

CHAPTER 101
JUVENILE DISCIPLINE

Authority

N.J.S.A. 52:17B-170(e); 52:17B-171; 52:17B-176;
52:17B-178; and 52:17B-182 through 186.

Source and Effective Date

R.2006 d.52, effective February 6, 2006.
See: 37 N.J.R. 2612(a), 38 N.J.R. 1059(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 101, Juvenile Discipline, expires on August 5, 2013. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 101, Juvenile Discipline, was adopted as new rules by R.2006 d.52, effective February 6, 2006. See: Source and Effective Date.

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 101, Juvenile Discipline, was scheduled to expire on August 5, 2011. See: 43 N.J.R. 168(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 13:101-1.1 Purpose
- 13:101-1.2 Scope
- 13:101-1.3 Definitions
- 13:101-1.4 Forms

SUBCHAPTER 2. PUBLICATION OF RULES

- 13:101-2.1 Notification to juveniles about rules and regulations
- 13:101-2.2 Review of facility rules
- 13:101-2.3 Promulgation of rules

SUBCHAPTER 3. JUVENILE RIGHTS AND RESPONSIBILITIES

- 13:101-3.1 Notification to juveniles of their rights and responsibilities

SUBCHAPTER 4. VIOLATIONS

- 13:101-4.1 Violations
- 13:101-4.2 Mechanisms for responding to violations
- 13:101-4.3 Reports to the prosecutor on violations

SUBCHAPTER 5. IMMEDIATE CORRECTIVE ACTION PROCEDURES

- 13:101-5.1 Immediate corrective action report
- 13:101-5.2 Immediate corrective action conference
- 13:101-5.3 Authorized immediate corrective actions
- 13:101-5.4 Imposition of immediate corrective action
- 13:101-5.5 Record of immediate corrective action
- 13:101-5.6 Referral to the Disciplinary Hearing Officer for a disciplinary hearing

SUBCHAPTER 6. DISCIPLINARY PROCEEDINGS

- 13:101-6.1 Designation and Authority of the Disciplinary Hearing Officer
- 13:101-6.2 Disciplinary report
- 13:101-6.3 Use immunity
- 13:101-6.4 Investigation
- 13:101-6.5 Requiring further investigation of charges

- 13:101-6.6 Scheduling disciplinary hearings
- 13:101-6.7 Review of postponed cases
- 13:101-6.8 Failure to adhere to time limits
- 13:101-6.9 Right of juvenile to appear at disciplinary hearing
- 13:101-6.10 In absentia hearings
- 13:101-6.11 Aid in presentation of juvenile's case
- 13:101-6.12 Opportunity to call witnesses and present evidence
- 13:101-6.13 Confrontation and cross examination
- 13:101-6.14 Evidence required for sustaining charges
- 13:101-6.15 Modification of charge during disciplinary hearing
- 13:101-6.16 Disciplinary sanctions
- 13:101-6.17 Limitations on room restriction as a disciplinary sanction
- 13:101-6.18 Suspending sanctions
- 13:101-6.19 Guidance
- 13:101-6.20 Transfers
- 13:101-6.21 Disciplinary decision
- 13:101-6.22 Discipline record card
- 13:101-6.23 Expungement
- 13:101-6.24 Records of disciplinary reports

SUBCHAPTER 7. APPEALS OF DISCIPLINARY DECISIONS

- 13:101-7.1 Time limit to file an appeal
- 13:101-7.2 Processing appeal
- 13:101-7.3 Stay of sanctions pending appeal
- 13:101-7.4 Investigation of appeal
- 13:101-7.5 Disposition of appeal
- 13:101-7.6 Notification to juvenile of appeal results
- 13:101-7.7 Appeals resulting in rehearings

SUBCHAPTER 8. PREHEARING ROOM RESTRICTION; CONDITIONS OF ROOM RESTRICTION GENERALLY

- 13:101-8.1 Confinement in room restriction pending disciplinary hearing
- 13:101-8.2 Ventilation, heating, lighting and sanitation in room restriction
- 13:101-8.3 Visual observation
- 13:101-8.4 Personal items
- 13:101-8.5 Withdrawal of personal items or special activities
- 13:101-8.6 Medical and psychiatric services
- 13:101-8.7 Visits by social services and supervisory custody staff
- 13:101-8.8 Chaplain services
- 13:101-8.9 Food
- 13:101-8.10 Correspondence, visits and telephone calls
- 13:101-8.11 Grooming, showering and shaving
- 13:101-8.12 Recreation
- 13:101-8.13 Room restriction records

