

**CHAPTER 3
SECURITY AND CONTROL**

Authority

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

Source and Effective Date

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

Executive Order No. 66(1978) Expiration Date

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

Chapter Historical Note

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

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

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SUBCHAPTER 1. INTRODUCTION

10A:3-1.1 Purpose

(a) The purpose of this chapter is to:

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

Amended by R.1991 d.250, effective May 20, 1991.
See: 23 N.J.R. 383(a), 23 N.J.R. 1672(b).

Added reference to keep separate status.

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

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

Added breathalyzer provision.

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

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

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

10A:3-1.2 Scope

(a) N.J.A.C. 10A:3-2, 3, 5, 6 and 7 shall be applicable to the Division of Operations.

(b) N.J.A.C. 10A:3-4 and 9 shall be applicable to the Department of Corrections.

(c) N.J.A.C. 10A:3-8 shall be applicable to juvenile inmates.

(d) N.J.A.C. 10A:3-10 shall be applicable to all Department of Corrections satellite units and community based facilities.

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

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

Added reference to Subchapter 2 at (a).

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

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

10A:3-1.3 Definitions

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

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

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

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

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

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

"Contraband" means:

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

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

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

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

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

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

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

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

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

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

Administrative change.

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

10A:3-4.13 Penalties for violation

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

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

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

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

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

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

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

10A:3-4.14 Post orders and procedures

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

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

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

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

SUBCHAPTER 5. SEARCH OF INMATES AND FACILITIES

10A:3-5.1 Purpose

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

10A:3-5.2 Search plan

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

(b) Each correctional facility shall appoint an officer, at a rank no less than captain, as Institutional Search Plan Coordinator.

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

(d) The Superintendent of each correctional facility shall submit, in the first calendar week of January and July, a written report on the appropriate implementation of the Institutional Search Plan to the Assistant Commissioner, Division of Operations.

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

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

Added (b)-(d).

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

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

10A:3-5.3 Searches of inmates and facilities

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

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

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

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

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

Added (c) and (d).

10A:3-5.4 Inspection of security devices

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

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

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

10A:3-5.5 Metal detector searches

(a) Searches of inmates by the use of metal detectors may be done routinely where necessary for security purposes. This may be a walk-through device or a handheld device which is passed over the fully clothed body of the inmate. The metal detector may also be utilized in conjunction with a strip search, as, for example, to pass the detector over the inmate's anal area.

(b) Metal detector searches may be conducted by male or female officers.

10A:3-5.6 Pat search

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

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

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

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

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

(d) Pat searches may be conducted by either male or female officers regardless of the sex of the inmate.

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

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

Changed frisk to pat.

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

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

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

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

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

In (c), deleted prior approval requirement.

10A:3-5.7 Strip searches

(a) A strip search shall be conducted while the inmate is unclothed. A strip search includes a thorough and systematic examination of the inmate's body and orifices, including visual inspection of external genital and anal areas, as well as the inmate's clothing and all personal possessions.

(b) Strip searches may be conducted in any of the following circumstances:

1. After a contact visit;
2. Before an inmate enters or leaves the facility's main building, whether to go to a destination in the outside community or to a minimum security camp or farm area;
3. Prior to the departure of the inmate from any area where the inmate has had access to dangerous or valuable items;
4. Upon entering or leaving any close custody unit;
5. During housing unit/wing searches;

6. Before placement of an inmate under psychological observation or suicide watch; or

7. When an officer with a rank of Sergeant or above is satisfied that there is a clear indication that an inmate is carrying or concealing contraband on his or her person, or in the inmate's anal or vaginal cavity.

(c) A strip search shall be conducted:

1. At a location where the search cannot be observed by unauthorized persons;

2. In a professional and dignified manner, with maximum courtesy and respect for the inmate's person;

3. By the number of custody staff deemed reasonably necessary to provide security; and

4. By custody staff of the same sex as the inmate except as set forth in (d) below.

(d) Strip searches of inmates may be conducted by custody staff of the opposite sex under emergent conditions as ordered by the Superintendent, Assistant Superintendent or the highest ranking custody supervisor on duty.

(e) In emergent circumstances, strip searches may be observed by persons, such as, but not limited to, the on-call Ombudsman, Special Investigations Division Investigator(s) or SOG Unit members required to be present who are not conducting the search and who may be of the opposite sex to help ensure:

1. The secure and orderly operation of the procedure;

2. The accurate recordkeeping regarding the emergent circumstances and incident;

3. That the strip search is conducted in a professional and dignified manner, with maximum courtesy and respect for the inmate's person.

(f) Under no circumstances shall invasive body cavity searches be conducted in accordance with this section. Body cavity searches shall be conducted pursuant to N.J.A.C. 10A:3-5.8.

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

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

Changed frisk to pat and added (g).

Amended by R.1994 d.374, effective July 18, 1994.

See: 26 N.J.R. 1937(b), 26 N.J.R. 2903(a).

