

(b) Unless otherwise stated, N.J.A.C. 10A:31 through 10A:34 shall be applicable to municipal and county correctional facilities within the State of New Jersey.

### 10A:1-2.2 Definitions

The following words and terms, when used in N.J.A.C. 10A:1 through 10A:30, shall have the following meanings:

“Administrator” means an administrator or a superintendent who serves as the chief executive officer of any State correctional facility within the New Jersey Department of Corrections.

“A.D.T.C.” means the Adult Diagnostic and Treatment Center which is the correctional facility designated to house persons who have been sentenced pursuant to N.J.S.A. 2C:47-1 et seq. and 2A:164-1 et seq.

“Adult county correctional facility” means any place, under the jurisdiction of a county, where adult persons convicted or accused of crimes are confined.

“Assistant Commissioner” means the chief executive officer of a Division within the Department of Corrections.

“Associate Administrator” means an assistant administrator or an assistant superintendent who is the ranking assistant to the Administrator of any State correctional facility within the New Jersey Department of Corrections.

“Asterisk offense” means a prohibited act preceded by a number and an asterisk that is considered the most serious and results in the most severe sanction(s).

“Body cavity search” means the visual inspection or manual search of a person’s anal or vaginal cavity.

“Business day(s)” means any single or consecutive days during which most businesses operate, Monday through Friday, excluding weekends or legal holidays.

“Calendar day(s)” means any single day or consecutive days, January 1 through December 31.

“Canine search” means a search conducted by a canine team consisting of a handler(s) and a dog(s) specially trained to discover and indicate to the handler(s) the presence of various substances and/or materials.

“Capital Sentence Unit (C.S.U.)” means the close custody unit to which persons sentenced to death pursuant to N.J.S.A. 2C:11-3 are assigned until such time that the person is placed into an isolated holding unit preceding the scheduled date of execution, or the sentence is commuted or changed to a lesser penalty.

“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 hours per day, seven days per 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.

“Central Reception and Assignment Facility (CRAF)” means the facility of the New Jersey Department of Corrections for inmate reception and correctional facility assignments.

“Chemical agent” means an aerosol spray which may be used to gain control of individuals who resist arrest or for the purpose of self-defense against an attack.

“Close Custody Unit” means an area within a correctional facility designated for assigning inmates who are removed from the general population for disciplinary or administrative reasons.

“Close observation” means intermittent monitoring of an inmate either in-person or by video monitor at 15 minute intervals.

“Commissioner” means the Commissioner of the New Jersey Department of Corrections.

“Constant observation” means:

1. Uninterrupted surveillance of one inmate who is on suicide watch that shall be conducted in person or by video monitor when the video monitor provides continuous unobstructed vigilance of the inmate by one staff member; or

2. One minute interval surveillance of two inmates in adjacent cells by one staff member that shall be conducted in person or by video monitor when the video monitor provides continuous unobstructed vigilance of the inmates.

“Contact visit” means a visit between an inmate and a visitor where there is no barrier (such as a window or wall) between the inmate and visitor.

“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;

3. Any item, article or material found in the possession of, or under the control of, staff or visitors within the facility or on its grounds which is not authorized for receipt, retention or importation;

4. Any item, article or material which is authorized for receipt, retention or importation by inmates, staff or visitors but which is found in an excessive amount or which has been altered from its original form. An amount shall be considered excessive if it exceeds stated correctional facility limits or exceeds reasonable safety, security, sanitary, or space considerations; or

5. Any article which may be harmful or presents a threat to the security and orderly operation of the correctional facility shall be considered contraband. Items of contraband shall include, but shall not be limited to: guns and firearms of any type; ammunition; explosives; knives, tools and other implements not provided in accordance with correctional facility regulations; hazardous or poisonous chemicals and gases; unauthorized drugs and medications; medicines dispensed or approved by the correctional facility but not consumed or utilized in the manner prescribed; intoxicants, including, but not limited to, liquor or alcoholic beverages; and where prohibited, currency and stamps.

“Custody staff” except as otherwise provided, means Custody Supervisors, Senior Correction Officers and Correction Officer Recruits who have been sworn as peace officers.

“Custody status” means the custody assignment of an inmate. There are six categories:

1. Close custody;
2. Maximum custody;
3. Medium custody;
4. Gang minimum custody;
5. Minimum custody; and
6. Community custody.

