necessary, whether the inmate's conduct is sufficiently under control to permit the inmate's safe release from detention.

(i) After the due process hearing has been completed, Form 251-II, Chronic Violator Adjudication Notice containing a written statement of the fact-findings shall be given to the inmate by the Disciplinary Hearing Officer. A copy of the due process hearing shall be kept in the Disciplinary Hearing Officers' records and in the inmate's classification folder.

(j) During the inmate's confinement as a chronic offender, a social worker and the custody staff supervisor or unit supervisor shall visit the inmate daily to monitor the inmate's needs and provide for programmatic involvement so far as is possible. The inmate shall be permitted to shower and participate in yard exercise as is consistent with correctional facility procedures, considering the safety of the inmate and the continued secure, orderly operation of the unit or correctional facility.

Administrative Correction, effective January 27, 1989.
 See: 21 N.J.R. 558(a).

Institutional name change.
 Amended by R.1989 d.136 effective March 20, 1989.
 See: 21 N.J.R. 10(b), 21 N.J.R. 766(a).

References to Assistant Superintendents at the Administrative Close Supervision Unit (ACSU) and the Edna Mahan Correctional Facility for Women, added.
 Amended by R.1990 d.34, effective January 16, 1990.
 See: 21 N.J.R. 3240(a), 22 N.J.R. 232(a).

In (a), (b) and (c): deleted references to Vroom Readjustment Unit Director, the Assistant Superintendent in charge of the Administrative Close Supervision Unit at East Jersey State Prison, and the Super-

intendent of the Edna Mahan Correctional Facility for Women. Replaced references with the “administrator in charge of the Administrative Close Supervision Unit.”

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Substituted detention for lockup, in (d) substituted 10A:16-13 for 10A:11, in (e) added reference to Form 251-I, and provided for written fact finding after due process hearing.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a), (f) and (g), inserted "calendar-"; in (g), substituted "decision of the Disciplinary Hearing Officer/Adjustment Committee" for "Disciplinary Hearing Officer's/Adjustment Committee's decision"; in (h), inserted "calendar"; and in (j), substituted "custody staff supervisor" for "shift".

10A:4-6.4 Appeal procedure

(a) At the time the inmate is adjudicated a chronic violator, the inmate shall be notified of his or her right to appeal the decision of the Disciplinary Hearing Officer to the Assistant Commissioner, Division of Operations, Department of Corrections. The appeal may be filed at any time during the inmate's continued confinement in detention, except that appellate review shall not occur more than twice per month.

(b) Prior to rendering a decision on the appeal, the Assistant Commissioner, Division of Operations, shall confer with the Administrator in charge of the Administrative Close Supervision Unit (ACSU) concerning the inmate's conduct. Alternative means for control and treatment shall be explored and utilized, if available and feasible. The inmate shall be notified of the decision of the Assistant Commissioner, Division of Operations, and the reasons thereof within five business days.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1989 d.136 effective March 20, 1989.

See: 21 N.J.R. 10(b), 21 N.J.R. 766(a).

References to Assistant Superintendents at the Administrative Close Supervision Unit (ACSU) and the Edna Mahan Correctional Facility for Women, added.

Amended by R.1990 d.34, effective January 16, 1990.

See: 21 N.J.R. 3240(a), 22 N.J.R. 232(a).

In (b): added "Division of Adult Institutions."

Replaced references to "VRU Director, the Assistant Superintendent in charge of ACSU, or the Edna Mahan ... Superintendent" with "administrator in charge of the Administrative Close Supervision Unit (ACSU)."

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (b), substituted "business" for "working".

SUBCHAPTER 7. ON-THE-SPOT CORRECTION

Subchapter Historical Note

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking. See: 29 N.J.R. 1410(a), 29 N.J.R. 2187(b).

10A:4-7.1 On-the-spot disciplinary report/adjudication

(a) When a violation of a prohibited act that is considered minor has occurred, the staff member witnessing the violation

shall prepare Part I of Form 253-I On-The-Spot Disciplinary Report/Adjudication and distribute copies as follows:

1. One copy of the report shall be served upon the inmate; and
2. Two copies shall be forwarded immediately to the custody staff supervisor.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In the introductory paragraph of (a), substituted "and distribute copies as follows:" for "in triplicate."; in (a)1, deleted comma from end; and in (a)2, substituted "custody staff" for "shift".

10A:4-7.2 Conference/appeal

(a) The custody staff supervisor shall hold a conference within 24 hours of receipt of the On-The-Spot Disciplinary Report/Adjudication. The inmate shall also be afforded the right to appear at the conference with the custody staff supervisor at which time the inmate may review and appeal the disciplinary report, discuss the violation and the inmate may present arguments regarding disciplinary action and challenge the proposed sanction.

(b) An inmate may waive the right to attend his or her conference or the inmate may forfeit that right if the inmate's behavior justifies his or her removal from the conference. In either case, the reasons for the inmate's absence shall be documented on Form 253-I.

(c) The custody staff supervisor shall indicate on Part 2 of Form 253-I On-The-Spot Disciplinary Report/Adjudication whether the conference was held and enter on the form the other data pertaining to the results of the conference.

(d) At the conclusion of the conference, the inmate shall receive a completed copy of Form 253-I On-The-Spot Disciplinary Report/Adjudication. Should the inmate be found guilty, the remaining copy of Form 253-I shall be submitted to the Director of Custody Operations who shall determine where Form 253-I shall be maintained.

(e) On-the-spot disciplinary action is considered minor in nature and as such the right afforded to the inmate to appear at the conference shall be the final appeal for a finding of guilt to an on-the-spot disciplinary adjudication.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (a) inserted "on-the-spot".

Amended by R.1997 d.432, effective October 6, 1997.

See: 29 N.J.R. 3408(a), 29 N.J.R. 4311(b).

In (d), substituted "submitted to the Director ... be maintained" for "submitted for placement into the inmate's classification folder" and deleted provision relating to not guilty determinations.

Petition for Rulemaking.

See: 36 N.J.R. 2957(a).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a), substituted "custody staff" for "shift" twice and "the inmate may present arguments regarding disciplinary action and" for "argue that the inmate should not be disciplined, or"; and in (c), substituted "custody staff" for "shift".

10A:4-7.3 Sanctions

(a) The following are authorized sanctions for on-the-spot corrections:

1. Verbal reprimand;
2. Loss of recreation privileges not to exceed five calendar days;
3. Up to four hours of extra work duty;
4. Up to four hours confinement to the room or housing area;
5. Loss of radio or television privileges for a period of no more than five days; and/or
6. Confiscation.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Added "confiscation" as a sanction for ON-THE-SPOT CORRECTIONS.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a)2, substituted "not to exceed" for "for a period of no more than" and inserted "calendar".

10A:4-7.4 Imposition of sanction

(a) If the custody staff supervisor concurs with the Form 253-I, On-The-Spot Disciplinary Report/Adjudication and proposed sanction, the proposed sanction shall be imposed within 24 hours of the conference. If no conference is requested, the sanction shall be imposed within 24 hours of the review by the custody staff supervisor.

(b) The custody staff supervisor shall have the authority to change the proposed sanction to another on-the-spot sanction.

(c) If the custody staff supervisor concludes that a more serious sanction is necessary, the custody staff supervisor may refer the on-the-spot correction to the Disciplinary Hearing Officer or Adjustment Committee and/or increase the on-the-spot correction in accordance with N.J.A.C. 10A:4-7.6.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (a) inserted "on-the-spot" and added (b) and (c).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Substituted "custody staff" for "shift" throughout; in (a), inserted "Form 253-I"; and in (c), inserted "the on-the-spot correction to the Disciplinary Hearing Officer or Adjustment Committee".

Petition for Rulemaking.

See: 39 N.J.R. 3566(a).

Petition for Rulemaking.

See: 42 N.J.R. 605(c).

10A:4-7.5 Record of sanction

(a) Information regarding on-the-spot guilty infractions shall not be entered onto the progress notes or be included in the reports presented to the New Jersey State Parole Board.

(b) Records of the on-the-spot sanctions (Form 253-I) shall be retained separately from the inmate's classification folder and in accordance with the internal management procedures of the correctional facility.

Amended by R.1997 d.432, effective October 6, 1997.

See: 29 N.J.R. 3408(a), 29 N.J.R. 4311(b).

Substantially amended section.

10A:4-7.6 Referral and/or increase of an on-the-spot correction infraction

(a) Should the custody staff supervisor conclude that a more serious sanction may be appropriate, the infraction shall be referred to the Disciplinary Hearing Officer or Adjustment Committee for a disciplinary hearing and disposition.

(b) A report shall be filed on Form 259, Disciplinary Report containing all the required information. Copies of all relevant documents shall then be forwarded to the Disciplinary Hearing Officer or Adjustment Committee Chairperson with a statement of reasons for the referral and any recommendations.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Deleted references to major violations.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a), substituted "custody staff" for "shift".

Petition for Rulemaking.

See: 42 N.J.R. 605(c).

SUBCHAPTER 8. ADJUSTMENT COMMITTEE OR DISCIPLINARY HEARING OFFICER**10A:4-8.1 Adjustment Committee or Disciplinary Hearing Officer**

The disciplinary hearing within a correctional facility shall be conducted by either a Disciplinary Hearing Officer designated by the Commissioner or a Committee of three staff members designated by the Administrator.

10A:4-8.2 Designation of an Adjustment Committee

(a) The Administrator shall have the authority to designate an Adjustment Committee only at those correctional facilities where the Commissioner has not designated a Disciplinary Hearing Officer to perform such function, or in extraordinary circumstances when a Disciplinary Hearing Officer is not available.

(b) The Administrator may appoint persons to serve permanently, or may rotate members, or appoint one or more members to serve permanently and rotate other members.

(c) The Administrator shall designate one of the Committee members to serve as Chairperson. The Chairperson shall be the presiding officer and shall have the responsibility for the proper operation of the Committee.

