

**CHAPTER 3
SECURITY AND CONTROL**

Authority

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

Source and Effective Date

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

Executive Order No. 66(1978) Expiration Date

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

Chapter Historical Note

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

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

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SUBCHAPTER 1. INTRODUCTION

10A:3-1.1 Purpose

(a) The purpose of this chapter is to:

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

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

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

Added reference to keep separate status.

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

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

Added breathalyzer provision.

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

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

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

10A:3-1.2 Scope

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

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

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

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

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

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

Added reference to Subchapter 2 at (a).

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

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

10A:3-1.3 Definitions

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

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

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

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

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

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

"Contraband" means:

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

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

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.

“Correction officer” means custody supervisors and senior correction officers who have been sworn as peace officers.

“Deadly force” means force which is intended to cause, or is likely to cause, death or serious bodily harm.

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

“Internal Affairs Unit” means the unit responsible for conducting investigations at the direction of the Commissioner.

“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.

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

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

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

“Roving patrol” means observation of a facility by making rounds, on foot or in a vehicle, of the outer perimeter at specific intervals.

“Shift supervisor” means the correction officer responsible for the maintenance of security during a tour of duty in a correctional facility.

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

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

Added definition of “keep separate status”.
Amended by R.1997 d.41, effective January 21, 1997.
See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Added “Body cavity search”, “Central Communications Unit”, “Central Medical/Transportation Unit”, “Correction officer”, “Contraband”, and “Mechanical restraints”; deleted “Commissioner”, “Department”, and “Superintendent”; and amended “Deadly force”, “Non-deadly force”, “Pat search” and “Strip search”.

10A:3-1.4 Forms

(a) The following forms related to Security and Control shall be reproduced by each facility from originals that are available by contacting the Standards Development Unit:

1. 156-I Oath of Office
2. 172-I Continuity of Evidence—Urine Specimen
3. 171-I Seizure of Contraband Report
4. 171-II Inmate Receipt, Contraband Seizure
5. 171-III Notice of Decision on Appeal, Contraband Seizure (Non-Disciplinary)
6. 173-I Placement In Keep Separate Status
7. 173-II Removal From Keep Separate Status
8. 285-I Request for Polygraph Examination
9. 285-II Breathalyzer Request Summary
10. 285-III Alcohol Influence Report.

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

1. 002 Travel Order.

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

Added forms regarding keep separate status.
Amended by R.1993 d.679, effective December 20, 1993.
See: 25 N.J.R. 4702(a), 25 N.J.R. 5929(a).
Amended by R.1996 d.209, effective May 6, 1996 (operative August 19, 1996).

See: 28 N.J.R. 763(a), 28 N.J.R. 2387(b).
Added breathalyzer request summary and alcohol influence report.
Amended by R.1997 d.41, effective January 21, 1997.
See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Added (b).

SUBCHAPTER 2. KEEP SEPARATE STATUS

10A:3-2.1 Recommending placement of an inmate in keep separate status

(a) Any staff person may recommend that an inmate be placed in keep separate status.

(b) The staff person recommending that an inmate be placed in keep separate status shall complete the recommendation section of Form 173-I, PLACEMENT IN KEEP SEPARATE STATUS, and submit Form 173-I to the Superintendent giving the reason(s) for the recommendation.

(c) The Superintendent may order an immediate Internal Affairs investigation and written report to determine whether the information received is accurate and placement of the inmate in keep separate status is warranted.

10A:3-2.2 Authorization of placement of inmate in keep separate status

(a) The Superintendent shall authorize the placement of an inmate in keep separate status in instances when the Superintendent determines that such placement is warranted for the maintenance of security and the orderly operation of the correctional facility.

(b) If the Superintendent authorizes that an inmate be placed in keep separate status, the completed Form 173-I, along with the supporting documents shall be forwarded to:

1. The Senior Classification Officer to be filed in the inmate's classification folder; and
2. The correctional facility housing the other inmate(s) involved in this assignment of keep separate status.

(c) A "Keep Separate" notation should be prominently placed on the outside cover of the inmate's institutional classification folder and in the appropriate files within the computerized inmate information record keeping system.

10A:3-2.3 Procedures for tracking transfers of inmates in keep separate status

(a) The Inter-Institutional Classification Committee (I.I.C.C.) or Special Classification Committee (S.C.C.) shall authorize the transfer of an inmate in keep separate status to another correctional facility when such transfer is warranted and appropriate. Emergency transfer procedures shall be followed in accordance with N.J.A.C. 10A:9-6.5 or 7.5.

(b) Prior to the transfer of any inmate in keep separate status, the Senior Classification Officer shall:

1. Confirm the current location via the Department of Corrections' computerized Offender Based Correctional Information System (O.B.C.I.S.) of the other correlated keep separate status inmate(s);

2. Complete Form 173-III Transfer of Keep Separate Status Inmate who is to be transferred;

3. Advise by telephone and fax a copy of Form 173-III to each correctional facility(s) housing the other correlated keep separate status inmate(s); and

4. Forward, within three days, a hard copy of Form 173-III to each correctional facility(s) housing the other correlated keep separate status inmate(s).