“Deadly force” means force which a custody staff member uses with the purpose of causing, or which the custody staff member knows will create a substantial risk of causing, death or serious bodily harm.

“Department” means the New Jersey Department of Corrections.

“Deputy Commissioner” means Deputy Commissioner of the New Jersey Department of Corrections.

“Detainer” means a warrant or formal authorization to hold an inmate for prosecution or detention by a Federal, state or local law enforcement agency or the Immigration and Naturalization Service. Detainers may include, but are not limited to:

1. Adjudicated criminal charges for which sentence has been imposed;
2. Criminal charges resulting from indictment, for which there is no final disposition (open charges);
3. Warrants for violation of parole or probation; and
4. Immigration detainers.

“Director” means the executive officer next in rank to the Assistant Commissioner (Chief Executive Officer) of a Division within the Department of Corrections.

“Disciplinary Hearing Officer” means a staff member of the Department of Corrections designated to hear and adjudicate inmate violations of prohibited acts.

“Disciplinary report” means a form on which a violation of a prohibited act is recorded along with other pertinent information.

“Disciplinary sanction” means a prescribed penalty that is imposed for violation of a prohibited act.

“Division of Operation” means the administrative unit that is responsible for the administration of all correction facilities within the New Jersey Department of Corrections.

“Division of Programs and Community Services” means the agency within the Department of Corrections which is charged with the supervision and monitoring of inmates assigned to the Electronic Monitoring Program and Furlough Program; the supervision of certain Executive Clemency cases; and any other inmate residential community programs such as halfway houses and the Work Release Program.

“DNA” means deoxyribonucleic acid.

“DNA sample” means a blood or other biological sample provided by any person pursuant to the DNA Database and Databank Act of 1994 (N.J.S.A. 53:1-20.17 et seq.).

“Electronic Monitoring Program (EMP)” means a program in which an inmate lives in the community and is monitored by an electronic monitoring device.

“Firearm” means any hand gun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile, bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the ignition of flammable or explosive substances.

“General population” means the common body of inmates not assigned to Close Custody Units (see N.J.A.C. 10A:5).

“Handbook on Discipline” means a handbook published by the Department of Corrections that is provided to inmates which contains an inmate’s rights and responsibilities, the acts and activities which are prohibited and the disciplinary procedures and sanctions imposed.

“Housing unit” means a cell, dormitory or other type of sleeping area within a correctional facility.

“Immediate family” means:

1. Spouse;
2. Parent;
3. Stepparent;
4. Legal guardian;
5. Grandparent;
6. Child; or
7. Sibling.

“Increased custody” means assignment of an inmate to a custody level that requires more supervision.

“Indeterminate sentence” means a sentence of imprisonment which contains no fixed term of duration (see N.J.S.A. 30:4-148).

“Indigent inmate” means an inmate who has no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances, and who has been verified as having no outside source from which to obtain funds.

“Inmate handbook” means a booklet that is provided to inmates which contains site-specific correctional facility rules and procedures, and information about services and programs. An Inmate Handbook may also mean a unit-specific handbook when identified as such. Such unit-specific handbooks shall be provided to inmates who are assigned to certain units, such as, but not limited to, a Close Custody Unit.

“Inmate Liaison Committee” means a group of inmate representatives, authorized by the correctional facility administration to act on behalf of correctional facility inmates. An authorized inmate group may be known as something other than an Inmate Liaison Committee.

“Inmate personal property” means items owned by an inmate which have been approved for retention by the inmate while incarcerated in a correctional facility. Inmate personal property may also be property held by a correctional facility on behalf of an inmate and handled in accordance with N.J.A.C. 10A:1-11.

“Institutional Classification Committee (I.C.C.)” means the committee of correctional facility staff members respon-

sible for monitoring an inmate’s progress and assigning the inmate to appropriate programs or activities.

“Inter-Institutional Classification Committee (I.I.C.C.)” means the committee of staff members responsible for determining the initial custody status and correctional facility assignments of male inmates; the custody status and correctional facility assignments of male parole violators, escapees and Interstate Corrections Compact transferees; and for recommending inmates at the Central Reception and Assignment Facility (CRAF) who are considered appropriate for Protective Custody.

“Internal Management Procedures” means procedures that are issued by the correctional facility/unit Administrator or supervisor or designee to provide specific operating procedures for that particular correctional facility/unit.