10A:4-8.3 Composition of the Adjustment Committee

(a) The Adjustment Committee shall be composed of at least three persons which shall include:

1. A supervisory custody staff member of the rank of Captain or above (or a Lieutenant in case of a Captain's absence);

2. A correctional facility supervisor from the medical, administrative, social services, educational or treatment staff; and

3. A civilian line staff member.

(b) A staff member shall not participate as a member of the Adjustment Committee if the Committee is hearing an incident that the staff member has reported and/or investigated.

(c) A staff member witnessing an incident under consideration should not participate as a member of the Adjustment Committee unless the incident has been so widely witnessed that virtually every staff member has witnessed it in whole or in part.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (c) and (d), substituted "participate" for "sit".

Amended by R.2008 d.97, effective April 21, 2008.

See: 40 N.J.R. 85(a), 40 N.J.R. 2111(b).

In the introductory paragraph of (a), deleted ", other than the Adjustment Committee of the Capital Sentence Unit (C.S.U.)" preceding "shall be composed".

Amended by R.2009 d.74, effective March 2, 2009.

See: 40 N.J.R. 6374(a), 41 N.J.R. 1052(b).

Deleted former (b); and recodified former (c) and (d) as (b) and (c).

10A:4-8.4 Authority of Disciplinary Hearing Officer or Adjustment Committee

(a) The Disciplinary Hearing Officer or Adjustment Committee shall have the authority to summon witnesses, take testimony, receive documentary evidence and shall have access to all correctional facility records which are relevant and necessary to the adjudication of any disciplinary case.

(b) The Disciplinary Hearing Officer or Adjustment Committee shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence which is not necessary for an adequate understanding of the case. The Committee Chairperson or Disciplinary Hearing Officer shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse or repetitiveness such as, but not limited to, a repetitive witness and to ensure that the hearing does not develop into an adversarial proceeding.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (b), inserted "such as, but not limited to, a repetitive witness" and substituted "ensure" for "insure" and "adversarial" for "adversary".

10A:4-8.5 Decisions of the Adjustment Committee

Decisions of an Adjustment Committee at those correctional facilities utilizing such a Committee shall be by majority vote with each member having an equal vote and an

equal right to participate in the fact-finding, discussions and deliberations of the Committee.

SUBCHAPTER 9. DISCIPLINARY PROCEDURES

Subchapter Historical Note

Petition for Rulemaking. See: 35 N.J.R. 1594(b).

10A:4-9.1 Disciplinary report

(a) When a violation of a prohibited act as identified in N.J.A.C. 10A:4-4, Inmate Prohibited Acts has occurred, the staff member who witnessed it or who has probable cause to believe that a prohibited act has occurred shall prepare Form 259 Disciplinary Report and forward it to the appropriate correctional supervisor.

(b) The correctional supervisor may change the report to an On-The-Spot Disciplinary Report/Adjudication or forward it to the Disciplinary Hearing Officer or Adjustment Committee for further disposition.

10A:4-9.2 Notification of inmate

The disciplinary report shall be served upon the inmate within 48 hours after the violation unless there are exceptional circumstances. The report shall be delivered by the reporting staff member or the investigating custody staff member. The report shall be signed by the person delivering it and the date and time of delivery shall be noted. The inmate shall have 24 hours to prepare his or her defense.

Case Notes

Deviation from requirement that inmate have 24 hours to prepare defense should be permitted only in extreme circumstances. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Violation of rule requiring that inmate have 24 hours to prepare defense to disciplinary charges was harmless. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Inmate not prejudiced because he received only 24 hours notice of his disciplinary report, subsequent to the completion of the investigation of the charges against him. *Negron v. Department of Corrections*, 220 N.J. Super. 425, 532 A.2d 735 (App.Div.1987).

10A:4-9.3 Notification of use immunity

In all cases, the inmate shall be advised of the inmate's right to use immunity at any investigative interview and at the disciplinary hearing. This warning shall consist of a statement that any statements made in connection with the disciplinary hearing or any evidence derived directly or indirectly from those statements shall not be used in any subsequent criminal proceeding. The failure to give this warning by the investigating custody staff member shall not be grounds for dismissing the disciplinary report. The Disciplinary Hearing Officer at his or her discretion or the Adjustment Committee at its discretion may grant a postponement if it is determined

that such failure has precluded the inmate from adequately preparing his or her defense at the hearing.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Added reference to the Adjustment Committee.

Amended by R.2011 d.157, effective June 6, 2011.

See: 43 N.J.R. 366(a), 43 N.J.R. 1343(a).

Section was "Notification of use of immunity".

Law Review and Journal Commentaries

Survey of Recent Developments in United States and New Jersey Law. Michael Ben-David, Stacy A. Dowling, Kristina K. Pappa, Douglas Friedman, Michael S. Rubin, Kerrie Restieri-Heslin, 25 Seton Hall L.Rev. 1332 (1995).

10A:4-9.4 Effect of use immunity

(a) An inmate's failure to invoke use immunity and make a statement in his/her defense may be considered by the Disciplinary Hearing Officer or Adjustment Committee together with the other evidence in decision making.

(b) A finding of guilt at a disciplinary hearing, however, shall not be predicated solely upon an inmate's silence.

10A:4-9.5 Investigation

(a) An investigation of the infraction shall be conducted by designated staff of the correctional facility within 48 hours of the time the disciplinary report is served upon the inmate.

(b) The Administrator shall appoint a coordinator of investigations who shall be an employee of supervisory level. The Administrator may also appoint one or more investigating officers. For the purpose of this section, "investigating officer" means an employee of supervisory level who has not been involved in the particular incident to be investigated.

(c) The coordinator of investigations shall be responsible for:

1. All investigations of disciplinary charges. The coordinator may assign individual investigations to an investigating officer who shall be responsible to the coordinator for completing the assignments;

2. Forwarding a list of all inmates who have a pending disciplinary infraction to the Mental Health Unit for a determination as to which inmates should be considered special needs inmates; and

3. Ensuring that Mental Health Unit staff provide said determination to the investigating officer and Disciplinary Hearing Officer/Adjustment Committee.

(d) The Disciplinary Hearing Officer/Adjustment Committee shall determine the need to obtain a psychological/psychiatric evaluation based upon the nature of the infraction, the determination from the Mental Health Unit regarding whether the inmate is a special needs inmate and/or any other relevant information.

1. In those cases where a psychological/psychiatric evaluation is necessary, the Disciplinary Hearing Officer/Adjustment Committee shall forward Form HSU-010, Request for Psychological/Psychiatric Evaluation to the Lead Psychologist.

2. Upon completion and receipt of the evaluation report from the Lead Psychologist, the Disciplinary Hearing Officer/Adjustment Committee shall consider the information provided in the evaluation report along with any other information gathered during the investigation.

(e) The investigating officer shall thoroughly investigate the incident. As part of this investigation, the investigating officer shall verify that the inmate has received the written charge. The investigating officer shall also read the charge to the inmate, inform the inmate of the inmate's use immunity rights, take the inmate's plea, and ask if the inmate wishes to make a statement concerning the incident or infraction. The investigating officer shall take the inmate's statement concerning the incident. The investigating officer may talk to witnesses and the reporting staff member and summarize their statements as may be necessary. Comments about the inmate's attitude may be included in the investigatory report. The investigating officer shall attach to the investigatory report, evidence such as, but not limited to, staff reports, photographs of physical evidence, analysis of specimens collected, continuity of evidence forms and confiscation forms.

(f) The inmate may submit to the investigating officer a written request for inmate witnesses. Written requests will be attached to the record of the case.

(g) The investigating officer may include comments and conclusions regarding the inmate's prior record and behavior, the investigating officer's analysis of any conflicts between witnesses, and the conclusions of the investigating officer regarding the incident. The inmate shall not receive a copy of the investigative record.

(h) The inmate may obtain a copy of inmate witness statements, provided that the Department of Corrections finds that such a disclosure would not compromise correctional facility safety, security, orderly operation, and goals.

Amended by R.1995 d.542, effective October 16, 1995.

See: 27 N.J.R. 2853(a), 27 N.J.R. 3957(a).

Amended by R.1999 d.187, effective June 7, 1999 (operative July 1, 1999).

See: 31 N.J.R. 831(a), 31 N.J.R. 1487(b).

In (b), substituted a reference to the Administrator for a reference to the Superintendent; rewrote (c); inserted a new (d); and recodified former (d) through (g) as (e) through (h).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Substituted "investigating officer" for "investigator" throughout; in (a), inserted "designated staff of"; rewrote (b); in the introductory paragraph of (c), inserted "of investigations"; rewrote (c)3; in (e), inserted the final sentence; rewrote (g); and in (h), inserted "orderly operation,".

Case Notes

Inmate not entitled to inmate witness statements gathered during investigation. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

10A:4-9.6 Requiring further investigation of charges

The Disciplinary Hearing Officer or the Chairperson of the Adjustment Committee may direct a further investigation in any case where he/she is of the opinion that the report is not properly made out or the facts and circumstances are not sufficient to set forth a basic understanding of the incident. The Disciplinary Hearing Officer or Chairperson shall append the supplementary information, in writing, to the original investigation report. The person who supplied the additional information shall sign that section of the report.

10A:4-9.7 Review of postponed cases

(a) Hearings which have been postponed for further investigation shall be reviewed by the Disciplinary Hearing Officer or Adjustment Committee to determine if an additional postponement is warranted:

1. Within 48 hours of the postponement if the inmate is in Prehearing Detention; or
2. Within seven calendar days of the postponement if the inmate is in any other unit. Should the seventh day fall on a Saturday, Sunday or holiday, the last day for the hearing shall be the business day immediately following the weekend or holiday.

(b) Additional postponements shall be granted only in exceptional circumstances.

Amended by R.2006 d.398, effective November 20, 2006.
See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Rewrote the section.

10A:4-9.8 Scheduling hearing

(a) Meetings with the Disciplinary Hearing Officer or the Adjustment Committee shall be convened at such times as are appropriate to carry out the work of the Disciplinary Hearing Officer or Adjustment Committee.