(c) The original Form 173-III, along with supporting documentation shall be filed in the chronological section of the transferred inmate's classification folder and shall be attached to Form 173-I. A copy of Form 173-III shall be added to the chronological section of each correlated inmate's classification folder, and shall be attached to Form 173-I.

(d) The Computerized Inmate Progress Notes shall be updated with the information recorded on Form 173-III.

New Rule, R.1993 d.679, effective December 20, 1993.
See: 25 N.J.R. 4702(a), 25 N.J.R. 5929(a).
Amended by R.1997 d.41, effective January 21, 1997.
See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

10A:3-2.4 Recommending removal from keep separate status

(a) Any staff person may recommend that an inmate be removed from keep separate status.

(b) Any staff person recommending that an inmate be removed from keep separate status shall complete the removal recommendation section of Form 173-II REMOVAL FROM KEEP SEPARATE STATUS and submit Form 173-II to the Superintendent, giving the reason(s) for the recommendation.

(c) The Superintendent may order an Internal Affairs investigation and written report to determine whether the information received is accurate and removal of the inmate from keep separate status is warranted.

Recodified from 10A:3-2.3 by R.1993 d.679, effective December 20, 1993.
See: 25 N.J.R. 4702(a), 25 N.J.R. 5929(a).

10A:3-2.5 Authorization for removal from keep separate status

(a) The Superintendent may authorize the removal of an inmate from keep separate status when a review of the factors in the inmate's case indicates that the keep separate status is no longer appropriate.

4. Where the correction officer reasonably believes that deadly force is imminently necessary to prevent the escape of an inmate committed to a correctional facility for the detention of persons charged with, or convicted of an offense, provided that the correction officer reasonably believes that the force employed creates no substantial risk of injury to innocent persons.

(d) Deadly force includes, but is not limited to, the use of shotguns, handguns, rifles, and other lethal weapons.

(e) Where feasible, before using a firearm, the correction officer shall attempt to identify himself or herself as an officer and state his or her intent to shoot. Warning shots are not authorized by the Department of Corrections.

(f) The correction officer shall not discharge a firearm if there is a substantial risk of injury to innocent persons.

(g) Correction officer involved in a pursuit shall not fire his or her firearm from or at a moving vehicle or engage in any vehicle contact action, such as ramming, except as a last resort to prevent imminent death or serious injury to the correction officer or another person where deadly force would otherwise be justified.

(h) Whenever feasible, the correction officer shall contact Central Control to request assistance before engaging in any use of force that reasonably could result in serious bodily injury.

(i) Written post orders shall govern the use of deadly force by correction officers.

Recodified from 10A:3-3.3 and amended by R.1997 d.41, effective January 21, 1997.

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

Substantially amended section. Former rule recodified to N.J.A.C. 10A:3-3.9.

10A:3-3.7 Use of force against persons other than inmates; duties outside security perimeter

(a) While engaged in roving patrol or other duty outside the correctional facility's security perimeter, appropriate force may be used against persons other than prison inmates when a correction officer observes what the correction officer believes to be a violation of the law and when there is also imminent peril of bodily harm to any individual or destruction of property.

(b) Whenever possible, the correction officer shall contact Central Control to request assistance before engaging in any use of force.

(c) In situations where a violation of law is suspected, but no imminent danger is present, the correction officer shall immediately contact Central Control.

(d) Non-deadly force may be used upon or toward persons other than inmates only under the following circumstances:

1. To protect self or others against the use of unlawful force;
2. To protect self or others against death or serious bodily harm;
3. To thwart the commission of a crime involving or threatening bodily harm or damage to property;
4. To prevent a suicide or attempted suicide;
5. To prevent escape, or flight from arrest for a crime; and/or
6. To effect an arrest for any offense or crime.

(e) Deadly force may be used against persons other than inmates when the correction officer reasonably believes that the person presents an imminent threat of death or serious bodily harm.

(f) The correction officer shall not discharge a firearm if there is substantial risk of injury to innocent persons.

Recodified from 10A:3-3.4 and amended by R.1997 d.41, effective January 21, 1997.

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

In (a), substituted "the correction officer believes" for "appears"; in (b), substituted "shall contact" for "should contact"; in (c), substituted "shall immediately contact" for "should immediately contact" and deleted reference to contacting local police; and added (d) through (f). Former rule recodified to N.J.A.C. 10A:3-3.10.