“Keep separate status” means the intentional assignment of certain inmates to different correctional facilities or different units within a correctional facility so as to maintain a separation between these inmates in order to prevent the possibility of retaliation because of a previous act or occurrence.

“Lawfully confined” means custodial confinement in a municipal detention facility, county correctional facility or a Department of Corrections facility.

“Legal correspondence” means the exchange of letters between an inmate and:

1. An attorney of this State or any other state when properly identified as such on the outside of the envelope;
2. Offices of the Federal or State Public Defender;
3. The Office of the Attorney General;
4. Federal and State courts;
5. Federal and State court judges;
6. Offices of Legal Services;
7. Legal assistance clinics managed by accredited law schools of this or any other state;
8. The Administrative Office of the Courts;
9. Offices of the Federal or State Prosecutor;
10. The Bureau of Risk Management, New Jersey Department of the Treasury;
11. The Internal Affairs Unit, Department of Corrections;
12. The Office of the Ombudsman, Department of Corrections; and
13. The Office of Administrative Law.

“Legal material” means papers or documents that are required to be filed with the court and served upon opposing parties. Legal material includes:

1. Orders required by their terms to be served;
2. Written notices;
3. Written motions;
4. Demands, or answers to demands which the inmate is required to serve, such as, for the production of documents for interrogatories;
5. Offers of judgment;
6. Designations of records on appeal;
7. Briefs;
8. Petitions;
9. Summons; and
10. Complaints.

“Mechanical restraints” means restraining devices such as, but not limited to, handcuffs, flex cuffs, leg irons, and belly chains.

“News media representative” means an individual with valid press credentials who provides any means of communication to the public.

“Non-asterisk offense” means a prohibited act that is considered less serious and results in a less severe sanction.

“Non-deadly force” means force which is not likely to cause death or serious bodily harm.

“Objective classification” means the standardized evaluation and custody assignment score of an inmate based on the following criteria:

1. Severity of current offense;
2. Prior assaultive offense history;
3. Escape history;
4. History of correctional facility violence;
5. Balance of term to be served to expiration of sentence (initial only);
6. Alcohol/drug abuse (initial only);
7. Current detainer/open charges;
8. Prior felony convictions (initial only);
9. Education (initial only);
10. Employment (initial only);
11. Age;
12. Number of disciplinary reports (reclassification only);

13. Most severe disciplinary infraction received (reclassification only);

14. Program participation (reclassification only);

15. Balance on parole eligibility date (reclassification only); and

16. System overrides.

“On-the-spot correction” means the immediate imposition of a sanction upon an inmate for the violation of a minor prohibited act.

“Passive canine search” means a search conducted by a canine team consisting of a handler(s) and a dog(s) specially trained to discover and passively indicate to the handler(s) the presence of various substances and/or materials.

“Pat search” means a thorough search of a fully-clothed inmate, including the clothing and personal property in the inmate’s possession.

“Prehearing detention” means removal of an inmate from the general population pending an investigation and a hearing into an alleged violation of a prohibited act.

“Prison Complex” means state correctional facilities designated to house inmates serving prison sentences.

“Probable cause” means reasonable ground(s) of suspicion, supported by circumstances sufficiently strong to warrant a cautious person to believe that criminal activity is taking place.

“Prohibited act” means conduct in violation of rules and regulations which will result in the imposition of sanctions.

“Protective custody” means confinement to a secure unit designated to restrict or limit an inmate’s activities and contacts with others, in order to provide protection to the inmate from injury or harm actually threatened, or reasonably believed to exist based on events, investigative reports, reports from an informant(s) or other reliable source(s) of information.

“Reasonable suspicion” means a belief that an action is necessary based upon specific and articulable facts that, taken together with rational inferences from those facts, reasonably support a conclusion.

“Regional institution” means the correctional facility designated to provide support services to a residential community program, such as, but not limited to, medical, security, administration, disciplinary returns and parole hearing scheduling.

“Scanning/testing device” means a mechanical and/or electronic instrument used to identify or to detect certain substances and materials.

“Scanning/testing device operator” means an individual specially trained and authorized by the Department to operate a scanning/testing device.

“Scanning/testing device search” means a search of a person or object by exposure to a mechanical and/or electronic instrument used to detect certain substances and materials.

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

“Shift Commander” means the custody staff member holding the rank of Sergeant or higher responsible for the maintenance of security during a tour of duty in a correctional facility or unit.

