

“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 a supervisory rank who has been designated by the Administrator or designee as being 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.

“Staff” means all personnel who are hired by the Department of Corrections as employees.

“State” (upper case “S”) means the State of New Jersey; “state” (lower case “s”) means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

“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 the removal or rearrangement of clothing to permit visual inspection of the person’s undergarments, buttocks, anus, genitals, or breasts.

“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.

“Weapon” means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to:

1. All firearms, even though not loaded or lacking a clip or other component to render them immediately operable;
2. All components that can be readily assembled into a weapon;

3. All gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, billies, black-jacks, bludgeons, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings or razor blades imbedded in wood;

4. All stun guns; and

5. Any weapon or other device, which projects, releases, or emits a compressed gas or tear gas or any other substance or electrical signal intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air (see N.J.S.A. 2C:39-1).

“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) 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.

“Zero Tolerance for Misuse or Possession of an Electronic Communication Device Policy” means a zero tolerance for the misuse, possession, distribution, sale, or intent to distribute or sell, an electronic communication device that is not authorized for use or retention. This policy establishes that inmates who are found guilty of an electronic communication device related prohibited act as set forth in N.J.A.C. 10A:4-4.1, 5.1, and 12 shall have their contact visit privileges terminated and shall be ineligible for consideration for any custody status lower than medium custody until after the contact visit privileges are reinstated in addition to being subject to administrative action and program requirements in accordance with N.J.A.C. 10A:4, Inmate Discipline.

“Zero Tolerance of the Incidence of Sexual Assault” means the zero tolerance policy maintained by the Department for the incidence of sexual assault in accordance with the Federal Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§15601 et seq. (see N.J.A.C. 10A:4-12).

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 designate" 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".

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

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

Added definitions "Electronic communication device" and "Zero Tolerance for Misuse or Possession of an Electronic Communication Device Policy".

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.151, effective May 1, 2006.

See: 38 N.J.R. 96(a), 38 N.J.R. 1836(a).

At the end of the introductory paragraph, added "unless the context clearly indicates otherwise"; in the definition of "Detainer", substituted "U.S. Immigration and Customs Enforcement" for "Immigration and Naturalization Service"; rewrote the definition of "Inmate Liaison Committee"; in the definition for "Legal Correspondence", in 4 and 5, substituted a comma for "and", and inserted ", county and municipal", and in 9, substituted a comma for "or", inserted "or county"; and added the definitions for "Non-contact visit" and "Staff".

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

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

In definitions "Zero Tolerance Drug/Alcohol Policy" and "Zero Tolerance for Misuse or Possession of an Electronic Communication Device Policy", updated N.J.A.C. references.

Amended by R.2007 d.17, effective January 16, 2007.

See: 38 N.J.R. 4159(a), 39 N.J.R. 216(a).

Inserted definitions "Domestic partner", "Family member", and "Relative"; and deleted definition "Immediate family".

Amended by R.2007 d.64, effective February 20, 2007.

See: 38 N.J.R. 4622(b), 39 N.J.R. 652(b).

Added definition "Personal information".

Amended by R.2007 d.127, effective May 7, 2007.

See: 39 N.J.R. 155(a), 39 N.J.R. 1730(a).

Added definitions "Non-permissible property" and "State".

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

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

Added definitions "Counsel substitute" and "Disciplinary detention".

Amended by R.2007 d.199, effective July 2, 2007.

See: 39 N.J.R. 747(a), 39 N.J.R. 2537(a).

In definition "Detainer", inserted "(ICE)".

Amended by R.2007 d.226, effective August 6, 2007.

See: 39 N.J.R. 836(a), 39 N.J.R. 3383(a).

Added definition "Departmental Research Review Board (DRRB)".

Amended by R.2007 d.268, effective August 20, 2007.

See: 39 N.J.R. 1622(a), 39 N.J.R. 3539(a).

Added definition "Community Corrections Classification Committee (C-4)".

Amended by R.2007 d.315, effective October 15, 2007.