SUBCHAPTER 1. GENERAL PROVISIONS

13:101-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish a disciplinary system and corresponding disciplinary policies that promote prosocial behavior and discourage negative behavior among juveniles in Juvenile Justice Commission facilities, and that provide staff with behavior management tools necessary for maintaining safety and security in the facilities;
2. Establish a comprehensive code of violations that explicitly describes behaviors prohibited in Juvenile Justice

Commission facilities, so that proscribed behavior may be known by both juveniles and staff;

3. Establish administrative due process safeguards in the disciplinary process and impartial and fair disciplinary procedures, and by so doing, foster morale among juveniles and staff with regard to the disciplinary process; and

4. Establish a range of authorized sanctions for responding to inappropriate behavior and rules for imposing such sanctions.

13:101-1.2 Scope

This chapter shall apply to all committed juveniles in Juvenile Justice Commission facilities.

13:101-1.3 Definitions

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

“Bodily fluid” means saliva, blood, urine, feces, seminal fluid or any other fluid produced by the body.

“Bodily injury” means physical pain, illness or any impairment of physical condition.

“Chief Investigator, Office of Investigations” means the Commission staff member who heads the unit responsible for conducting investigations within the Commission at the direction of the Executive Director.

“Commission” means the New Jersey Juvenile Justice Commission.

“Committed juvenile” or “juvenile” means an individual who has been adjudicated delinquent and sentenced to a term of incarceration to be served under the custody of the Commission. For the purpose of this chapter, “committed juvenile” or “juvenile” shall only refer to those individuals residing in a Juvenile Justice Commission facility.

“Counsel substitute” means an individual, such as a juvenile paralegal, teacher or social worker, who represents and defends a juvenile at a disciplinary hearing which is conducted within a facility under the jurisdiction of the Juvenile Justice Commission.

“Custody status” means the degree of supervision that is assigned to a juvenile in a Commission facility.

“Director of Custody Operations” means the Commission staff member at each secure facility of the Commission responsible for supervising the custody work force.

“Director of Operations” means the Commission staff member, by whatever name or title, charged with oversight and management responsibilities for the overall operation and supervision of the Commission’s secure and non-secure facilities.

“Disciplinary Hearing Officer” means a staff member of the Juvenile Justice Commission designated to hear and adjudicate juvenile violations.

“Executive Board” means the Executive Board of the Commission.

“Executive Director” means the Executive Director of the Commission.

“Extra work duty” means a task in addition to those related to a juvenile’s work or program assignment to which a juvenile has been assigned as a sanction for committing a violation.

“Facility” means any facility operated by the Commission which houses juveniles.

“Facility restriction” means the restriction of the juvenile to the confines of the facility’s building or grounds.

“Gang” means a group of juveniles possessing common characteristics, interests and goals which serve to distinguish these juveniles from other juveniles or groups of juveniles and which, as a discrete entity, poses a threat to the safety of staff, other juveniles, the community or to the orderly operation of the facility.

“Handbook on Discipline” means a handbook prepared by the Commission and provided to juveniles which contains a juvenile’s rights and responsibilities, the acts and activities which are prohibited and the disciplinary procedures and sanctions imposed.

“Institutional Classification Committee (I.C.C.)” means a group of Commission staff members that have been designated to make decisions related to the assignment or reassignment of juveniles to programs and activities within a Commission facility and to conduct initial reviews of juvenile requests for transfer to another such facility.

“Juvenile Handbook” means a booklet prepared by the Commission and provided to juveniles which contains a facility’s rules, procedures and information about a facility’s services and programs.

“Office of Investigations” means the unit responsible for conducting investigations within the Commission at the direction of the Executive Director.

“Program Separation Unit” means an area within a secure facility designated for assigning juveniles who are removed from the general population for disciplinary or administrative reasons.

“Room restriction” means confining a juvenile for disciplinary or administrative reasons, either in the room in which he or she usually sleeps or in a room in a program separation unit.

“Sanction” means a prescribed penalty or remedial action that is imposed for a violation.

“Secure facility” means any Commission facility which houses juveniles and employs custody personnel (N.J.S.A. 52:17B-174) to provide security.

“Serious bodily injury” means bodily injury that 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.

“Shift supervisor” means the juvenile corrections officer of supervisory rank in those facilities employing custody personnel who is responsible for the maintenance of security during a tour of duty.