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

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

Inserted (b)6; deleted (c), relating to administrative segregation, prehearing detention, Management Control Units, South Hall, and other closed custody units; deleted (d)1 and (d)2 and recodified (d) as (a)7, (e) as (c) with substantial amendment, and (g) as (d); and deleted (f), prohibiting searches as punishment or discipline.

Amended by R.1997 d.324, effective August 4, 1997.

See: 29 N.J.R. 2231(a) 29 N.J.R. 3451(a).

In (d), added “, Assistant Superintendent or the highest ranking custody supervisor on duty”; added (e); and recodified the former last sentence of (d) as (f) and amended.

Amended by R.1998 d.263, effective May 18, 1998.

See: 30 N.J.R. 966(a), 30 N.J.R. 1811(a).

Rewrote (c); and in (d), substituted “custody staff” for “officers”.
Administrative change.
See: 32 N.J.R. 303(a).

10A:3-5.8 Body cavity searches of an inmate(s)

(a) Under no circumstances shall a body cavity search be conducted on an inmate unless the correction officer in charge is satisfied that a reasonable suspicion exists that contraband will be found in the inmate's body cavity.

(b) In the event an officer in charge is reasonably satisfied that contraband is being concealed in the inmate's body cavity, the inmate shall be escorted immediately to the hospital or medical department in the correctional facility and the following procedure shall be followed for examination of the inmate and removal of contraband.

1. A body cavity search shall be conducted:

i. Under sanitary conditions;

ii. At a location where the search cannot be observed by unauthorized person;

iii. By a physician or registered nurse of either sex;

iv. In the presence of only those correction officers deemed necessary for security, who are of the same sex as the inmate; and

v. In a professional and dignified manner, with maximum courtesy and respect for the inmate's person.

2. The inmate may:

i. Remove the object in the presence of the physician or registered nurse and a correction officer(s) of the same sex as the inmate; or

ii. Be examined by the physician or registered nurse who may remove the object without the use of force.

3. If a correction officer in charge determines there is a reasonable suspicion to believe that a foreign object which contains metal is present in the inmate's body cavity, such object may be removed only by the physician with or without the use of force.

4. In the event the officer in charge, the physician or the registered nurse has determined that nonmetal contraband is being concealed in the inmate's body cavity, and the inmate refuses to permit contraband removal, the inmate shall receive appropriate disciplinary charges and may be placed in prehearing detention or medical isolation. During prehearing detention, medical isolation or disciplinary detention, if any, the inmate may be kept under visual surveillance to detect removal or elimination of the contraband.

(c) A written report of the results of a body cavity search shall be made part of the inmate's record and shall include, but not be limited to, the following information:

1. A statement of facts indicating reasonable suspicion for the search;
2. The name of the officer in charge who authorized the search;
3. The name(s) of the correction officer(s) present during the search and the reason for his or her presence;
4. The name(s) of the person(s) conducting the search;
5. An inventory of any item(s) found during the search; and
6. The reason(s) for use of force, if necessary.

10A:3-5.9 Canine searches

(a) All correctional facilities and properties under the jurisdiction of the Department of Corrections are subject to random searches by canine teams, trained to discover narcotics.

(b) Before any canine search is conducted, inmates and/or visitors shall be removed from the immediate area to be searched.

(c) There shall be no canine searches of persons.

New Rule, R.1987 d.397 effective October 5, 1987.

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

Recodified from 10A:3-5.8 by R.1997 d.41, effective January 21, 1997.

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

Former rule recodified to N.J.A.C. 10A:3-5.10.

10A:3-5.10 Testing for prohibited substances

(a) Testing for prohibited substances may be conducted for the purpose of deterring and controlling the introduction of contraband or to detect the presence of any substance not authorized for possession or use by the inmate.

(b) Inmates shall be tested:

1. When the name of the inmate appears on a computer-generated randomly selected list of names, regardless of how often the name of the inmate is randomly selected;
2. Prior to commencing participation in any unsupervised community release program such as, but not limited to, furlough or work release;
3. During the 72 hour period prior to an inmate's release from custody on parole;
4. During the 10 calendar days prior to the inmate's release from custody on expiration of maximum sentence;
5. In accordance with drug treatment program requirements;

6. When a custody staff member of the rank of Sergeant or above or a Special Investigations Division Investigator believes, based upon his or her education and experience, that there is a reasonable factual basis to suspect the inmate of using or possessing prohibited substances;

7. When a supervising staff member or a licensed medical staff person in residential contract facilities and/or other community residential facilities utilizing non-custody staff believes based upon his or her education and experience that there is a reasonable factual basis to suspect the inmate of using or possessing prohibited substances;

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote the section.

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) No inmate shall be disciplined for refusing to provide a specimen or failing to comply with an order to submit a

specimen unless that inmate has been given a reasonable physical opportunity to comply with such order.

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

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

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

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

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

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

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

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

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

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

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

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

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

Petition for Rulemaking.