(b) The inmate shall be entitled to a hearing within seven calendar days of the alleged violation, including weekends and holidays, unless such hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Should the seventh day fall on a Saturday, Sunday or holiday, the last day for the hearing shall be the business day immediately following the weekend or holiday.

(c) Inmates confined in Prehearing Detention shall receive a hearing within three calendar days of their placement in Prehearing Detention, including weekends and holidays, unless there are exceptional circumstances, unavoidable delays or reasonable postponements. Should the third day fall on a Saturday, Sunday or holiday, the hearing shall be held on the business day immediately following the weekend or holiday.

(d) Inmates confined in Prehearing Detention shall be given priority in scheduling their appearance before the Disciplinary Hearing Officer or Adjustment Committee.

(e) No delays in hearing a case shall be permitted for the purpose of punishment or discipline.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (b) and (c), inserted "calendar" and substituted "business day" for "weekday".

10A:4-9.9 Failure to adhere to time limits

(a) The failure to adhere to any of the time limits prescribed by this subchapter shall not mandate the dismissal of a disciplinary charge. However, the Disciplinary Hearing Officer or Adjustment Committee may, in its discretion, dismiss a disciplinary charge because of a violation of time limits. Such discretion shall be guided by the following factors:

1. The length of the delay;
2. The reason for the delay;
3. Prejudices to the inmate in preparing his/her defense; and
4. The seriousness of the alleged infraction.

Case Notes

"Residuum evidence rule" inapplicable to Parole Board decisions (citing N.J.A.C. 10A:71-2.1, 10A:71-3.7, 10A:71-3.46); delay in scheduling parole hearing did not violate appellant's due process rights warranting reversal on that ground; when parole rescission decision is based on expert opinion concerning wiretapped conversations said to show criminal activity not presented through tapes or transcripts or both, testifying officer should accurately recount them. *Gerardo v. N.J. State Parole Bd.*, 221 N.J.Super. 442, 534 A.2d 1037 (App.Div.1987).

Inmate not prejudiced because he received only 24 hours notice of his disciplinary report, subsequent to the completion of the investigation of the charges against him. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

10A:4-9.10 Excluding the inmate from the disciplinary hearing

(a) An inmate shall be permitted to be present throughout the disciplinary hearing except during the necessary deliberations of the Disciplinary Hearing Officer or Adjustment Committee and except in instances where correctional facility security would be jeopardized by the inmate's presence.

(b) The reasons for excluding an inmate from the disciplinary hearing must be well documented in the record.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Inserted disciplinary preceding hearing.

10A:4-9.11 In absentia hearings

(a) A full in absentia hearing shall be conducted if the inmate refuses to appear at the hearing.

(b) The following procedural process shall apply at all disciplinary hearings conducted in absentia which will enable the Disciplinary Hearing Officer or Adjustment Committee to ensure that the inmate has been given every opportunity to be present for his or her disciplinary hearing.

1. The escorting custody staff member shall report the inmate's refusal to appear before the Disciplinary Hearing Officer or Adjustment Committee.

2. A custody staff member shall deliver to the inmate who refuses to appear Form 252 Inmate Disciplinary Hearing Attendance Refusal Notice that includes the following statement:

"I voluntarily refuse to appear at this hearing. I understand that the hearing will be held in my absence."

3. The custody staff member shall advise the inmate that refusal to appear at the disciplinary hearing may result in an incomplete understanding by the Disciplinary Hearing Officer or Adjustment Committee of the circumstances surrounding the charges lodged against the inmate. If the inmate still refuses to appear at the disciplinary hearing, the inmate shall be requested to sign Form 252 immediately after the statement noted above in (b)2.

4. In the event the inmate refuses to sign his or her name where designated on Form 252 and still refuses to appear, Form 252 shall be returned to the Disciplinary Hearing Officer or Adjustment Committee Chairperson and the following statement on Form 252 shall be acknowledged by signature of the investigating custody staff member:

"Inmate refuses to sign _____."
Signature of
Custody Staff Member

5. The Disciplinary Hearing Officer or Adjustment Committee shall ensure that the following statement shall be included in the inmate statement section of the Adjudication of Disciplinary Report form: "No statement taken as the inmate refused to appear at the hearing."

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Inserted disciplinary preceding hearing.

10A:4-9.12 Aid in presentation of inmate's case

(a) When an inmate has been charged with an asterisk offense, the inmate shall be afforded the right to request representation by a counsel substitute.

(b) When the Disciplinary Hearing Officer or Adjustment Committee determines that an inmate is illiterate or cannot adequately collect and present the evidence in his or her own behalf, the inmate may elect to receive the services of a counsel substitute or the inmate may request representation by a **staff member**.

(c) Where the inmate requests the services of a staff member, the Administrator or designee may appoint a staff member to provide representation.

(d) The counsel substitute shall be permitted reasonable time to speak to the inmate and shall be given at least 24 hours to prepare the inmate's defense.

(e) If necessary, the inmate shall be allowed to present a defense through an interpreter.

Amended by R.1987 d.383, effective September 21, 1987.

See: 19 N.J.R. 913(b), 19 N.J.R. 1738(c).

(c): "may" was "shall".

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

10A:4-9.13 Opportunity to call a witness(es) and present evidence

(a) Inmates shall be allowed to call a fact witness(es) (as this term is defined at N.J.A.C. 10A:4-1.3) and present documentary evidence in their defense. The Disciplinary Hearing Officer or Adjustment Committee has the discretion to keep the disciplinary hearing within reasonable limits. If requested, an inmate or counsel substitute shall be provided the opportunity to call and question in-person a fact witness(es) unless the Disciplinary Hearing Officer or Adjustment Committee determines that calling said witness(es) may be:

1. Unduly hazardous to the correctional facility/unit safety, security, orderly operation, or goals;
2. Irrelevant;
3. Likely to produce repetitive testimony;
4. Harassing or retaliatory against another;
5. For some malicious purpose;
6. A request to call a witness who is a confidential informant;
7. A request to call a witness who is not employed or is no longer employed by the Department of Corrections;
8. A request to call an inmate witness who is not in the custody of the Department of Corrections; or
9. A request to call an unavailable witness, as defined in this chapter. An unavailable witness may be asked to submit a written statement in lieu of an in-person appearance.

(b) Witnesses requested by the inmate who are called may be questioned by the Disciplinary Hearing Officer or by members of the Adjustment Committee and the inmate or the inmate's counsel substitute. Inmates or their representatives may request that certain questions be directed by the Adjustment Committee members or the Disciplinary Hearing Officer to any witnesses. The Disciplinary Hearing Officer or Adjustment Committee may take testimony in a manner or form which is determined to be necessary to protect correctional

facility safety or goals. Such manner or form shall include, but shall not be limited to, the consideration of confidential reports. If the request for witness testimony is granted, the inmate or counsel substitute shall provide to the Disciplinary Hearing Officer or Adjustment Committee the proposed witness questions for review.

(c) Based upon the review as established in (b) above, the Disciplinary Hearing Officer or Adjustment Committee may take the testimony in a manner or form which is determined to be necessary to protect correctional facility/unit safety, security, orderly operation, or goals. The Disciplinary Hearing Officer or Adjustment Committee may disallow any questions that may:

1. Be unduly hazardous to the correctional facility/unit safety, security, orderly operation, or goals;
2. Be irrelevant;
3. Be repetitive;
4. Be meant to harass or retaliate;
5. Be for some malicious purpose; or
6. Reveal confidential information.

(d) The Disciplinary Hearing Officer or Adjustment Committee shall direct all remaining questions to the witness. The inmate or counsel substitute may request additional follow-up questions as set forth in this section.

(e) If the Disciplinary Hearing Officer or Adjustment Committee denies the request of the inmate or counsel substitute to call a witness(es), have access to certain information, or to ask certain questions, the reasons for the denial shall be specifically set forth on form 259A Adjudication of Disciplinary Report.

(f) The New Jersey Department of Corrections has a penological interest to ensure correctional facilities are operated in a safe, secure and orderly fashion; therefore, the Department prohibits all forms of violence among inmates. The Disciplinary Hearing Officer or Adjustment Committee will allow an inmate to raise self-defense to a prohibited act involving the use of force among inmates; however, the inmate claiming self-defense shall be responsible for presenting supporting evidence that shall include each of the following conditions:

1. The inmate was not the initial aggressor;
2. The inmate did not provoke the attacker;
3. The use of force was not by mutual agreement;
4. The use of force was used to defend against personal harm, not to defend property or honor;
5. The inmate had no reasonable opportunity or alternative to avoid the use of force, such as, by retreat or alerting correctional facility staff; and

6. Whether the force used by the inmate to respond to the attacker was reasonably necessary for self-defense and did not exceed the amount of force used against the inmate.

(g) When self-defense is raised by an inmate, the Disciplinary Hearing Officer or Adjustment Committee may consider any other condition or evidence that would cause the force that was used by the inmate to be deemed unreasonable, such as, but not limited to, any use of force that would interfere with or otherwise undermine the safe, secure or orderly operation of the correctional facility.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (a) inserted disciplinary preceding hearing.

Amended by R.2004 d.293, effective August 2, 2004.

See: 36 N.J.R. 1867(a), 36 N.J.R. 3551(a).

Rewrote the section.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In the introductory paragraph of (a), inserted "(as this term is defined at N.J.A.C. 10A:4-1.3)".

Amended by R.2007 d.198, effective July 2, 2007.

See: 39 N.J.R. 834(b), 39 N.J.R. 2538(a).

In (e), inserted ", have access to certain information," substituted "form 259A" for "the" following "on" and deleted "form" from the end; and added (f) and (g).

Petition for Rulemaking.

See: 48 N.J.R. 2078(b), 2637(a).

Case Notes

Denying prisoner accused of threatening corrections officer access to the testimony of an alleged eyewitness violated his statutory right to call witnesses at disciplinary hearing, and thus, to the extent eyewitness's written statement informed the findings and conclusion reached by the hearing examiner, those determinations were flawed. *Jones v. Department of Corrections*, 359 N.J.Super. 70, 819 A.2d 1.