“Special Investigations Division,” prior to November 17, 1999 known as the Internal Affairs Unit, means the unit responsible for conducting investigations at the discretion of the Commissioner or designee.

“Special needs inmate” means an inmate who suffers a DSM IV, axis I and/or axis II disorder which interferes with the inmate’s ability to meet the functional requirements of prison life without mental health treatment.

“State DNA Databank” means the repository of DNA samples collected under the provisions of the DNA Database and Databank Act of 1994 (N.J.S.A. 53:1-20.17 et seq.).

“Strip search” means a thorough and systematic examination of an unclothed person’s body and orifices, including visual inspection of external genital and anal areas, as well as the person’s clothing and all personal possessions.

“Suicide watch” means monitoring the activities, emotional status and behavior of inmates who are identified as emotionally troubled, mentally disturbed or otherwise deemed likely to inflict physical injury or death upon themselves.

“Youth Complex” means State correctional facilities designated to house young adult offenders pursuant to N.J.S.A. 30:4-146.

“Zero Tolerance Drug/Alcohol Policy” means a zero tolerance for the possession/sale/use by State prison inmates of any drugs, intoxicants or narcotic paraphernalia not prescribed for the inmate by medical or dental staff. This policy establishes that inmates found guilty of drug/alcohol related prohibited acts as set forth in N.J.A.C. 10A:4-5.1(c) and 5.2(c) shall have their contact visit privileges terminated while housed in New Jersey State prisons and correctional facilities in addition to being subject to administrative action

and program requirements in accordance with N.J.A.C. 10A:4, Inmate Discipline.

Amended by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Revised definition “youth complex”.

Amended by R.1993 d.246, effective June 7, 1993.

See: 25 N.J.R. 1043(a), 25 N.J.R. 2591(b).

Amended by R.1998 d.364, effective July 20, 1998.

See: 30 N.J.R. 1367(b), 30 N.J.R. 2618(b).

In “Legal correspondence”, inserted a new 10 and recodified former 10 through 12 as 11 through 13.

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

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

Added new “Zero Tolerance Drug/Alcohol Policy” definition.

Administrative correction.

See: 31 N.J.R. 1066(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).

Inserted “Special needs inmate”.

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

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

Deleted “Internal Affairs Unit”; and inserted “Special Investigations Division”.

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

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

Added “Administrator”, “Associate Administrator”, “Canine search”, “Passive canine search”, “Scanning/testing device”, “Scanning/testing device operator” and “Scanning/testing device search”; in “Shift supervisor”, substituted “Commander” for “supervisor” and substituted “custody staff member” for “correction officer”; deleted “Superintendent”.

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Added “Business day(s)”, “Calendar day(s)”, “Immediate family” and “Internal Management Procedures”; rewrote “Capital Sentence Unit (C.S.U.)”, “Constant observation”, “Custody status”, “Deadly force”, “Division of Programs and Community Services”, “Inmate handbook”, “Lawfully confined” and “Regional institution”; in “Shift Commander”, inserted “holding the rank of Sergeant or higher” following “custody staff member”; in “Special Investigations Division”, inserted “or designee” following “Commissioner”.

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

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

In “Institutional Classification Committee (I.C.C.)”, substituted “committee of” for “group of staff members within a” and “staff members” for “that is” following “correctional facility”; rewrote “Inter-Institutional Classification Committee (I.I.C.C.)”.

Amended by R.2004 d.395, effective October 18, 2004.

See: 36 N.J.R. 3225(b), 36 N.J.R. 4826(a).

Added “DNA”, “DNA sample” and “State DNA Databank”.

#### Case Notes

Regulation which classifies inmates who do not have any funds in their account and who cannot work, but are able to receive funds from outside sources as “nonindigent,” thus requiring them to use funds from outside sources for payment of legal photocopying and medical care, did not violate equal protection clause. *Robinson v. Fauver*, D.N.J.1996, 932 F.Supp. 639.

#### 10A:1-2.3 Chief Executive Officer

Pursuant to N.J.S.A. 30:1B-1 et seq., the Chief Executive Officer of the Department of Corrections is the Commissioner of Corrections.

#### 10A:1-2.4 Rulemaking and exemption authority

(a) The Commissioner, pursuant to N.J.S.A. 30:1B-1 et seq., is authorized to formulate, adopt, issue and promulgate

rules and regulations for the administration of correctional facilities, community programs and operational units within the Department of Corrections.