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

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

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

Rewrote the section.

Case Notes

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

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

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

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

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

10A:3-5.12 (Reserved)

New Rule, R.1996 d.209, effective May 6, 1996 (operative August 19, 1996).

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

Recodified from 10A:3-5.11 by R.1997 d.41, effective January 21, 1997.

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

Former rule recodified to N.J.A.C. 10A:3-5.12.

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

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

Section was "Breathalyzer testing of inmates".

10A:3-5.13 Orientation and training

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

(b) Post orders developed in accordance with this subchapter shall be made available to all correction officers and support staff. All personnel shall receive training in the interpretation and applicability of post orders, so as to insure effective and safe search techniques.

Amended by R.1987 d.397, effective October 5, 1987.

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

Section divided into (a) and (b) subsections; recodified from 5.10.

Recodified from 10A:3-5.11 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).

Recodified from 10A:3-5.12 by R.1997 d.41, effective January 21, 1997.

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

SUBCHAPTER 6. CONTRABAND AND DISPOSITION OF CONTRABAND

Cross References

Religious materials, see N.J.A.C. 10A:17-5.12.

10A:3-6.1 Procedures for handling contraband upon discovery

(a) Whenever an item, article or material is determined to be contraband, it shall be immediately seized.

1. The correction officer or staff member making the seizure shall submit the contraband to the unit supervisor who shall submit it to the Special Investigations Division or Central Control of the correctional facility, together with a fully completed Form 171-I, Seizure of Contraband Report. The contraband report must be submitted no later than the end of the shift during which the contraband was seized.

2. Care should be taken at all times to carefully record the chain of possession of the contraband.

3. The correction officer or staff member shall also give an inmate from whose control or possession contraband is taken, an itemized, signed and dated receipt (Form 171-II, Inmate Receipt, Contraband Seizure), a copy of which shall also go to the Special Investigations Division or to the correctional facility Central Control. The contents of this form shall be either read or explained to the inmate if necessary.

4. When contraband is removed from mail, such as, letters and packages, the correction officer or staff member making the seizure shall send the inmate to whom the mail was addressed a completed copy of Form 171-II indicating that the specified items were removed.

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

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

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

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

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

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

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

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

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

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

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

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

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

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

Administrative change.

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

Cross References

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

10A:3-6.7 Disciplinary reports

(a) When disciplinary reports are issued resulting from application of this Subchapter, such reports shall be issued

and adjudicated in accordance with Chapter 4, INMATE DISCIPLINE.

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

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

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

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

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

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

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

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

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

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

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

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

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

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

Administrative change.

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

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

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

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

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

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

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

SUBCHAPTER 7. POLYGRAPH EXAMINATIONS

10A:3-7.1 Use of polygraph examinations with inmates

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

1. When there are issues of credibility regarding serious incidents or allegations which may result in a disciplinary charge; or
2. As part of a reinvestigation of a disciplinary charge, when the Superintendent is presented with new evidence or finds serious issues of credibility.

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

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

Case Notes

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

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

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

10A:3-7.3 Requesting a polygraph examination

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

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

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

Administrative change.

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

10A:3-7.4 Scheduling polygraph examinations

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

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

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

Administrative change.

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

10A:3-7.5 Procedural limitations

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

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

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

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

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

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

SUBCHAPTER 8. FINGERPRINTING AND PHOTOGRAPHING JUVENILE INMATES

10A:3-8.1 Fingerprints of juvenile inmates

Pursuant to N.J.S.A. 2A:4A-61, a correctional facility may fingerprint any inmate detained in or committed to the facility as the result of an adjudication of delinquency. Such records may be retained by the facility to be used for purposes of identification.

10A:3-8.2 Photographs of juvenile inmates

Inmates 14 years of age or older may be photographed for purpose of identification. Inmates under the age of 14 shall not be photographed unless both the juvenile and his or her parent or guardian expressly consent in writing or there is an appropriately executed court order.

10A:3-8.3 Confidentiality

(a) All fingerprint and photograph records of juvenile inmates shall be plainly marked "confidential". These records shall not be released except to the following:

1. Law enforcement agencies of this State for law enforcement purposes;
2. Any court or probation department;
3. The Attorney General or County Prosecutor;
4. The parents or guardian;
5. The attorney of the juvenile, provided the attorney has secured permission from the parents or guardian;
6. The Division of Youth and Family Services, if DYFS is providing care or custody of the juvenile; or
7. As directed by court order, as permitted by N.J.A.C. 10A:22, RECORDS.

10A:3-8.4 Written policy and procedures

Each facility which houses inmates with juvenile commitments shall prepare written policy and procedures consistent with this Subchapter. These shall be submitted to the Office of the Chief of Staff for approval.

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

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

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

(b) If it is necessary for an inmate to ride in an employee's private vehicle, the employee must secure approval from the Superintendent or his or her designee of the facility responsible for the inmate prior to such transportation.

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