Case Notes

Senior corrections officer's criminal conviction for harassing his immediate superior was one "involving or touching" his employment as a senior corrections officer, and, therefore, he was properly removed from his employment pursuant to forfeiture statute. *Moore v. Youth Correctional Institute of Annandale*, 230 N.J.Super. 374 553 A.2d 830 (App.Div.1989) affirmed 119 N.J. 256, 574 A.2d 583.

10A:3-3.8 Reports

(a) The correction officer shall immediately contact his or her shift supervisor and shall write a special report when the officer participated in, or witnessed, an incident in which:

1. A firearm was discharged outside of the firing range;
2. A use of force resulted in death or serious bodily injury; and/or
3. An individual alleged that a serious bodily injury had been inflicted.

(b) The report shall contain the following information:

1. A description of the events leading up to the use of force;
2. A description of the incident;
3. The type of force used;

4. The reason(s) for employing force;
5. A list of all participants and witnesses to the incident;
6. A description of the injuries suffered, if any, and medical treatment given; and
7. Other relevant facts or comments about the incident or conduct of employees or inmates.

(c) The Shift Supervisor shall forward, as soon as possible, all special reports to the Internal Affairs Unit of the correctional facility and the Director of Custody Operations for review. The Director of Custody Operations shall forward all reports to the Superintendent. The Superintendent shall then report the incident in accordance with N.J.A.C. 10A:21, Reports.

Recodified from 10A:3-3.5 and amended by R.1997 d.41, effective January 21, 1997.

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

Rewrote (a); in (c), inserted reference to forwarding reports as soon as possible. Former rule recodified to N.J.A.C. 10A:3-3.11.

10A:3-3.9 Use of mechanical restraints

(a) On authorization of the Shift Supervisor, mechanical restraints may be used in the following instances:

1. When transporting an inmate from place to place;
2. When the inmate's history, disciplinary record, behavior or present emotional state indicates the likelihood that bodily injury to any person, damage to property or escape by the inmate will occur; or
3. On current medical advice, to prevent the inmate from attempting suicide, self-inflicted injury, or injury to others.

(b) Mechanical restraints shall not be used as punishment, or in any way that causes undue physical discomfort, inflicts physical pain or restricts the blood circulation or breathing of the inmate.

(c) Mechanical restraints shall be removed promptly when the reason for their initial use has ceased to exist or has sufficiently abated.

(d) An inmate in restraints shall be under continuous observation by a correction officer(s).

Recodified from 10A:3-3.6 and amended by R.1997 d.41, effective January 21, 1997.

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

In (c)3, inserted reference to injury to others; and added (d). Former rule recodified to N.J.A.C. 10A:3-3.13.

10A:3-3.10 Use of chemical agents; storage

(a) Only Department of Corrections approved chemical agents shall be used by correction officers in accordance with N.J.A.C. 10A:3-3.

(b) Whenever chemical agents are used as a means of control, staff members shall comply with the reporting procedure in N.J.A.C. 10A:3-3.

(c) A correction officer is not permitted to carry or use chemical agents unless he or she has received appropriate training and annual retraining in chemical agent use and effects.

(d) After each instance of use, individuals who have been exposed to chemical agents shall be referred to the medical staff for any necessary examination and treatment.

(e) Chemical agents shall be safely stored, legibly labeled to show the chemical name and expiration date, and properly inventoried to insure security and an adequate unexpired supply.

Amended by R.1993 d.219, effective May 17, 1993.

See: 25 N.J.R. 1044(b), 25 N.J.R. 1971(b).

Revised (a).

Recodified from 10A:3-3.7 and amended by R.1996 d.41, effective January 21, 1997.

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

Substantially amended section.

10A:3-3.11 Training

(a) Training in proper methods and techniques of using force and in the legal aspect of using force shall be provided as part of the Basic Course for Correction Officers provided at the Thomas M. Cooper Corrections Staff Training Academy (CSTA), New Jersey Department of Corrections.

(b) All security and custodial personnel shall receive annual training in proper methods and techniques of using force and in the legal aspects of using force. In addition to annual training, retraining may be repeated as needed. Such training shall be provided by each correctional facility.

Recodified from 10A:3-3.8 and amended by R.1997 d.41, effective January 21, 1997.

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

Substantially amended section.

10A:3-3.12 Penalties for violation

(a) Correction officer action which does not conform to the provisions of this subchapter and any procedures implemented in connection with this subchapter may result in the following:

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

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

(b) The employee must present his or her official photo identification card of the New Jersey Department of Corrections when checking the firearm out of the weapons collection station.

(c) Employees are prohibited from storing off-duty weapons or ammunition in their personal vehicles while on Department property.

(d) Employees assigned to satellite units or other Department residential facilities must store their firearms at the main correctional facility or an approved authorized weapons storage unit.

(e) Personal firearms shall be checked in and out on the employee's own time. It is the employee's responsibility to allow sufficient time for this procedure so that he or she will be on time to work.