See: 39 N.J.R. 2442(a), 39 N.J.R. 4402(a).

Added definitions "Civil union" and "Civil union couple"; in definition "Family member", added new 3 and recodified former 3 through 8 as 4 through 9; and in definition "Relative", added new 3 and recodified former 3 through 6 as 4 through 7.

Amended by R.2007 d.379, effective December 17, 2007.

See: 39 N.J.R. 2445(a), 39 N.J.R. 5340(b).

In definition "Institutional Classification Committee (I.C.C.)", inserted the last sentence; substituted definition "Institutional Classification Reception Committee (I.C.R.C.)" for definition "Inter-Institutional Classification Committee (I.I.C.C.)"; and in definition "Objective classification", deleted paragraphs 5 through 7, recodified former paragraphs 8 through 14 as 5 through 11, in paragraph 11, inserted "and" at the end, deleted paragraph 15, and recodified paragraph 16 as 12.

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

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

Deleted definition "Capital Sentence Unit (C.S.U.)".

Amended by R.2008 d.171, effective June 16, 2008.

See: 39 N.J.R. 2188(a), 40 N.J.R. 3718(d).

Added definition "Inmate Remedy System".

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

Added definitions "Administrative Segregation", "Weapon" and "Zero Tolerance of the Incidence of Sexual Assault"; in definition "Contraband", substituted "that" for "which" three times in paragraph 4, and in paragraph 5, substituted "that" for "which", substituted a comma for "and" following "currency" and inserted "and electronic communication devices"; rewrote definitions "Division of Programs and Community Services" and "Strip search"; in definition "Firearm", inserted the last sentence; in definition "Keep separate status", inserted a comma following the first occurrence of "facility" and inserted "for administrative reasons to ensure the safe, secure and orderly operation of the correctional facility and/or"; in definition "Legal correspondence", added new paragraph 10 and recodified former paragraphs 10 through 13 as paragraphs 11 through 14; in paragraph 12 of definition "Legal correspondence", substituted "Special Investigations Division" for "Internal Affairs Unit"; in paragraph 13 of definition "Legal correspondence", substituted "Corrections Ombudsperson, Division of Citizen Relations, Department of the Public Advocate" for "Office of the Ombudsman, Department of Corrections"; and in definition "Non-permissible property" inserted "any item addressed to or received by an inmate from or someone or someplace that is not an authorized source of sale," deleted "or" following "through the mail" and substituted "an authorized" for "a".

Amended by R.2008 d.266, effective September 2, 2008.

See: 40 N.J.R. 2647(a), 40 N.J.R. 5040(a).

Added definition "Office of Community Programs".

Amended by R.2009 d.86, effective March 16, 2009.

See: 40 N.J.R. 6732(a), 41 N.J.R. 1250(a).

In paragraph 2 of definition "Constant observation", inserted "uninterrupted surveillance by one staff member of up to four inmates".

Amended by R.2009 d.272, effective September 8, 2009.

See: 41 N.J.R. 2202(a), 41 N.J.R. 3301(b).

Added definition "Responsible health authority".

In definition "Shift Commander", substituted "a supervisory rank who has been designated by the Administrator or designee as being" for "the rank of Sergeant or higher".

Amended by R.2009 d.320, effective October 19, 2009.

See: 41 N.J.R. 2607(a), 41 N.J.R. 3936(a).

Amended by R.2010 d.054, effective April 5, 2010.
See: 41 N.J.R. 4663(a), 42 N.J.R. 721(a).

Added definition "Prehearing Protective Custody".
Amended by R.2010 d.057, effective April 19, 2010.
See: 41 N.J.R. 4395(a), 42 N.J.R. 792(b).

In definition "Canine search", inserted ", objects".
Administrative change.
See: 43 N.J.R. 1344(a).

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.

