

10A:4-2.3 Promulgation of rules

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

Administrative Correction: Responsibilities have been substantially amended.

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

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

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

Petition for Rulemaking.

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

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

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

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

SUBCHAPTER 4. INMATE PROHIBITED ACTS

10A:4-4.1 Prohibited acts

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

- *.001 killing
- *.002 assaulting any person
- *.003 assaulting any person with a weapon
- *.004 fighting with another person
- *.005 threatening another with bodily harm or with any offense against his or her person or his or her property
- *.006 extortion, blackmail, protection: demanding or receiving favors, money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing
- *.007 hostage taking
- *.008 abuse/cruelty to animals
- *.009 misuse, possession, distribution, sale, or intent to distribute or sell, an electronic communication device, equipment or peripheral that is capable of transmitting, receiving or storing data and/or electronically transmitting a message, image or data that is not authorized for use or retention (see "electronic communication device" definition at N.J.A.C. 10A:1-2.2)
- *.010 participating in an activity(ies) related to a security threat group
- *.011 possession or exhibition of anything related to a security threat group
- *.012 throwing bodily fluid at any person or otherwise purposely subjecting such person to contact with a bodily fluid
- .013 unauthorized physical contact with any person, such as, but not limited to, physical contact not initiated by a staff member, volunteer or visitor
- *.014 unauthorized physical contact with any person with

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

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

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

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

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

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

Added *.008 abuse/cruelty to animals.

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

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

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

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

Added .150 and amended *.151.

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

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

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

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

Administrative Correction.

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

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

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

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

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

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

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

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

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

In (a) added refusing a breathalyzer test.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Inserted new prohibited acts .010 and .011.

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

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

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

Petition for Rulemaking.

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

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

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

Amended prohibited act 260 to include references to mandatory testing.

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

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

Inserted “.204A” and “.552A”.

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

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

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

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

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

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

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

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

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

Cross References

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

Case Notes

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

Department of Corrections was authorized to discipline a prisoner, who tested positive for cocaine and opiates upon his return to a State prison after escaping from a halfway house, for violating the Department’s regulation prohibiting the use of drugs; under N.J.S.A. 30:1B-3 and N.J.S.A. 30:4-91.3, the Commissioner of Corrections maintains

authority over adult offenders committed to State correctional institutions, even at times when they are physically outside prison walls. *Ries v. Dep’t of Corr.*, 396 N.J. Super. 235, 933 A.2d 638, 2007 N.J. Super. LEXIS 328 (App.Div. 2007).

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 5. SCHEDULE OF SANCTIONS FOR PROHIBITED ACTS

10A:4-5.1 Schedule of sanctions for prohibited acts committed at the Prison Complex

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