(f) Under no circumstances may an employee carry a personally owned firearm into the correctional facility beyond the weapons collection station. Personally owned firearms shall not be carried or used while on-duty except when authorized by the Superintendent and approved by the Assistant Commissioner, Division of Operations. In those instances, only firearms approved by the Department may be used by qualified officers.

Recodified from 10A:3-4.5 and amended by R.1997 d.41, effective January 21, 1997.

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

, Deleted (g), relating to a master list of employees authorized to carry off-duty firearms. Former rule recodified to N.J.A.C. 10A:3-4.7.

10A:3-4.7 Use of force while off-duty

(a) Although N.J.S.A. 2A:154-4 authorizes peace officers to exercise law enforcement powers, no correction officer is required to exercise those powers or to carry arms during off-duty hours.

(b) Correction officers, while off-duty, should not become involved with routine law enforcement duties as they apply to local law enforcement agencies. When a correction officer observes what he or she believes to be a violation of the law, he or she should take note of vehicle description, license plate numbers, identifying characteristics of persons involved and other relevant information and report such information to the local law enforcement agency having jurisdiction and to the Central Communication Unit, New Jersey Department of Corrections. Officers should avoid stopping or detaining vehicles or persons, or becoming involved in high speed chases.

(c) In cases where correction officers have passed the qualifying firearms examination and do elect to carry a firearm off-duty, the utmost discretion shall be exercised by the correction officer to determine when and under what conditions to use force. Whenever he or she believes that possible criminal action is taking place and that a reasonable alternative to use force exists, the correction officer must

take the action which is calculated to be least dangerous or harmful to persons or property.

(d) Any use of force while off-duty shall be in accordance with the requirements of this Subchapter.

(e) A correctional employee shall be deemed to have acted within the scope of his or her employment or in the law and enforcement interest of the State of New Jersey if he or she exercises police powers in accordance with the provisions of this Subchapter and post orders promulgated in connection therewith.

Recodified from 10A:3-4.6 and amended by R.1997 d.41, effective January 21, 1997.

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

Former rule recodified to N.J.A.C. 10A:3-4.8.

10A:3-4.8 Use of non-deadly force while off-duty

(a) Whenever non-deadly force is used off-duty, the reasonable amount of force possible under the circumstances shall be used.

(b) Non-deadly force may be used off-duty by authorized persons when it is believed to be immediately necessary to:

1. Protect self or others against the unlawful use of force;
2. Protect self and/or others against death or serious bodily harm;
3. Prevent a suicide or attempted suicide;
4. Thwart the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace;
5. Prevent an escape; or
6. Effect an arrest for any offense or crime under the laws of the State of New Jersey subject to (c) below.

(c) The use of non-deadly force to effect an arrest is only justifiable if:

1. The correction officer makes known his or her identity and the purpose of the arrest; or
2. The correction officer reasonably believes that his or her identity and purpose are otherwise known by, or cannot reasonably be made known to, the person to be arrested; and
3. When the arrest is made under a warrant and the warrant is valid or reasonably believed by the correction officer to be valid.

Recodified from 10A:3-4.7 and amended by R.1997 d.41, effective January 21, 1997.

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

In (a), substituted reference to using reasonable amount of force for reference to use of minimum amount of force; in (b)1, substituted reference to unlawful use of force for reference to any physical assault; inserted (b)2; recodified former (b)2 through (b)5 as (b)3 through

(b)6; in (b)3, deleted reference to infliction of serious bodily harm and inserted reference to attempted suicide; inserted (c)2; and recodified former (c)2 as (c)3. Former rule recodified to N.J.A.C. 10A:3-4.9.

10A:3-4.9 Use of deadly force while off-duty

(a) Deadly force includes, but is not limited to, the use of firearms and other lethal weapons.

(b) Deadly force may be used in the following situations under limitations consistent with the provisions of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq.

1. When the correction officer reasonably believes that deadly force is imminently necessary to protect himself or herself against the use of unlawful force which he or she believes may result in death or serious bodily harm;

2. When the correction officer reasonably believes that deadly force is imminently necessary to protect another against the use of unlawful force which he or she believes may result in death or serious bodily harm. However, deadly force is not justifiable if the correction officer can otherwise secure the complete safety of the protected person;

3. When the correction officer reasonably believes that deadly force is imminently necessary to prevent or stop the suspect from committing or continuing a criminal offense which would endanger human life or inflict serious bodily harm upon another person unless the commission or the consummation of the crime is prevented;

4. When the correction officer has probable cause to believe that the suspect will pose an imminent threat of death or serious bodily harm to human life should the officer not take immediate action by deadly force to effect an arrest or to prevent the escape of a fleeing suspect; and

5. Where the correction officer reasonably believes that deadly force is imminently necessary to prevent the escape of a person committed to a correctional facility for the detention of persons charged with, or convicted of an offense, provided that the officer reasonably believes that the force employed creates no substantial risk of injury to innocent persons.