Hearing officers must record their reasons for refusing to call witness. *McDonald v. Pinchak*, 139 N.J. 188, 652 A.2d 700 (1995).

Disciplinary proceeding would be remanded to Department of Correction to clarify and amplify record. *McDonald v. Pinchak*, 139 N.J. 188, 652 A.2d 700 (1995).

10A:4-9.14 Confrontation and cross-examination

(a) The opportunity for confrontation and cross-examination of the accuser(s) and/or the State's witness(es), if requested, shall be provided to the inmate or counsel substitute in such instances where the Disciplinary Hearing Officer or Adjustment Committee deems it necessary for an adequate presentation of the evidence, particularly when serious issues of credibility are involved.

(b) The Disciplinary Hearing Officer or Adjustment Committee may refuse confrontation and cross-examination when confrontation and cross-examination is determined by the Disciplinary Hearing Officer or Adjustment Committee to be:

1. Unduly hazardous to the correctional facility/unit safety, security, orderly operation, or goals;
2. Irrelevant;
3. Likely to produce repetitive testimony;
4. Harassing or retaliatory against another;

5. For some malicious purpose;
6. A request to call a witness who is a confidential informant;
7. A request to call a witness who is not employed or no longer employed by the Department of Corrections;
8. A request to call a witness who is not in the custody of the New Jersey Department of Corrections; or
9. A request to call an unavailable witness, as defined in this chapter. An unavailable witness may be asked to submit a written statement answering cross-examination questions in lieu of an in-person appearance.

(c) If the request for confrontation/cross-examination is granted, the inmate or counsel substitute shall provide proposed questions to the Disciplinary Hearing Officer or Adjustment Committee for review.

(d) Based upon the review as established in (c) above, the Disciplinary Hearing Officer or Adjustment Committee may take testimony in a manner or form which is determined to be necessary to protect correctional facility/unit safety, security, orderly operation, or goals. The Disciplinary Hearing Officer or Adjustment Committee may disallow any questions that may:

1. Be unduly hazardous to the correctional facility/unit safety, security, orderly operation, or goals;
2. Be irrelevant;
3. Be repetitive;
4. Be meant to harass or retaliate;
5. Be for some malicious purpose; or
6. Reveal confidential information.

(e) The Disciplinary Hearing Officer or Adjustment Committee shall direct all remaining questions to the accuser and/or the State's witness. The inmate or counsel substitute may request additional follow-up confrontation/cross-examination questions, based on the testimony given by the accuser and/or the State's witness, following the procedure as set forth in this section.

(f) If the Disciplinary Hearing Officer denies the request of the inmate or counsel substitute to call a witness(es) or ask certain cross-examination questions, the reasons for the denial shall be specifically set forth on Form 259A, Adjudication of Disciplinary Report.

Amended by R.2004 d.293, effective August 2, 2004.
See: 36 N.J.R. 1867(a), 36 N.J.R. 3551(a).

Rewrote the section.

Amended by R.2006 d.398, effective November 20, 2006.
See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Section was "Confrontation and cross examination". In (a), substituted "cross-examination" for "cross examination"; in the introductory paragraph of (b), substituted "confrontation and cross-examination" for "said"; and in (f), substituted "Form 259A" for "the" and deleted "form" following "Report".

Petition for Rulemaking.
See: 40 N.J.R. 4360(a).

Case Notes

At disciplinary hearing, prisoner was entitled to confront and cross-examine corrections officer who accused prisoner of threatening him with bodily harm, and Department of Correction's violation of that right deprived prisoner of the fundamental opportunity to develop his defense by revealing weaknesses in accusation against him either on basis of accuser's credibility or otherwise; hearing officer's decision was based on a credibility finding favorable to corrections officer, which was a determination that could not be fairly reached without affording prisoner opportunity to address the credibility issue effectively. *Jones v. Department of Corrections*, 359 N.J.Super. 70, 819 A.2d 1.

Due process violated in disciplinary proceeding; information developed from confidential informants. *Hyson v. Neubert*, D.N.J.1993, 820 F.Supp. 184.

Where inmate was charged with a disciplinary infraction by virtue of conduct directed to or at a corrections officer and the matter turned on the credibility of the officer or inmate, the inmate, upon request, was entitled to confrontation and cross-examination of the officer, at least in the absence of any reasons that justify an exception as a matter of prison security. *Decker v. New Jersey Department of Corrections*, 331 N.J.Super. 353, 751 A.2d 1094 (N.J.Super. 2000).

In prison disciplinary hearing to address charges that inmate forged another inmate's signature on court documents, inmate was provided insufficient access to proofs against him, which included report of administrative investigation, handwriting samples of both inmates and handwriting and typeface analyses conducted by internal affairs unit, to satisfy requirements of due process. *Wakefield v. Pinchak*, 289 N.J.Super. 566, 674 A.2d 621 (A.D.1996).

Regulation provides more protection than Fourteenth Amendment. *McDonald v. Pinchak*, 139 N.J. 188, 652 A.2d 700 (1995).

Supreme Court would remand prison disciplinary proceeding. *McDonald v. Pinchak*, 139 N.J. 188, 652 A.2d 700 (1995).

Hearing officer in prison disciplinary proceeding has broad discretion to refuse a request for cross-examination and confrontation; denial of request for cross-examination of various individuals involved in drug-trafficking investigation was proper. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

10A:4-9.15 Evidence required

(a) A finding of guilt at a disciplinary hearing shall be based upon substantial evidence that the inmate has committed a prohibited act.

(b) Evidence relied upon in making a determination shall be specified on the Adjudication of Disciplinary Report form.

1. In any case in which the Disciplinary Hearing Officer or Adjustment Committee's decision of guilt is based on evidence which includes confidential information, adjudication shall contain:

i. A concise summary of the facts on which the Disciplinary Hearing Officer or Adjustment Committee concluded that the informant was creditable or his or her information reliable; and

ii. The informant's statement (either in writing or as reported) in language that is factual rather than a conclusion, and based on the informant's personal knowledge of the matters contained in such statement.

2. The Disciplinary Hearing Officer or Adjustment Committee is not permitted to disclose the identity of the informant.

Petitions for Rulemaking.

See: 25 N.J.R. 4517(b), 25 N.J.R. 4675(b), 25 N.J.R. 4796(a), 25 N.J.R. 5365(b), 25 N.J.R. 5706(a), 26 N.J.R. 1162(c).

Law Review and Journal Commentaries

Prisoners—Discipline—Due Process—Polygraphs. P.R. Chenoweth, 136 N.J.L.J. No. 9, 61 (1994).

Case Notes

Action to restore good-time credits remanded to District Court for dismissal as an action seeking federal habeas corpus relief prior to exhaustion of State remedies: "substantial evidence" in disciplinary proceeding held ambiguous, as more frequently taken as a standard of review rather than a burden of proof; exhaustion of State remedies required in light of their ambiguity; (a) disciplinary hearing is substantial evidence of guilt; *Brown v. Fauver*, 819 F.2d 395 (3c 1987).

Inmate, in civil rights action against prison officials, deprived of due process by use of confidential information in increase of his custody status; deprivation not harmless. *Muhammed v. Butler*, 655 F.Supp. 1470 (D.N.J.1987) appeal dismissed 802 F.2d 447.

Disciplinary proceeding violated prisoner's due process rights. *Engel v. New Jersey Dept. of Corrections*, 270 N.J.Super. 176, 636 A.2d 1058 (A.D.1994).

Prisoner should have been allowed to take polygraph test. *Engel v. New Jersey Dept. of Corrections*, 270 N.J.Super. 176, 636 A.2d 1058 (A.D.1994).

Procedural safeguards not used in prison disciplinary proceeding. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

Information provided by confidential informant for use in prison disciplinary hearing must be part of confidential record. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

New prison disciplinary hearing required when procedural safeguards were absent in initial hearing or in presence of newly discovered

evidence. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

Inmate charged with prison drug trafficking not entitled to verbatim recording of disciplinary proceeding; documents in support of hearing officer's determination were admissible as exceptions to hearsay rule. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

10A:4-9.16 Modification of charge during disciplinary hearing

(a) Whenever it becomes apparent at a disciplinary hearing that an incorrect prohibited act is cited in the disciplinary report but that the inmate may have committed another prohibited act, the Adjustment Committee or Disciplinary Hearing Officer shall modify the charge. The inmate shall be given the option of a 24-hour postponement to prepare his or her defense against the new charge or have the new charge adjudicated at that time.

(b) If, after reviewing the charge, the inmate's past disciplinary record and any special reports, the Disciplinary Hearing Officer or Adjustment Committee concludes that the infraction is of a minor nature that is suitable for handling as an on-the-spot correction, the charge may be referred back to the appropriate custody staff supervisor for handling under N.J.A.C. 10A:4-7, On-The-Spot Correction.

Amended by R.2006 d.398, effective November 20, 2006.
See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a), substituted "The inmate shall be given" for "and give the inmate", "his or her" for "his/her" and "have" for "adjudicate" and inserted "adjudicated"; and in (b), inserted "that is" and substituted "custody staff supervisor" for "Shift Supervisor".

Case Notes

Inmates charged with disciplinary violations should be informed of constitutional rights. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Inmate will be deemed informed of rights to confront and cross-examine witnesses in prison disciplinary hearing. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Failure to inform inmate of constitutional rights did not prejudice inmate. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

10A:4-9.17 Disciplinary sanctions

(a) The disciplinary action may be individualized by considering such factors as the:

1. Offender's past history of correctional facility adjustment;
2. Setting and circumstances of the prohibited behavior;
3. Involved inmate's account;
4. Correctional goals set for the inmate; and
5. The inmate's history of, or the presence of, mental illness.

(b) The sanction shall be one or more of those enumerated in N.J.A.C. 10A:4-5, Schedule of Sanctions for Prohibited Acts.