(b) The Commissioner is authorized to determine all matters of policy and regulate the administration of correctional facilities, community programs and operational units and modify policies and regulations so that same can function effectively within the Department of Corrections.

(c) The Commissioner may exempt a correctional facility, community program or operational unit from adherence to a rule or certain requirements of a rule in instances when strict compliance with a rule or all of its requirements would result in:

1. An undue hardship;
2. An inability to meet a therapeutic, rehabilitative or medical need; or
3. A security risk to the overall management, safe or orderly operation of a correctional facility, community program or operational unit.

Amended by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Revised (c).

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Rewrote (c).

#### 10A:1-2.5 Expiration of rule exemptions

(a) All rule exemptions shall expire two years from the date of approval by the Commissioner.

(b) A rule exemption may be terminated prior to its expiration date when:

1. The special circumstances making the rule exemption necessary no longer exist; or
2. The Commissioner no longer approves the rule exemption.

(c) A rule exemption may be extended beyond its expiration date when:

1. The Administrator or Unit Supervisor reapplies for the rule exemption; and
2. The approval of the Commissioner is given for an extension of the rule exemption.

(d) A correctional facility, community program or operational unit shall return to compliance with the New Jersey Administrative Code when rule exemptions terminate or expire.

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

In (c)1, substituted "Administrator" for "Superintendent".

#### 10A:1-2.6 Effective dates of adopted and exempted rules

(a) Unless otherwise noted in the New Jersey Register, an adopted rule is effective on the date of its publication in the New Jersey Register.

(b) The effective date of a rule exemption shall be the date of the Commissioner's signature on Form 911 Request for Rule Exemption.

#### 10A:1-2.7 Procedure for requesting rule exemptions

(a) Requests for rule exemptions may be submitted by staff or committees to the Administrator for review.

(b) Requests for rule exemptions may be submitted by inmates or inmate groups to the Institutional Classification Committee (I.C.C.) for review. The I.C.C. shall review and submit inmate requests for rule exemptions to the Administrator along with recommendations for approval or disapproval.

(c) Requests for rule exemptions may be submitted by staff members, individually or as a group, to the community program supervisor or operational unit supervisor for review.

(d) The Administrator, community program supervisor or operational unit supervisor shall review and determine, based on the criteria in N.J.A.C. 10A:1-2.4(c), whether to submit requests for rule exemptions to the appropriate Assistant Commissioner and the Commissioner for consideration.

(e) If the Administrator, community program supervisor or operational unit supervisor approves a request for rule exemption, the designated sections of Form 911 Request for Rule Exemption shall be completed in duplicate, signed and submitted to the appropriate Assistant Commissioner.

(f) The Assistant Commissioner shall review Form 911 Request for Rule Exemption and determine whether to approve or disapprove the request, based on the criteria in N.J.A.C. 10A:1-2.4(c). If the Assistant Commissioner approves the request, the designated section of Form 911 shall be signed, dated and submitted to the Commissioner for review. If the Assistant Commissioner disapproves the request, the designated section of Form 911 shall be signed, dated and returned to the correctional facility Administrator, the community program supervisor or operational unit supervisor.

(g) The Commissioner shall review Form 911 Request for Rule Exemption, submitted by an Assistant Commissioner and determine whether to authorize a rule exemption, based on the criteria in N.J.A.C. 10A:1-2.4(c). The Commissioner shall approve or disapprove a rule exemption by signing and dating the designated section on Form 911 and returning it to the Assistant Commissioner.

(h) The Assistant Commissioner shall be responsible for notifying the Administrator, the community program supervisor or operational unit supervisor of the Commissioner's approval or disapproval of requests for rule exemptions.

Amended by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Revised (d)-(h).

Administrative Correction in (e) and (f).

See: 24 N.J.R. 4390(a).

Administrative Change.

See: 25 N.J.R. 4105(a).

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Substituted "Administrator" for "Superintendent" throughout.

#### 10A:1-2.8 Forms

(a) The following forms related to Administration, Organization and Management shall be reproduced from originals that are available by contacting the Administrative Rules Unit, New Jersey Department of Corrections:

1. 911 Request for Rule Exemption;
2. 980-I Research Project Request; and
3. 980-II Inmate Research Participation Consent.