(c) Where feasible, before using a firearm, the correction officer shall attempt to identify himself or herself as an officer and state his or her intent to shoot. Warning shots are not authorized.

(d) The correction officer shall not discharge a firearm if there is a substantial risk of injury to innocent persons.

Recodified from 10A:3-4.8 and amended by R.1997 d.41, effective January 21, 1997.

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

Substantially amended section. Former rule recodified to N.J.A.C. 10A:3-4.10.

10A:3-4.10 Unauthorized use of personal weapons while off-duty

(a) An employee shall not be authorized to carry an off-duty firearm in the following instances:

1. Where N.J.S.A. 2C:39-7 (Persons Convicted of Certain Crimes) is applicable;

2. Where 18 U.S.C. 1202 Appx.—Appendix to the United States Code (Persons Convicted of Certain Crimes) is applicable;

3. When an employee has been suspended from duty for any violation by the Superintendent or a higher official of the Department;

4. When there are pending charges or ongoing investigations of alleged incidents involving the misuse of a firearm;

5. When otherwise required by law or regulation; or

6. Any other situation where the Superintendent/Unit Chief or their designee may exercise their authority to withdraw off-duty firearms privileges, subject to the review of the Assistant Commissioner, Division of Operations, Chief of Staff, or Commissioner, Department of Corrections.

(b) In any of the instances in (a) above, the State of New Jersey, Firearms Unit Weapons Card shall be turned in to the Superintendent/Unit Chief, or their designee.

Recodified from 10A:3-4.9 and amended by R.1997 d.41, effective January 21, 1997.

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

Inserted (a)5; and recodified former (a)5 as (a)6. Former rule recodified to N.J.A.C. 10A:3-4.11.

10A:3-4.11 Possession of firearms within a casino or casino simulcasting facility

Pursuant to N.J.A.C. 19:45-1.13, an employee shall not possess or be permitted to possess a firearm within a casino or casino simulcasting facility.

Recodified from 10A:3-4.10 and amended by R.1997 d.41, effective January 21, 1997.

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

Substituted references to possession of firearms for a reference to carrying firearms and added reference to simulcast facility. Former rule recodified to N.J.A.C. 10A:3-4.12.

10A:3-4.12 Reporting incidents

(a) When an authorized off-duty firearm is believed to have been lost or stolen, the employee shall report this fact to the local law enforcement authorities and to the correctional facility Central Control or the New Jersey Department of Corrections Central Communications Unit within three hours from the time he or she is aware that the firearm is missing.

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

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

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

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

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

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

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

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

10A:3-4.13 Penalties for violation

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

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

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

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

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

In (a), inserted reference to post procedures; in (a)1, inserted N.J.A.C. reference; and deleted (c), relating to uses of force which allow denial of indemnification and representation. Former rule recodified to N.J.A.C. 10A:3-4.14.

10A:3-4.14 Post orders and procedures

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

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

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

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

SUBCHAPTER 5. SEARCH OF INMATES AND FACILITIES

10A:3-5.1 Purpose

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

10A:3-5.2 Search plan

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

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

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

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

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

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

Added (b)-(d).

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

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

10A:3-5.3 Searches of inmates and facilities

(a) All inmate residential, work, training areas and other areas to which inmates have access shall be searched thor-

oughly for contraband on a routine, continuing basis. Searches shall be unannounced and irregularly timed, and may be limited to a specific building or area.

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

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

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

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

10A:3-5.4 Inspection of security devices

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

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

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

10A:3-5.5 Metal detector searches

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

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

10A:3-5.6 Pat search

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

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

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

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

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

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

Amended by R.1988 d.406, effective September 6, 1988.
See: 20 N.J.R. 1331(a), 20 N.J.R. 2294(a).
Changed frisk to pat.

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

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

Amended by R.1997 d.343, effective August 18, 1997.
See: 29 N.J.R. 2614(b), 29 N.J.R. 3732(a).

In (c), deleted prior approval requirement.

10A:3-5.7 Strip searches

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

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

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

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

(c) A strip search shall be conducted:

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

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

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

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

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

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

1. The secure and orderly operation of the procedure;

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

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

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

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

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

Changed frisk to pat and added (g).

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

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

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

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

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

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

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

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

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

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

Rewrote (c); and in (d), substituted "custody staff" for "officers".

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

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

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

1. A body cavity search shall be conducted:

i. Under sanitary conditions;

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

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

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

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

2. The inmate may:

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

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

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

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

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

1. A statement of facts indicating reasonable suspicion for the search;

2. The name of the officer in charge who authorized the search;

3. The name(s) of the correction officer(s) present during the search and the reason for his or her presence;
4. The name(s) of the person(s) conducting the search;
5. An inventory of any item(s) found during the search; and
6. The reason(s) for use of force, if necessary.