(c) In accordance with N.J.A.C. 10A:9-3.14, inmates shall be reviewed and scored on the Reclassification Instrument upon a finding of guilt to a prohibited act(s) when:

1. A sanction imposed by the Disciplinary Hearing Officer includes a referral to the I.C.C., except if administrative segregation is part of the imposed sanction;
2. A minimum custody status inmate is found guilty of a prohibited act in the highest or high level of the Severity of Offense—Disciplinary Infractions Scale (see N.J.A.C. 10A:9-2.11); or
3. Referred by the Administrator.

(d) Whenever an inmate damages or destroys plumbing fixtures, or floods his or her cell at New Jersey State Prison, the inmate may be placed in Prehearing Detention or Disciplinary Detention in a "DRY" cell to serve the sanction imposed.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

In (a), substituted "may" for "shall" following "disciplinary action" in the introductory sentence.

Amended by R.1999 d.187, effective June 7, 1999 (operative July 1, 1999).

See: 31 N.J.R. 831(a), 31 N.J.R. 1487(b).

In (a), substituted "by considering" for "in keeping with" in the introductory paragraph, and added 6.

Amended by R.2001 d.425, effective November 19, 2001.

See: 33 N.J.R. 2390(a), 33 N.J.R. 3947(a).

Added a new (c) and (d), and recodified former (c) as (e).

Amended by R.2002 d.351, effective November 4, 2002.

See: 34 N.J.R. 2186(a), 34 N.J.R. 3781(a).

Deleted former (d); recodified former (e) as new (d).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (d), inserted "or her" and substituted "the inmate" for "he".

Amended by R.2014 d.027, effective February 3, 2014.

See: 45 N.J.R. 13(a), 46 N.J.R. 297(a).

In (c)1, substituted "administrative segregation" for "Administrative Segregation".

10A:4-9.18 Suspending sanctions

(a) The Adjustment Committee or Disciplinary Hearing Officer may suspend a sanction(s) imposed upon an inmate for a violation of a prohibited act when, in their opinion, such action is warranted by the particular circumstances of the case.

(b) When a sanction(s) is suspended, the inmate's behavior shall be watched closely for a period of time to see if his or her intentions to conform to the required code of behavior are sincere.

(c) If the inmate whose sanctions(s) has been suspended commits further violations of the rules or regulations of the correctional facility, the Adjustment Committee or Disci-

plinary Hearing Officer shall enforce the sanction(s) that was suspended and impose an additional sanction(s) for the new violation(s).

New Rule, R.1988 d.61, effective February 1, 1988.

See: 19 N.J.R. 1717(b), 20 N.J.R. 294(a).

Old section 18 recodified to section 19.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (c), deleted "correctional facility's" preceding "rules", inserted "of the correctional facility" and substituted "that" for "which".

10A:4-9.19 Confiscation of contraband items

All items determined to be contraband found in the inmate's possession shall be confiscated and disposed of in accordance with N.J.A.C. 10A:3-6, Contraband and Disposition of Contraband.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Substituted 10A:3-6 for 10A:3.

10A:4-9.20 Guidance and referrals

The Adjustment Committee or Disciplinary Hearing Officer shall give guidance to the inmate with respect to the reason for the rules and policies of the correctional facility. The elements of the inmate's behavior or attitude that are deemed to be unsatisfactory shall be pointed out.

10A:4-9.21 Emergency transfer to another correctional facility or unit

(a) When it shall appear that an inmate has committed a disciplinary infraction that requires the inmate's immediate transfer to the general population of another correctional facility or unit, or the Prehearing Detention Unit of another correctional facility or unit, the notice and disciplinary hearing shall be granted after the transfer.

(b) The Disciplinary Hearing Officer or Adjustment Committee assigned to the correctional facility to which the inmate has been transferred shall conduct the hearing.

(c) Staff at the sending correctional facility shall be responsible for preparing the disciplinary charges, conducting the investigation and delivering this material to the receiving correctional facility.

(d) The transfer of inmates in keep separate status shall be conducted in accordance with N.J.A.C. 10A:3-2.

(e) All due process safeguards shall be provided as soon after the transfer as practicable and shall be in compliance with this subchapter except that written statements of unavailable witnesses shall be liberally accepted instead of live testimony.

(f) No transfer as described in this subchapter shall be effected unless the Administrator and either the Assistant Commissioner or Director, Division of Operations (or the Commissioner or designee if both the Assistant Commis-

sioner and the Director are unavailable) shall have determined that there are emergency conditions in the sending correctional facility justifying the transfer.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Editorial changes only.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Inserted provision for transfer in keep-separate status.

Administrative correction.

See: 29 N.J.R. 777(a).

Rewrote (e).

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

In (g), substituted "Commissioner or designee" for "Chief of Staff" preceding "if both the".

Amended by R.2004 d.180, effective May 3, 2004.

See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

Deleted (f); recodified (g) as (f).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Section was "Emergency intra-complex transfer". In (a), substituted "that" for "which" and deleted "within the complex" following "unit" two times; in (c), substituted "Staff at the" for "The"; and in (d), substituted "keep separate" for "keep-separate".

10A:4-9.22 Emergency inter-complex transfer

(a) When it shall appear that an inmate from the Youth Complex has committed a disciplinary infraction which requires the inmate's immediate transfer to the Prison Complex, the notice and disciplinary hearing shall be granted after the transfer.

(b) The disciplinary hearing shall be conducted by the Disciplinary Hearing Officer or Adjustment Committee assigned to the correctional facility to which the inmate has been transferred.

(c) Staff at the sending correctional facility shall be responsible for preparing the disciplinary charges, for conducting the investigation and for delivering the material to the receiving correctional facility.

(d) The transfer of inmates in keep separate status shall be conducted in accordance with N.J.A.C. 10A:3-2.

(e) All due process safeguards shall be provided as soon after the transfer as practicable and shall be in compliance with this subchapter except that written statements of unavailable witnesses shall be liberally accepted instead of live testimony.

(f) Emergency transfers from the Youth Complex to the Prison Complex shall be reviewed by the Institutional Classification Committee and are subject to confirmation by the Special Classification Committee. (See N.J.A.C. 10A:9, Classification Process.)

(g) No transfer as described in this section shall be effected unless the Administrator and either the Assistant Commissioner or Director, Division of Operations, (or the Commissioner or designee if both the Assistant Commissioner and the Director are unavailable) shall have determined that there are

emergency conditions in the sending correction facility justifying the transfer.

(h) Transfers of adjudicated delinquents 18 years of age or older from the Juvenile Justice Commission to the Department of Corrections shall be handled in accordance with N.J.A.C. 13:91-2.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Changed term "variance" to "rule exemption".

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Inserted provision for transfer in keep-separate status.

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

In (g), substituted "Commissioner or designee" for "Chief of Staff" preceding "if both the".

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (c), substituted "Staff at the" for "The"; and in (d), substituted "keep separate" for "keep-separate".

10A:4-9.23 Transfer from satellite units

(a) When a minimum security inmate at a satellite unit is charged with a serious disciplinary infraction requiring transfer for reasons of security to the main correctional facility, the inmate shall be provided with a disciplinary hearing at the main correctional facility.

(b) The satellite unit staff shall be responsible for preparing the disciplinary charges.

(c) The investigation shall be conducted by either staff of the main correctional facility or the satellite unit.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (a) substituted "is charged with" for "commits".

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (b), inserted "staff"; and in (c), inserted "staff of".

10A:4-9.24 Disciplinary decision

(a) After the hearing has been completed, a written statement of the fact-findings shall be given to the inmate by the Disciplinary Hearing Officer or Adjustment Committee Chairperson. This statement shall include evidence relied upon, the decision and the reason for the disciplinary action taken, unless doing so would, in the discretionary opinion of the Disciplinary Hearing Officer or Adjustment Committee Chairperson, jeopardize correctional facility security. The written statement shall also indicate the reason for refusing to call a witness or to disclose items of evidence whether it be for irrelevance, lack of necessity or other special circumstances presented in individual cases. When an inmate has been denied the opportunity for confrontation and cross-examination, the reason for such denial shall be entered in the record and made available to the inmate.

(b) A copy of the disciplinary decision shall be kept in the Disciplinary Hearing Officer's/Adjustment Committee's

records and in the inmate's classification folder unless the inmate has been adjudicated not guilty of the charge(s), in which case, the records of the charge(s) shall be expunged from the inmate's classification folder.

(c) If the inmate is adjudicated guilty, the decision shall be entered on the inmate's progress notes and included in reports submitted to the New Jersey State Parole Board.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Added new (c).

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

10A:4-9.25 Discipline record card (Form 254-I)

For the purpose of assisting the Disciplinary Hearing Officer or Adjustment Committee in determining the appropriate sanction to impose, each correctional facility shall have available at the hearing a Discipline Record Card (Form 254-I) for each inmate. This card shall accompany the inmate should he/she be transferred to another correctional facility.

10A:4-9.26 Expungement

(a) If an inmate shall be adjudicated not guilty on a disciplinary charge, the results of the hearing shall not be entered onto the inmate's progress sheet. In addition, all references to the disciplinary charges (including any entry onto the progress sheet, the disciplinary report, the investigation report and the adjudication sheet) shall be removed from the inmate's classification folder. Copies of the disciplinary report, investigation and adjudication sheet shall be maintained by the correctional facility and the Disciplinary Hearing Officer or Adjustment Committee in the event of judicial review and for statistical and accounting purposes only. These records shall be maintained separately from the inmate's classification folder.

(b) In the event that a finding of guilt is rescinded on appeal and no further disciplinary action is taken, the inmate's records shall be expunged in accordance with the above procedure. Copies of the appeal and the disposition on appeal shall be forwarded to the Disciplinary Hearing Officer or Adjustment Committee for their records.

(c) The provisions of this subchapter shall be applicable to disciplinary reports prepared on or after September 1, 1980.

10A:4-9.27 Reopening a disciplinary hearing

(a) A finding of not guilty shall represent the final disposition of a disciplinary charge. Except when new information is discovered, an inmate may not be recharged with an offense for which the inmate has been found not guilty.