“Superintendent” means the chief executive officer of any Commission facility which houses juveniles.

“Unit manager” means the person designated by the Superintendent of a facility not employing custody personnel to be in charge of the shift in that facility.

“Weapon” means anything readily capable of lethal use or inflicting serious bodily injury.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

Added definition “Disciplinary Hearing Officer”, and deleted definition “Treatment Team”.

13:101-1.4 Forms

(a) The following forms related to juvenile discipline shall be reproduced or obtained by each facility through the office of the Superintendent, or designee.

1. Room Restriction/Separation Form;
2. Immediate Corrective Action Form;
3. Notice of Violation;
4. Disciplinary Review Report;
5. Disciplinary Review Appeal Form; and
6. Refusal to Attend Hearing Notice.

SUBCHAPTER 2. PUBLICATION OF RULES

13:101-2.1 Notification to juveniles about rules and regulations

(a) At the time of reception into the Commission, each juvenile 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 shall be followed and the disciplinary process within the facilities of the Juvenile Justice Commission. Each juvenile shall be required to sign a form acknowledging re-

ceipt of the Handbook on Discipline. A refusal by the juvenile to sign shall be noted on the form by the issuing staff member.

(b) At the time of arrival at a facility, each juvenile shall receive a copy of the facility’s Juvenile Handbook which contains facility rules, procedures and information about services and programs. The facility’s Juvenile Handbook shall be provided as part of the admission and orientation program. Each juvenile shall be required to sign a form acknowledging receipt of the facility’s Juvenile Handbook. A refusal by the juvenile to sign shall be noted on the form by the issuing staff member.

(c) All changes in disciplinary rules shall be posted in the living and common areas of the Commission’s facilities and incorporated into the next revision of the Handbook on Discipline and when appropriate, in the facility’s Juvenile Handbook.

(d) When a facility has a juvenile in the population who does not speak and/or read English, the rules shall be printed and presented verbally in the juvenile’s primary language.

(e) For juveniles unable to read, the rules shall be verbally communicated and assistance shall be provided to those juveniles unable to provide written acknowledgment.

13:101-2.2 Review of facility rules

The Superintendent of each facility shall be responsible for maintaining an ongoing rule review process to ensure that the rules of the facility are current and appropriate. The facility’s Juvenile Handbook shall be revised accordingly.

13:101-2.3 Promulgation of rules

(a) The rules of a facility shall be approved by the facility’s Superintendent and published in the facility’s Juvenile Handbook.

(b) The Commission’s disciplinary rules shall be promulgated by the Commission’s Executive Board and published in the Handbook on Discipline.

SUBCHAPTER 3. JUVENILE RIGHTS AND RESPONSIBILITIES

13:101-3.1 Notification to juveniles of their rights and responsibilities

(a) Upon reception into the Commission each juvenile shall be given a Handbook on Discipline, which shall clearly and prominently inform the juvenile of his or her rights:

1. To be treated respectfully, impartially and fairly by all personnel;

2. To be informed of the rules, procedures and schedules concerning the operation of the facility;

3. To freedom of religious affiliation and voluntary religious worship within the facility;

4. To health care which includes medical and dental treatment;

5. To nutritious meals, proper bedding and clothing, a laundry schedule for cleaning bedding and clothing, an opportunity to shower regularly, sufficient warmth, proper ventilation, fresh air, a regular exercise period and toilet articles;

6. To correspond with and receive visits from family members and other persons where there is no threat to security or order in keeping with the rules and schedules of the facility;

7. To unrestricted and confidential access to the courts by correspondence;

8. To legal counsel from an attorney of the juvenile's choice, both through meetings and through correspondence, and the right to receive help when it is available through a legal assistance program;

9. To participate in the use of law reference materials to assist in resolving legal problems;

10. To a wide range of reading material for educational purposes and for the juvenile's enjoyment;

11. To participate in counseling, education, vocational training, and employment as far as resources are available and in keeping with the juvenile's interests, needs and abilities; and

12. To use the services of the Commission's Ombudsman.

(b) Upon reception into the Commission each juvenile shall be given a Handbook on Discipline, which shall clearly and prominently inform the juvenile of his or her responsibilities:

1. To treat others, both employees and juveniles, respectfully, impartially and fairly;

2. To know and abide by the rules, procedures and schedules concerning the operation of the facility;

3. To recognize and respect the rights of others to freedom of religious affiliation and voluntary religious worship within the facility;

4. To follow the laundry and shower schedules, to maintain neat and clean living quarters, to seek medical and dental care as needed;