10A:3-5.9 Canine searches

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

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

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

New Rule, R.1987 d.397 effective October 5, 1987.
See: 19 N.J.R. 1175(a), 19 N.J.R. 1813(a).
Recodified from 10A:3-5.8 by R.1997 d.41, effective January 21, 1997.
See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).
Former rule recodified to N.J.A.C. 10A:3-5.10.

10A:3-5.10 Urine monitoring

(a) Urine monitoring may be conducted for the purpose of deterring and controlling the introduction of contraband or to detect the presence of any drug not authorized for possession or use by the inmate.

(b) Inmates shall be required to submit urine for analysis when:

1. A correction officer of the rank of Sergeant or above or an Internal Affairs Officer believes, based upon his or her education and experience, that there is a reasonable factual basis to suspect the inmate of using or possessing drugs;
2. A supervising staff member or a licensed medical staff person in residential contract facilities and/or other community residential facilities utilizing non-custody staff believes based upon his or her education and experience that there is a reasonable factual basis to suspect the inmate of using or possessing drugs;
3. The Superintendent, Assistant Superintendent or the Director of Custody Operations orders all inmates of a particular housing unit, work detail or other functional unit to submit urine samples. Such orders shall be in writing and this authority may not be delegated;
4. A correction officer of the rank of Sergeant or above orders urine samples to be taken upon any inmate's return from furlough or other unsupervised temporary release from custody; or,

5. A Disciplinary Hearing Officer/Adjustment Committee orders a urine sample to be taken as part of a sanction for a drug related infraction.

Recodification: this section was recodified from N.J.A.C. 10A:3-5.8.
See: 19 N.J.R. 1175(a), 19 N.J.R. 1813(a).
Recodified from 10A:3-5.9 and amended by R.1997 d.41, effective January 21, 1997.

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

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

Case Notes

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

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

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

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

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

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

(a) Each time a urine specimen is collected for the reasons stated in N.J.A.C. 10A:3-5.10, Form 172-I Continuity of Evidence—Urine Specimen shall be completed and submitted with the urine sample to the Internal Affairs Officer or the staff member responsible for maintaining custody over the specimen until transfer to the testing facility.

(b) Urine samples taken from inmates shall be voided directly into an approved specimen bottle in the presence of at least one correction officer or staff member of the same sex as the inmate.

1. A minimum of 50 milliliters (two ounces) must be voided in order to provide an adequate sample.

2. The specimen bottle shall immediately be closed, labeled and sealed in the presence of the inmate by the correction officer or staff member.

3. The label shall include the inmate's name and number, the correctional facility to which the inmate is assigned, the name of the correction officer or staff member who witnessed the voiding of the sample, the date and time of the sample, the prescription medication that the inmate is currently taking, and the inmate's signature. Should the inmate refuse to sign, the correction officer or staff member who witnessed the voiding of the sample shall indicate the refusal on the label and on Form 172-I.

(c) The correction officer or staff member who signs the label as witness shall, as soon as reasonably practicable, deliver the urine sample to the Internal Affairs Officer or other officer responsible for maintaining custody over evidence:

1. The urine sample shall be placed in a locked and secure refrigerator or freezer by the officer responsible for maintaining custody over evidence as soon as reasonably practical, but in no event later than eight hours after the sample was voided.

2. The officer who receives custody of the urine sample shall record on Form 172-I the date and time he or she received the sample, the officer from whom it was received, and the date and time of its placement into the evidence locker and/or locked refrigerator.

(d) Inmate urine samples transported out of the correctional facility for drug testing shall be transported, where reasonably practical, in an iced cooler or similar device. The date and time of the removal of the urine sample from the correctional facility, as well as the date and time of its receipt by the testing facility shall be noted on Form 172-I by the person(s) performing these functions.

(e) The Department of Corrections shall not proceed with testing any urine sample for drugs unless the urine sample arrives at the laboratory in a sealed and approved specimen bottle.

(f) Inmates charged with use of drugs or intoxicants not prescribed by the medical staff based upon the results of urine analysis shall be advised of the results of any tests at least 24 hours prior to any hearing ordered because of those charges.

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

(h) Urine monitoring shall not be conducted as a means of punishment or discipline, except as ordered by a Disciplinary Hearing Officer/Adjustment Committee as permitted by Chapter 4, INMATE DISCIPLINE.

(i) No inmate shall be disciplined for refusing to provide a urine sample unless that inmate has been given a reasonable physical opportunity to comply with such order.

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

2. The inmate shall not be deemed to have complied with the order to submit a urine sample unless he or she voids the sample in the presence of a correction officer or staff member.

See: 19 N.J.R. 1175(a), 19 N.J.R. 1813(a).
Amended by R.1989 d.140 effective March 20, 1989.
See: 21 N.J.R. 10(a), 21 N.J.R. 765(c).