(b) New information shall be defined to include only information which was not available at the time of the initial hearing and which could not reasonably have been ascertained in the course of the correctional facility's investigation.

(c) Information which was overlooked as the result of a careless or incomplete investigation shall not be considered new information within the meaning of this subchapter.

10A:4-9.28 Records of disciplinary reports

(a) A disciplinary report result sheet containing the following information regarding inmates who received disciplinary actions shall be prepared no less than weekly and submitted to the Administrator or designee:

1. The names of the inmates;
2. The inmate numbers;
3. The inmate housing locations;
4. The violations of the inmates;
5. The names of staff members who wrote the reports;
6. The disposition of the charges; and
7. The names of staff members who adjudicated the cases.

(b) The result sheet shall be kept on file for two years.

Amended by R.1996 d.237, effective May 20, 1996.
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

SUBCHAPTER 10. DETENTION PROGRAM

10A:4-10.1 Confinement in Prehearing Detention

(a) An inmate may be placed in Prehearing Detention in those instances where it appears necessary to remove or isolate the inmate from the general population until an investigation into the inmate's alleged misconduct can be completed and a disciplinary hearing can be held pursuant to N.J.A.C. 10A:4-9, Disciplinary Procedures. Confinement in Prehearing Detention shall be deemed necessary only where it appears that, if the inmate remained in his or her existing housing unit, the inmate would constitute a threat to other inmates, staff members, the inmate or to the safe, secure and orderly operations of the correctional facility.

(b) Confinement in Prehearing Detention may consist of placement in the Detention Unit or confinement to the inmate's room or housing unit.

(c) Factors which may be considered in determining whether confinement in Prehearing Detention is warranted include:

1. The inmate has been charged with an assault upon another person and, in the opinion of the correctional staff, there is a substantial possibility that the inmate may assault another inmate or staff member;
2. The inmate has been charged with threatening another person and, in the opinion of the correctional staff,

there is a substantial possibility that the inmate will act on his or her threat;

3. The inmate has been charged with being under the influence of drugs or intoxicants and, in the opinion of the correctional staff, the inmate's behavioral controls appear to be impaired;

4. The inmate has been charged with inciting others to engage in an assault upon another person, causing serious destruction of property or participating in a group demonstration or work stoppage and, in the opinion of the correctional staff, there is a substantial possibility the inmate will continue such incitement;

5. The inmate has been charged with arson or serious destruction of property and, in the opinion of the correctional staff, there is a substantial likelihood that the inmate may engage in additional arson or destruction of property. (Whenever the destruction to property consists of flooding the cell or damaging plumbing fixtures, the inmate may be placed in Prehearing Detention in a "DRY" cell—New Jersey State Prison only);

6. The inmate has received a disciplinary charge and, in the opinion of the correctional staff, there is a substantial possibility that the inmate will attempt to harm, threaten or intimidate potential witnesses or that the inmate will attempt to organize or encourage others to harm, threaten or intimidate potential witnesses;

7. The inmate has been charged with participating in an unauthorized gathering or group demonstration and the inmate refuses to abandon his or her participation;

8. The inmate has been charged with escape or attempted escape and evidence has been produced that indicates the inmate presents a serious escape risk if permitted to remain in general population; and

9. The inmate has been charged with conduct that disrupts and in the opinion of correctional facility staff, there is a substantial possibility that such behavior has the potential to threaten the safe, secure, and orderly operation of the correctional facility.

(d) If an inmate is confined in Prehearing Detention as a result of any of the factors in (c) above, such confinement must be authorized, in writing, by the custody staff supervisor. Form 255-I Authorization for Prehearing Detention shall be utilized when placing an inmate in Prehearing Detention. A separate Form 255-I must be completed for each inmate and, wherever possible, Form 255-I should be completed prior to placing the inmate in Prehearing Detention. When an emergency exists which precludes completion of Form 255-I prior to placement, Form 255-I shall be completed immediately following placement. After all appropriate parties have signed Form 255-I, it shall be placed in the inmate's folder. Additional copies of the completed Form 255-I may be kept on file, for recordkeeping purposes, in areas designated by the Administrator and the Director of Custody Operations.

(e) Where possible, an Administrator, Associate Administrator, Assistant Superintendent or Director of Custody Operations shall review and approve or disapprove a request to place an inmate in Prehearing Detention.

(f) Any time spent in Prehearing Detention shall be credited to any subsequent detention sentence imposed.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Provisions previously mandated are now suggested thereby providing more flexibility.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a), inserted "safe, secure and"; in (c)7, deleted "and" from the end; in (c)8, substituted "that" for "which" preceding "indicates", deleted "that" following "indicates" and substituted "; and" for a period at the end; added (c)9; in (d), substituted "custody staff" for "shift"; in (e), inserted "Associate Administrator,"; and in (f), substituted "to" for "against" and inserted "detention".

Petition for Rulemaking.

See: 41 N.J.R. 2507(c).

Case Notes

Prison inmate was properly placed in detention while awaiting hearing on drug-trafficking charges. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

10A:4-10.2 Placement in Disciplinary Detention

(a) Inmates shall be placed in Disciplinary Detention by the Adjustment Committee or Disciplinary Hearing Officer for a period not to exceed 15 calendar days.

(b) If it shall be determined that the inmate has committed a new major violation during the period of Disciplinary Detention, this time may be extended. In response to the commission of this new infraction, the Adjustment Committee or Disciplinary Hearing Office shall provide the inmate with a due process hearing pursuant to N.J.A.C. 10A:4-9, Disciplinary Procedures, prior to extending the 15-calendar day period of Disciplinary Detention. The period of Disciplinary Detention shall not extend beyond 30 calendar days, except as provided in N.J.A.C. 10A:4-6, Chronic Violator.

(c) In the event of further infractions in the Unit or correctional facility, the Adjustment Committee or Disciplinary Hearing Officer shall consider alternative programs for regulating the inmate's behavior within acceptable limits.

(d) The inmate shall be entitled to appear before the Adjustment Committee or Disciplinary Hearing Officer unless the inmate refuses to appear or the inmate's presence would pose a threat to the security of the correctional facility. Under no circumstances shall force be used to compel the attendance of the inmate at the disciplinary hearing. A refusal to appear shall be entered upon the Adjudication of Disciplinary Report form by the Disciplinary Hearing Officer or Adjustment Committee Chairperson.

(e) The time an inmate spends in Disciplinary Detention shall be proportionate to the offense committed, taking into

consideration the inmate's prior conduct, the inmate's specific program needs and other relevant factors.

(f) If at any time during the inmate's confinement in Disciplinary Detention, the mental health staff become aware of the mental decompensation of an inmate, the health care staff shall immediately provide appropriate intervention services and refer the matter to the correctional facility Administrator or designee.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.1999 d.187, effective June 7, 1999 (operative July 1, 1999).

See: 31 N.J.R. 831(a), 31 N.J.R. 1487(b).

Added (f).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a) and (b), inserted "calendar"; and in (b), inserted "-calendar".

10A:4-10.3 Separate facilities

(a) Facilities utilized to separate inmates from the general population shall be physically separate so that materials allowed inmates in one section cannot be passed to inmates in Disciplinary Detention.

(b) An inmate may be confined to his or her room or housing unit to serve Disciplinary Detention under appropriate circumstances, such as, but not limited to, whether the inmate is already confined in a close custody unit, overcrowding, or in emergent situations such as, riots and fires. All requirements of the Detention Program shall apply when the inmate serves Disciplinary Detention separate from the general population or when Disciplinary Detention is served in the inmate's room or housing area.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Case Notes

Disciplinary rules do not give rise to creation of a "liberty interest" requiring a prisoner to become part of the general prison population; no violation of due process involved in the solitary confinement of a prisoner as a result of prison overcrowding (citing former N.J.A.C. 10:34-1.7, 10:35-6, 49, and 69.1 through 70.6). *Gibson v. Lynch*, 652 F.2d 348 (3rd Cir.1981) certiorari denied 103 S.Ct. 3123, 462 U.S. 1137, 77 L.Ed.2d 1375 (1983).

10A:4-10.4 Ventilation, heating, lighting and sanitation in Detention Program

(a) Ventilation and reasonable temperature shall be maintained on a 24 hour basis. Light of sufficient intensity shall be maintained to allow visual observation of inmates at all times. When admitted, inmates shall not be placed in cells that lack cleanliness or have malfunctioning sanitary fixtures or lights. Daily inspections shall be made to ensure the cells are kept secure, clean and sanitary.

(b) Toilets that are flush controlled from outside the cells shall be flushed as often as necessary to maintain healthy sanitary conditions.

(c) Inmates confined to "DRY" cells shall be permitted to shower at least once every three days. Drinking water shall be available upon request.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a), substituted "ensure" for "insure"; and in (b), substituted "healthy" for "good".

10A:4-10.5 Visual observation

Inmates in Disciplinary Detention shall be observed regularly and frequently by custody staff. There shall be no physical obstruction to visual observation of inmates at any time. Full or partial curtains shall not be permitted over the cell door.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Substituted "custody" for "custodial".

10A:4-10.6 Personal items

(a) All inmates shall be admitted to Disciplinary Detention dressed in basic issue correctional clothing after a thorough search for contraband except that:

1. No belts shall be permitted; and
2. Shoestrings may be removed or shoes may be replaced with cloth or paper slippers at the discretion of the Administrator or designee.

(b) Each inmate shall be provided with the following items for use in the cell to the same extent as such items are provided for inmates in the general population:

1. Clothing required for use in the cell;
2. Bedding and mattresses;
3. Personal hygiene supplies (including soap, deodorant, toothbrush and toothpaste or powder, towel, toilet paper, and female sanitation supplies for women);
4. Utensils and supplies for adequately cleaning the cell;
5. Eyeglasses;
6. Reading material (see N.J.A.C. 10A:4-10.15);
7. Writing materials; and
8. Legal materials.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (b)3 provided for female sanitation supplies.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In introductory paragraph of (a), substituted "basic issue" for "normal", and in (a)2, inserted "or designee".