In an inmate's appeal of disciplinary action arising from a fight he was involved in, the appellate court rejected the Department of Correction's blanket policy of keeping confidential all security camera videotapes in order to preclude inmates from learning camera angles, locations, or blind spots, and directed the Department to develop a record on remand regarding the need for confidentiality of the particular videotape. *Robles v. New Jersey Dept. of Corrections*, 388 N.J. Super. 516, 909 A.2d 755, 2006 N.J. Super. LEXIS 295 (App.Div. 2006).

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, policy and procedure making and exemption authority

(a) The Commissioner, pursuant to N.J.S.A. 30:1B-1 et seq., is authorized to formulate, adopt, issue, promulgate, relax and exempt 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 procedure in order to regulate the operational issues associated with the administration of correctional facilities, community programs and operational units and to formulate, modify, relax, and exempt such policies, procedures and regulations when necessary, so that same can function safely and 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 may relax certain requirements of a rule for good cause shown in a particular situation or in instances when strict compliance with a rule or all of its requirements would result in:

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

4. An inability to utilize existing technology or apply technological innovations in order to meet penological objectives;

5. An inability to meet an operational need to ensure management effectiveness and efficiency; or

6. An inability to reasonably meet a time period requirement.

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).

Amended by R.2010 d.057, effective April 19, 2010.
See: 41 N.J.R. 4395(a), 42 N.J.R. 792(b).

Section was "Rulemaking and exemption authority". In (a), substituted a comma for "and" preceding "promulgate" and inserted ", relax and exempt"; rewrote (b); in the introductory paragraph of (c), inserted "may relax" and "for good cause shown in a particular situation or"; in (c)1, inserted ", unfairness or injustice"; in (c)2, deleted "or" at the end; in (c)3, inserted "or imminent peril" and substituted a semicolon for a period at the end; and added (c)4 and (c)5.

Amended by R.2011 d.022, effective January 18, 2011.
See: 42 N.J.R. 2194(a), 43 N.J.R. 188(a).

In (c)4, deleted "or" from the end; added new (c)5; and recodified former (c)5 as (c)6.

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. Such requests for rule exemptions must:

1. Be in writing;
2. Be legible and intelligible;
3. Contain the full name and address of the inmate or inmate group;
4. Contain the N.J.A.C. 10A citation of the rule for which the exemption is made; and
5. Include a clear and concise statement summarizing the substance of the rule exemption, why the suggestion is being requested and a summary of reasons for the exemption.

(c) Requests for rule exemptions may be submitted by staff members, individually or as a group, utilizing and submitting Form 911 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.

Amended by R.2010 d.057, effective April 19, 2010.

See: 41 N.J.R. 4395(a), 42 N.J.R. 792(b).

In the introductory paragraph of (b), inserted the last sentence; added (b)1 through (b)5; and in (c), inserted "utilizing and submitting Form 911".

10A:1-2.8 Forms

(a) The following form related to Administration, Organization and Management is available by accessing the Department of Corrections computer network (DOCNet). Interested individuals who do not have access to DOCNet may obtain copies of this form by contacting the Administrative Rules Unit, New Jersey Department of Corrections:

1. 911 Request for Rule Exemption.

(b) The following form related to inventory of inmate personal property is printed by the Bureau of State Use Industries—DEPTCOR and each facility shall purchase a supply of this form by contacting DEPTCOR:

1. IIS-1M Inmate Inventory Sheet.

(c) The following form related to Disability Discrimination Grievance is available at N.J.A.C. 10A:1-3.7 or can be obtained by contacting the ADA Coordinator, New Jersey Department of Corrections:

1. Americans with Disabilities Act Grievance Form 100.

Administrative change.

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

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), substituted "is available at N.J.A.C. 10A:1-3.7 or can" for "shall" following "Disability Discrimination Grievance" in the introductory paragraph.

Administrative change.

See: 36 N.J.R. 1779(a).

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

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

In the introductory paragraph of (a), deleted "shall be reproduced from originals that" preceding "are available" and inserted "by accessing the Department of Corrections computer network (DOCNet). Interested individuals who do not have access to DOCNet may obtain copies of forms".