5. To conduct himself or herself properly during visits, to refuse to accept or pass contraband, and to comply with Commission rules and State or Federal laws through the juvenile's correspondence;

6. To use the law library resources in keeping with the facility procedures and schedule prescribed and to respect the rights of other juveniles in the use of this legal material;

7. To seek and utilize reading material for personal benefit, without depriving others of their right to use same;

8. To take advantage of activities (such as counseling, education, vocational training and employment) that may help the juvenile live a successful and law abiding life within the facility and in the community. The juvenile will be expected to abide by the regulations governing the use of such activities; and

9. To attend compulsory educational programs conducted by the Commission as required by law.

SUBCHAPTER 4. VIOLATIONS

13:101-4.1 Violations

(a) A juvenile who commits one or more of the following numbered violations shall be subject to disciplinary action:

SECTION J1: CAUSING DEATH

<u>Number</u>	<u>Violation</u>	<u>Description</u>
J101	Causing Death	Intentionally or negligently causing the death of another juvenile, staff member, or other person.

SECTION J2: ASSAULTIVE, AGGRESSIVE, AND RELATED BEHAVIORS

J201A	Assault on Juvenile	Intentionally inflicting bodily injury on another juvenile.
J201B	Assault on Staff	Intentionally inflicting bodily injury on a staff person.
J201C	Aggravated Assault	Intentionally inflicting serious bodily injury on any person.
J202	Assault with a Weapon	Inflicting bodily injury on another person with an item clearly identifiable as a weapon, or otherwise readily capable of inflicting serious bodily injury.
J203	Fighting	Engaging in a physical altercation with another person or persons.

13:101-6.9 Right of juvenile to appear at disciplinary hearing

(a) A juvenile shall be permitted to be present throughout the disciplinary hearing except during the necessary deliberations of the Disciplinary Hearing Officer and except in instances where facility security would be jeopardized by the juvenile’s presence.

(b) The reasons for excluding a juvenile from the hearing must be well documented in the record.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (a), substituted “Disciplinary Hearing Officer” for “Treatment Team”.

13:101-6.10 In absentia hearings

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

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

1. The escorting staff member shall report the juvenile’s refusal to appear before the Disciplinary Hearing Officer.

2. A staff member shall deliver to the juvenile who refuses to appear a Refusal to Attend Hearing 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 staff member shall advise the juvenile that refusal to appear at the disciplinary hearing may result in an incomplete understanding by the Disciplinary Hearing Officer of the circumstances surrounding the charges lodged against the juvenile. If the juvenile still refuses to appear at the disciplinary hearing, the juvenile shall be requested to sign Refusal to Attend Hearing Notice immediately after the statement noted above in (b)2 above.

4. In the event the juvenile refuses to sign his or her name where designated on the Refusal to Attend Hearing Notice and still refuses to appear, the notice shall be returned to the Disciplinary Hearing Officer and the following statement on the notice shall be acknowledged by the signature of the investigating staff member:

“Juvenile refuses to sign _____.”
Signature of Staff Member, Date

5. The Disciplinary Hearing Officer shall ensure that the following statement shall be included in the juvenile statement section of the Disciplinary Review Report: “No statement taken as the juvenile refused to appear at the hearing.”

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In the introductory paragraph of (b) and in (b)1, (b)3 and (b)5, substituted “Disciplinary Hearing Officer” for “Treatment Team”; and in (b)4, substituted “Disciplinary Hearing Officer” for “Treatment Team Chairperson”.

13:101-6.11 Aid in presentation of juvenile’s case

(a) When a juvenile has been charged with a violation, the juvenile shall be afforded the right to request representation by a counsel substitute.

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

(c) Where the juvenile requests the services of a staff member, the Superintendent or his or her designee may appoint a staff member to provide representation.

(d) The counsel substitute and/or the staff member shall be permitted reasonable time to speak to the juvenile and shall be given at least 24 hours to prepare the juvenile’s defense.

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

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (b), substituted “Disciplinary Hearing Officer” for “Treatment Team”.