10A:4-10.7 Withdrawal of personal items or special activities

(a) Whenever in the judgment of the supervisor of the Unit there shall be imminent danger that an inmate will destroy any item or will injure himself or herself, another person, or damage property with any item, the supervisor may direct that the inmate be deprived of the item, if practicable. In such case, however, every effort shall be made to supply a substitute for the item or to permit the inmate to use the item under supervision of a custody staff member.

(b) Whenever an inmate shall be deprived of any usually authorized item or activity, a written report shall be immediately forwarded to the Administrator or designee, identifying the inmate, the item or activity of which the inmate has been deprived and the reason thereof.

(c) Whenever the circumstances are such that all the inmate's clothing is removed, the Administrator or designee shall be contacted immediately for approval of this action.

(d) Arrangements shall be made for a physician or other appropriate staff to visit the inmate as soon as possible after the withdrawal of personal item(s) or activities.

(e) In all cases, the item or activity shall be restored to the inmate as soon as restoration appears to be consistent with safety.

(f) No inmate shall ever, under any circumstances, be deprived of any of these items or activities for the purposes of punishment or discipline.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

10A:4-10.8 Medical and psychiatric services

(a) Inmates in Disciplinary Detention shall receive a daily visit by a member of the health care provider staff which can be a nurse, paramedic, doctor or other authorized health care personnel.

(b) Medical and psychiatric emergencies shall be attended to immediately. Requests for medical attention for inmates in non-emergency situations shall be responded to by the physician, or a health care provider staff member designated by the physician within 24 hours.

(c) Whenever it shall appear that an inmate is suffering from an emotional or psychiatric disturbance, arrangements shall be made for a psychiatric or psychological evaluation. Documentation of the evaluation findings shall be forwarded to the Administrator or designee by the health care provider staff member who conducted the evaluation prior to completion of the shift of the health care provider staff member on the day the evaluation is conducted. A copy of the evaluation findings documentation shall be placed in the inmate's medical record.

Amended by R.1996 d.237, effective May 20, 1996.
 See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).
 Amended by R.1999 d.187, effective June 7, 1999 (operative July 1, 1999).
 See: 31 N.J.R. 831(a), 31 N.J.R. 1487(b).

In (a), substituted a reference to health care staff for a reference to medical staff; in (b), substituted a reference to health care staff members for a reference to medical persons; and in (c), added the second and third sentences.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Inserted "provider" throughout; and in (c), deleted "/dental" preceding "record".

10A:4-10.9 Emergency evacuation

Staff designated by the Administrator or designee at each correctional facility shall develop a written evacuation plan in case of fire or other emergencies.

Amended by R.2011 d.157, effective June 6, 2011.

See: 43 N.J.R. 366(a), 43 N.J.R. 1343(a).

Substituted "Staff designated by the Administrator or designee at each" for "Each".

10A:4-10.10 Visits by social services and correctional supervisory staff

(a) A member of the correctional facility social services staff shall visit the inmates in Disciplinary Detention daily to determine any emergencies or unusual needs of the inmates.

(b) Inmates shall receive at least daily visits from the senior custody staff supervisor in charge of the Disciplinary Detention area.

10A:4-10.11 Chaplain services

Inmates confined in Disciplinary Detention shall not be denied pastoral services. The correctional facility chaplain shall visit this area to provide religious counseling or other pastoral services in response to an inmate's written request. An outside religious leader approved by the chaplain and Administrator to conduct religious activities may visit this area to provide religious counseling or other pastoral services in response to an inmate's written request.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Deleted inmate handbook requirement.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Deleted "or an outside religious leader approved by the chaplain and Administrator to conduct religious activities" following "chaplain" and "in response to an inmate's written request" following "area", and inserted "in response to an inmate's written request" and the final sentence.

10A:4-10.12 Food

(a) Disciplinary Detention or Prehearing Detention inmates shall be served the normal correctional facility meals on the menu of the day or such special diet as shall be prescribed.

(b) Disposable utensils shall be used when necessary.

10A:4-10.13 Correspondence, visits and telephone calls

(a) Inmates in Disciplinary Detention shall have the same opportunities to send and receive written correspondence that are available to inmates in the general population (see N.J.A.C. 10A:18, Mail, Visits and Telephone).

(b) Inmates in Disciplinary Detention shall not be provided with visit or telephone opportunities while in Disciplinary Detention except:

1. Legal visits and legal telephone calls as authorized by the Administrator or designee; and

2. The Administrator or designee may authorize a special visit or telephone call for an inmate when there are compelling reasons to do so.

(c) In the event a Disciplinary Detention visit restriction that exceeds existing internal management visit procedures is deemed necessary by the Administrator or designee, efforts shall be made to provide such notification to expected visitors prior to the next regularly scheduled visit period. Inmates shall be responsible for such notification when time allows for correspondence.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In the introductory paragraph of (b), substituted "except:" for "with the exception of legal telephone calls.", added new (b)1; deleted (b)2, recodified former (b)1 as new (b)2; and added new (c).

10A:4-10.14 Grooming, showering and shaving

Barbering and hair care services shall be provided in the Disciplinary Detention area, as needed. Each inmate shall be given the opportunity to shave and shower a minimum of two times a week, unless permitting these activities would present an undue security hazard.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Substituted "a minimum of" for "not less than" and deleted the former last sentence.

10A:4-10.15 Reading material

Inmates in Disciplinary Detention shall be permitted to retain in their possession an amount of reading material that is consistent with the maintenance of security and the orderly operation of the Unit. Reading material containing disapproved content or material not permitted in Disciplinary Detention is set forth in N.J.A.C. 10A:18, Mail, Visits and Telephone.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Inserted "containing disapproved content or material" and substituted "set forth" for "outlined".

10A:4-10.16 Recreation

Where conditions permit, correctional facilities shall provide recreation outside the cells at least five hours per week.

10A:4-10.17 Records in Disciplinary Detention

(a) The following information regarding inmates confined in Disciplinary Detention status shall be available in the Unit for the use of the custody staff:

1. Inmate name;
2. Number;
3. Housing location;
4. Unit;
5. Cell or room assignment;
6. Date admitted;
7. Disciplinary charge leading to Disciplinary Detention;
8. Expiration date of Disciplinary Detention; and
9. Special medical or psychiatric problems.

(b) Visits by medical, psychiatric, social services or custody supervisory staff and all unusual behavior shall be noted in the Unit log book together with the time and date of occurrence.

10A:4-10.18 Correctional facility internal management procedures and post orders

(a) Each correctional facility shall develop written procedures and post orders consistent with this subchapter.

(b) The written internal management procedures and post orders for the Detention Program shall be submitted to the Office of the Commissioner or designee for review and approval on or before January 31 of each year.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

In (b), substituted "Commissioner or designee" for "Chief of Staff" preceding "for review".

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Section was "Correctional facility procedures". In (b), inserted "internal management".

SUBCHAPTER 11. APPEALS OF DISCIPLINARY DECISIONS**Subchapter Historical Note**

Petition for Rulemaking. See: 35 N.J.R. 1594(b).

10A:4-11.1 Time limit to file an appeal

(a) When an inmate is provided a disciplinary decision, the Disciplinary Hearing Officer or Adjustment Committee shall advise the inmate in writing of his or her opportunity to appeal the decision to the Administrator or designee.

1. Inmates confined within correctional facilities shall have 48 hours from receipt of the disciplinary decision to make such appeal.

2. Inmates assigned to satellite units shall have 48 hours to present the appeal form to a designated individual at the unit who shall deliver it to the Administrator or designee.

(b) In all cases, the Administrator or designee may, for good cause shown, accept appeals submitted after the prescribed deadline.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

In (a), deleted "his or her" preceding "designee" in the introductory paragraph, deleted former 2 and recodified former 3 as 2; and in (b), deleted "his/her" preceding "designee".

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Rewrote introductory paragraph of (a); in (a)1, inserted "confined" and deleted "the main" preceding "correctional" and "of the Prison or Youth Complex" following "facilities"; and in (a)2, substituted "assigned to" for "in" and inserted "or designee".

Case Notes

Inmate's federal court claim that disciplinary proceedings violated his constitutional rights was barred under doctrine of claim preclusion. *Rodziewicz v. Beyer*, D.N.J.1992, 809 F.Supp. 1164.

10A:4-11.2 Processing appeal

(a) The inmate shall use the Appeal of Disciplinary Decision Form 256-I to request an appeal of a disciplinary decision.

(b) Upon submission of Form 256-I, the person accepting the appeal form shall sign, date and note the time on the original and copies in the inmate's presence. A copy of the form shall be given to the inmate.

(c) The appeal form shall be brought to the office of the Administrator or designee during the same shift the appeal is received from the inmate.

(d) All appeals shall be considered by the Administrator or designee of the correctional facility in which the charge was received.

(e) If the inmate has been transferred before the appeal is heard, the appeal form shall be delivered to the Administrator or designee of the correctional facility from which the charges were issued within 48 hours of receipt of the form from the inmate.

(f) Inmates unable to complete Form 256-I Appeal of Disciplinary Decision may request assistance from another inmate in preparing the form. When Form 256-I has been completed by an inmate other than the inmate who received

the charge, the name of the preparer should appear on the form.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (c), (d) and (e), inserted "or designee"; in (c), substituted "the appeal" for "on which it"; and in (e), deleted "its" preceding "receipt" and inserted "of the form".

Case Notes

Due process requires only that disciplinary proceedings and administrative appeals viewed as whole not lead to constitutionally tainted result. *Hyson v. Neubert*, D.N.J.1993, 820 F.Supp. 184.

10A:4-11.3 Suspension of sanctions pending appeal

(a) Inmates who wish to have their sanctions suspended pending a decision on their appeal, must make a request to the Administrator or designee for this consideration. If this request is not made, no action shall be taken to suspend any sanctions received in the disciplinary hearing.

(b) A disciplinary sanction shall not be suspended pending appeal unless the inmate establishes by clear and convincing evidence that the inmate's release from Disciplinary Detention will not jeopardize correctional facility safety, security, and order, that witnesses or victims will not be intimidated and that the inmate will not engage in any action that could otherwise interfere with the administration of justice.