At (b)1. . . . "in the presence of the inmate" . . . , added.
Amended by R.1991 d.503, effective October 7, 1991.
See: 23 N.J.R. 1259(a), 23 N.J.R. 3031(b).

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

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

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

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

Petition for Rulemaking.

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

Case Notes

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

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

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

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

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

10A:3-5.12 Breathalyzer testing of inmates

(a) The Internal Affairs Unit shall be responsible for the operation of the breathalyzer.

(b) Inmates shall be required to submit to breathalyzer testing when:

1. A correction officer of the rank of Sergeant or above or an Internal Affairs Investigator has reasonable grounds to believe that an inmate has been using alcohol;

2. A supervising staff member or a licensed medical staff member in a residential contract facility and/or other community residential facility utilizing non-custody staff, has reasonable grounds to believe that an inmate has been using alcohol;

3. The Superintendent, Assistant Superintendent or the Director of Custody Operations orders all inmates of a particular housing unit, work detail or other functional unit to submit to breathalyzer testing. Such orders shall be in writing and this authority may not be delegated; or

4. A correction officer of the rank of Sergeant or above or an Internal Affairs Investigator orders breathalyzer testing on an inmate who has returned from furlough or any other unsupervised temporary release from custody.

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

(c) Whenever there is reasonable grounds to believe that an inmate is under the influence of alcohol and a breathalyzer test is to be conducted, Form 285-II BREATHALYZER REQUEST SUMMARY shall be completed by the authorizing staff member as set forth in (b) above.

(d) All breathalyzer testing shall be conducted and performed by an operator from the Internal Affairs Unit who is certified by the Department of Law and Public Safety in chemical breath analysis and Form 285-III ALCOHOL INFLUENCE REPORT shall be completed by the certified individual who conducts the breath analysis testing.

(e) Inmates with a blood alcohol concentration of 0.02 or more will be considered to have used and/or be under the influence of alcohol.

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

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

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

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

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

10A:3-5.13 Orientation and training

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

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

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

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

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

Recodified from 10A:3-5.11 by R.1996 d.209, effective May 6, 1996 (operative August 19, 1996).

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

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

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

SUBCHAPTER 6. CONTRABAND AND DISPOSITION OF CONTRABAND

Cross References

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

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

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

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

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

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

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

5. The inmate shall have three days to appeal the seizure to the Superintendent or his or her designee.

(b) The Internal Affairs Unit or correctional facility Central Control shall maintain a log of all Seizure of Contraband and Inmate Receipt forms (Forms 171-I and 171-II). It shall be the responsibility of these units to record the disposition of the contraband on the Seizure of Contraband Report (Form 171-I).

(c) All contraband seized shall be clearly and appropriately marked and securely stored by the Internal Affairs Unit or the correctional facility Central Control.

(d) If disciplinary charges are issued in connection with the seizure of contraband, the Internal Affairs Unit or the correctional facility Central Control shall present evidence of the contraband at the disciplinary hearing unless the contraband was seized pursuant to N.J.A.C. 10A:3-6.5. If the contraband was seized pursuant to N.J.A.C. 10A:3-6.5, the Disciplinary Hearing Officer/Adjustment Committee shall arrange to view the contraband outside the inmate's presence.

(e) Contraband shall be disposed of by the Internal Affairs Unit or the correctional facility Central Control in accordance with this Subchapter.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Recodified from 10A:3-6.2 and amended by R.1997 d.41, effective January 21, 1997.

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

In (a)3, deleted references to specified training schools for boys and girls; and in (d), substituted "present evidence of the contraband" for "present the contraband". Section was "Contraband defined".

10A:3-6.2 Disposal of contraband personal property seized in reception units

(a) When an inmate is delivered to a Department of Corrections reception unit with items of personal property not authorized for retention or possession, the items shall be seized.

(b) The staff member making the seizure shall give the inmate an itemized, signed and dated receipt for the property seized, and shall notify the inmate that such items are

contraband, and that the inmate has three working days, from the date of the seizure of the contraband, to appeal the classification of any or all items as contraband to the Superintendent.

1. If the Superintendent or his or her designee shall determine that any or all of the items are not contraband, they shall be returned to the inmate.

2. If the Superintendent shall determine that any item is contraband, the inmate shall be given two working days to indicate which of the following means of disposal should be used with respect to the property. The contraband shall either be:

- i. Mailed to a designated relative or friend of the inmate at the inmate's expense;
- ii. Given to a visitor for disposal;
- iii. Donated by the inmate to a charitable organization at the inmate's expense; or
- iv. Destroyed at the inmate's request.

3. If the inmate fails to indicate the desired disposition, the property shall be disposed of at the option of the Superintendent of the correctional facility in which the reception unit is located.

(c) Disciplinary reports shall not be issued to an inmate entering a reception unit for possession of unauthorized or excessive personal property.

Administrative Correction, effective January 27, 1989.