13:101-6.12 Opportunity to call witnesses and present evidence

(a) Juveniles shall be allowed to call witnesses and present documentary evidence in their defense when permitting them to do so will not be unduly hazardous to facility safety. The Disciplinary Hearing Officer shall review the evidence offered as reasonably available and necessary for proper understanding of the circumstances surrounding the charge. The Disciplinary Hearing Officer has the discretion to keep the hearing within reasonable limits and to refuse to call repetitive witnesses and witnesses who may create a risk of reprisal. For purposes of this subsection, “repetitive witnesses” are witnesses who provide the same account as a previous witness(es). “Repetitive witnesses” are not intended to refer to the calling of a witness(es) who previously provided written documentary evidence. Unavailable witnesses may be asked to submit written statements. If the Disciplinary Hearing Officer shall refuse to call one or more witnesses, the reasons for each such refusal shall be separately specified on the Disciplinary Review Report.

(b) Witnesses requested by the juvenile who are called may be questioned by the Disciplinary Hearing Officer and the juvenile, the staff member or counsel substitute. Juveniles or their representatives may request that certain questions be directed by the Disciplinary Hearing Officer to any witness. The Disciplinary Hearing Officer may take testimony in a

manner or form, which is determined to be necessary to protect facility safety. Such manner or form shall include, but shall not be limited to, the consideration of confidential reports.

Amended by R.2008 d.354, effective December 1, 2008.

See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

Substituted "Disciplinary Hearing Officer" for "Treatment Team" throughout; and in (b), substituted "the Disciplinary Hearing Officer" for "members of the Treatment Team", "Disciplinary Hearing Officer" for "Treatment Team members" and inserted a comma following "form".

13:101-6.13 Confrontation and cross examination

(a) The opportunity for confrontation and cross examination, if requested, shall be provided to the juvenile in such instances where the Disciplinary Hearing Officer deems it necessary for an adequate presentation of the evidence, particularly when serious issues of credibility are involved.

(b) The Disciplinary Hearing Officer may refuse confrontation and cross examination when said would be unduly hazardous to facility safety.

Amended by R.2008 d.354, effective December 1, 2008.

See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (a) and (b), substituted "Disciplinary Hearing Officer" for "Treatment Team".

13:101-6.14 Evidence required for sustaining charges

(a) Charges may be sustained at a disciplinary hearing only upon substantial evidence that the juvenile has committed a violation.

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

1. In any case in which the Disciplinary Hearing Officer's decision to sustain charges is based on evidence that includes confidential information, the report shall contain:

i. A concise summary of the facts on which the Disciplinary Hearing Officer concluded that the informant was credible 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 shall not disclose the identity of the informant.

Amended by R.2008 d.354, effective December 1, 2008.

See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (b)1, substituted "Disciplinary Hearing Officer's" for "Treatment Team's" and "that" for "which" following "evidence"; and in (b)1i and (b)2, substituted "Disciplinary Hearing Officer" for "Treatment Team".

13:101-6.15 Modification of charge during disciplinary hearing

(a) Whenever it becomes apparent at a disciplinary hearing that an incorrect violation is cited in the Notice of Violation

but that the juvenile may have committed another violation, the Disciplinary Hearing Officer shall modify the charge and give the juvenile the option of a 24-hour postponement to prepare his or her defense against the new charge or to adjudicate the new charge at that time.

(b) After reviewing the charge and all available information, the Disciplinary Hearing Officer may conclude that the infraction is of a minor nature and handle it as an immediate corrective action.

Amended by R.2008 d.354, effective December 1, 2008.

See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (a) and (b), substituted "Disciplinary Hearing Officer" for "Treatment Team".

13:101-6.16 Disciplinary sanctions

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

1. Juvenile's history of adjustment in the Commission;
2. Setting and circumstances of the prohibited behavior;
3. Involved juvenile's account;
4. Rehabilitative goals set for the juvenile; and
5. Juvenile's history of or the presence of special needs.

(b) Sustaining charges for any violation, other than a violation handled by immediate corrective action, shall render the offender subject to one or more of the following sanctions:

1. Any sanction prescribed for an immediate corrective action (see N.J.A.C. 13:101-5.3);
2. Up to five days room restriction, subject to the provisions of N.J.A.C. 13:101-6.17;
3. Loss of telephone, radio, television, and contact visit privileges for up to 30 days;
4. Loss of one or more additional facility privileges up to 15 days;
5. Confiscation;
6. Up to 14 hours extra work duty, to be performed within a maximum of two weeks;
7. Restitution for damage, alteration or destruction of State property or the property of another person which results in undue expenditure of State funds; or
8. Referral to Mental Health Services or to another program or treatment regimen for appropriate care and/or treatment.

(c) In addition to the sanctions in (b) above, administrative action may be taken by the Institutional Classification Committee upon a recommendation by the Disciplinary Hearing