(c) In those cases where the Administrator or designee grants the inmate's request for release from Disciplinary Detention pending appeal, the release shall not preclude the correctional facility from denying outside privileges; such as, but not limited to, furloughs for the inmate even though other disciplinary sanctions are suspended pending the outcome of the appeal.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (b), inserted "safety" and substituted "that" for "which" preceding "could"; and in (c), inserted "or designee".

10A:4-11.4 Investigation of appeal

(a) The Administrator or designee may order an independent investigation of the charge and proceedings of the disciplinary hearing in those instances in which the inmate's appeal and information furnished after the initial disciplinary hearing appear to warrant such action.

(b) The Administrator or designee shall have the option to request a total or partial reinvestigation of the charge or proceedings of the hearing. The reinvestigation may be conducted by any person or unit designated by the Administrator, provided, however, that the individual shall have had no contact with the issuance of the first investigation of the charge.

(c) The reinvestigation may include any of the components of the original investigation such as reinterviewing witnesses, inmates and custody staff, reevaluating reports and reexamining evidence.

(d) If on the basis of new evidence, the Administrator may also request a polygraph examination as part of the reinvestigation. Such requests shall be in accordance with N.J.A.C. 10A:3-7, Polygraph Examinations.

(e) In reviewing an appeal the following factors shall be considered:

1. Compliance with the subchapters on inmate discipline which prescribe procedural safeguards;
2. Whether the decision of the Disciplinary Hearing Officer or Adjustment Committee was based upon substantial evidence;
3. Whether the sanction imposed was proportionate to the offense in view of the inmate's recent disciplinary history and present custody status except in the case of a termination of contact visits sanction as established in N.J.A.C. 10A:4-5.1(c);
4. Whether the inmate has a history or presence of mental illness; and/or
5. Whether extenuating circumstances were considered.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (d) substituted 10A:3-7 for 10A:3.

Amended by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

In (e), added an exception at the end of 3.

Amended by R.1999 d.187, effective June 7, 1999 (operative July 1, 1999).

See: 31 N.J.R. 831(a), 31 N.J.R. 1487(b).

Substituted references to the Administrator for references to the Superintendent throughout; and in (e), inserted a new 4, and recodified former 4 as 5.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (b), inserted "or designee"; and in (e)3, updated the N.J.A.C. reference.

Law Review and Journal Commentaries

Prisoners—Discipline—Due Process—Polygraphs. P.R. Chenoweth, 136 N.J.L.J. No. 9, 61 (1994).

Case Notes

Prisoner should have been allowed to take polygraph test. *Engel v. New Jersey Dept. of Corrections*, 270 N.J.Super. 176, 636 A.2d 1058 (A.D.1994).

10A:4-11.5 Disposition of appeal

(a) At the conclusion of the Administrator's or designee's review of an appeal, one of the following actions shall be taken:

1. The Administrator or designee shall rescind the decision of the Disciplinary Hearing Officer or Adjustment

Committee if the review and/or investigation indicates that the evidence fails to demonstrate that any violation was committed, or the Administrator or designee determines that there was such a failure to adhere to proper procedures at the initial hearing that the inmate had been irreparably prejudiced and would be unable to present a defense at a rehearing. No further disciplinary action shall be taken. The copies of the infraction and all notations concerning the infraction shall be promptly expunged from the inmate's records.

2. The Administrator or designee shall rescind the original decision and order a new hearing if the review and/or investigation indicates that procedural safeguards prescribed for inmate disciplinary hearings were not followed, or if new evidence not available at the original hearing is revealed. If a new hearing is ordered, there shall be no increase in the severity of the sanctions unless new evidence warrants such action.

3. The Administrator or designee shall downgrade the sanctions if the review and/or investigation indicates that the sanction is disproportionate to the offense in accordance with factors enumerated in N.J.A.C. 10A:4-9, Disciplinary Procedures, except in the case of a termination of contact visits sanction as established in N.J.A.C. 10A:4-5.1(c).

4. The Administrator or designee shall order a new hearing if the review and/or investigation indicates that the evidence does not support the findings of the Adjustment Committee or Disciplinary Hearing Officer but would support some form of disciplinary action for a lesser offense than that with which the inmate was charged.

5. The Administrator or designee, in all other cases, shall uphold the decision of the Adjustment Committee or Disciplinary Hearing Officer and make no change in the penalty.

(b) In no event shall there be an increase in severity of sanctions issued by the Adjustment Committee or Disciplinary Hearing Officer solely as a result of the review of the appeal.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

In (a)3, deleted "his/her" preceding "designee" at the beginning and added an exception at the end.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In the introductory paragraph of (a), inserted "or designee's"; in (a)1, inserted "or designee"; and in (a)3, updated the N.J.A.C. reference.

Case Notes

Inmate's federal court claim that disciplinary proceedings violated his constitutional rights was barred under doctrine of claim preclusion. *Rodziewicz v. Beyers*, D.N.J.1992, 809 F.Supp. 1164.

10A:4-11.6 Policy regarding rehearings

(a) If a rehearing is required, the inmate shall be accorded all procedural rights applicable to a disciplinary hearing.

(b) The hearing body may be the same as that which heard the original charge unless the composition of that body was the procedural defect requiring the rehearing or unless there is a substantial likelihood of prejudice.

1. In the absence of exceptional circumstances, a rehearing shall be scheduled no more than 14 calendar days from the date of the original hearing.

2. When a disciplinary sanction has not been suspended pending the outcome of the appeal, a rehearing shall be scheduled within 24 hours of the decision of the Administrator or designee to have the matter reheard, excluding weekends and holidays, in the absence of exceptional circumstances.

(c) Rehearings may be appealed and the Administrator or designee may exercise the same options as provided for in N.J.A.C. 10A:4-11.5.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (b)2 and (c), inserted "or designee".

10A:4-11.7 Notification of inmate on appeal results

(a) In all cases, the inmate shall be notified in writing of the results of the review of the inmate's appeal and the reasons therefor.

1. If an inmate is being held in Disciplinary Detention which resulted from disciplinary action, the written decision on the appeal shall be given to the inmate within 72 hours of receipt of the appeal, excluding weekends and holidays, in the absence of exceptional circumstances.

2. In all other cases, or if the sanctions have been suspended, the Administrator or designee shall respond in writing to the inmate within seven business days of receipt of the appeal. Form 256-II, Disposition of Disciplinary Appeal shall be used for this purpose.

(b) Copies of the decision shall also be distributed to the Adjustment Committee or the Disciplinary Hearing Officer and placed in the inmate's classification folder. Other copies may be distributed as determined to be necessary by the Administrator or designee.

(c) Only for reasons of significant importance may an Administrator or designee extend the time limit to act on an appeal. In such case, the inmate shall be notified in writing within the prescribed time period that action on the inmate's appeal has been extended. Where possible, the reason for the extension shall be explained in general terms to the inmate.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (a)2 substituted Form 245-II for Form 256-II.

Petition for Rulemaking.

See: 31 N.J.R. 1823(a).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a)1, inserted “in the absence of exceptional circumstances”; and in (b), inserted “placed in” and “or designee” and substituted “classification folder” for “file”.

10A:4-11.8 Expungement

Expungement of a disciplinary charge when an inmate has been found not guilty, shall be done in accordance with N.J.A.C. 10A:4-9, Disciplinary Procedures.

10A:4-11.9 (Reserved)

SUBCHAPTER 12. ZERO TOLERANCE POLICIES OF THE DEPARTMENT OF CORRECTIONS

10A:4-12.1 Purpose

(a) In addition to the prohibited acts set forth in this chapter, the Department of Corrections maintains zero tolerance policies as set forth in this subchapter.

(b) The purpose of this subchapter is to:

1. Provide notice to inmates, staff, visitors, volunteers, and other affected individuals that the Department maintains a zero tolerance for certain prohibited and/or criminal acts and for the unauthorized use, misuse, possession, distribution, sale or intent to distribute or sell certain items;
2. Create a safe, secure and orderly environment for correctional facility inmates, staff, volunteers and visitors; and
3. Ensure a disciplinary process that deters certain behaviors and is consistent with correctional objectives.

Amended by R.2007 d.221, effective July 16, 2007.

See: 39 N.J.R. 1393(a), 39 N.J.R. 2648(a).

In (b)1, inserted “certain prohibited and/or criminal acts and for”.

10A:4-12.2 Zero tolerance policies

(a) The following zero tolerance policies, as defined in N.J.A.C. 10A:1-2.2, are maintained by the Department:

1. “Zero Tolerance Drug/Alcohol Policy”; and
2. “Zero Tolerance for Misuse or Possession of an Electronic Communication Device Policy.”

(b) In accordance with the Federal Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§15601 et seq., the Department maintains a zero tolerance for the incidence of sexual assault.

Amended by R.2007 d.221, effective July 16, 2007.

See: 39 N.J.R. 1393(a), 39 N.J.R. 2648(a).

Added (b).

10A:4-12.3 Zero tolerance disciplinary sanctions

(a) Disciplinary sanctions related to a prohibited act identified in a zero tolerance policy are set forth at N.J.A.C. 10A:4-5.1.

(b) An inmate who has been found guilty of a second or subsequent zero tolerance offense shall be subject to consecutively imposed disciplinary sanctions.

(c) The reinstatement of contact visit privileges that were terminated due to a finding of guilt to a prohibited act identified in a zero tolerance policy will be considered after 365 calendar days from the date the sanction was imposed. The inmate shall be responsible for submitting a request to the Administrator or designee for reinstatement consideration. If a request is not produced by the inmate, no reinstatement consideration shall be extended.

(d) Disciplinary sanctions involving assignment to medium custody status or above shall require the application of the appropriate override code (see N.J.A.C. 10A:9-2.12), and any specific information concerning the reason for the use of an override shall be documented and maintained in the inmate record.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a), updated the N.J.A.C. reference; and in (c), inserted “calendar”.