See: 21 N.J.R. 5589a.

Institutional name change.

Recodified from 10A:3-6.3 and amended by R.1997 d.41, effective January 21, 1997.

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

Former rule recodified to N.J.A.C. 10A:3-6.1.

10A:3-6.3 Disposal of contraband personal property seized within a correctional facility

(a) When contraband is seized within a correctional facility, appropriate disciplinary reports shall be written and issued pursuant to N.J.A.C. 10A:3-6.7.

(b) The staff member making the seizure shall give the inmate an itemized, signed and dated receipt (Form 171-II) for the property seized and shall notify the inmate that such items are contraband and that the inmate has the right to appeal the classification of any or all items as contraband through the disciplinary process.

1. If the Disciplinary Hearing Officer/Adjustment Committee determines that any or all items are not contraband or if the Superintendent, on appeal, determines that an item is not contraband it shall be returned to the inmate.

2. If the Disciplinary Hearing Officer/Adjustment Committee determines that any or all items are contraband, the inmate shall be given two working days following receipt of the Disciplinary Hearing Officer/Adjustment Committee decision or the decision of the Superintendent if the disciplinary decision is appealed to indicate to the Internal Affairs Unit or Central Control which of the following means shall be used to dispose of the contraband. The contraband shall either be:

- i. Mailed to a designated relative or friend of the inmate at the inmate's expense;
- ii. Donated by the inmate to a charitable organization at the inmate's expense; or
- iii. Destroyed at the inmate's request.

3. Where the inmate fails to indicate the desired disposition, the property shall be disposed of at the option of the Superintendent.

4. For verifiable cases of inmates who have no family and no visitors, special arrangements to store property at the facility in which the inmate is housed may be approved on a case by case basis by the Superintendent and in accordance with N.J.A.C. 10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Recodified from 10A:3-6.4 and amended by R.1997 d.41, effective January 21, 1997.

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

Former rule recodified to N.J.A.C. 10A:3-6.2.

10A:3-6.4 Disposal of contraband, State issued property

Where State issued personal property is confiscated as contraband, the inmate shall not have any option with respect to its disposition. It shall be returned to the source for redistribution or subsequent disposal. Commissary items seized as contraband may be distributed among needy inmates as determined by the Superintendent.

Recodified from 10A:3-6.5 and amended by R.1997 d.41, effective January 21, 1997.

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

Former rule recodified to N.J.A.C. 10A:3-6.3.

10A:3-6.5 Disposal of contraband threatening to security or disruptive of operations

(a) All contraband determined to pose a threat to security or to be disruptive of the orderly running of a correctional facility shall be taken into the custody of the correctional facility and under no circumstances shall be returned to the inmate.

1. The staff member making the seizure shall immediately turn the contraband over to the Internal Affairs Unit or Central Control of the correctional facility, together with the completed Seizure of Contraband Report Form 171-I and Inmate Receipt Form 171-II.

2. Appropriate disciplinary reports shall be written and issued, pursuant to N.J.A.C. 10A:3-6.7.

(b) Suspected contraband narcotics or dangerous drugs may be forwarded to an approved laboratory for chemical analysis or, where appropriate, field tested at the correctional facility. All weapons, ammunition, explosives, chemicals, liquor or items altered from original status may be sent to the laboratory for analysis. After analysis, the contraband shall be claimed at the laboratory and secured at the facility.

(c) Precautions shall be taken to assure the continuity of possession of contraband that will be used as evidence in accordance with accepted legal procedures. Unauthorized items determined to pose a threat to or to be disruptive of the operations of a facility may be destroyed or properly

disposed of by the facility only under the following circumstances:

1. With the permission of the Superintendent;
2. Upon completion of all disciplinary action; and
3. With the prior approval of the appropriate county prosecutor's office.

Recodified from 10A:3-6.6 and amended by R.1997 d.41, effective January 21, 1997.

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

Former rule recodified to N.J.A.C. 10A:3-6.4.

10A:3-6.6 Confiscation and disposal of unauthorized currency or money

(a) All unauthorized money or currency found in an inmate's possession shall be immediately seized and turned over to the Central Control, Internal Affairs Unit together with reports required by N.J.A.C. 10A:3-6.

1. Any inmate found to be in possession or to have control over such money or currency shall receive a disciplinary report.

2. A determination as to the manner in which the money or currency has been acquired shall be made by the Disciplinary Hearing Officer/Adjustment Committee at the disciplinary hearing from the reports against the inmate.

3. If the Disciplinary Hearing Officer/Adjustment Committee concludes that the money or currency is unauthorized or has been acquired through improper means, the Disciplinary Hearing Officer/Adjustment Committee shall recommend to the administration that the money or currency shall be forfeited by the inmate, deposited in the General Treasury Fund and recorded in the Law Enforcement Dedicated Account of the Department of Corrections.

4. Subsequent to the Disciplinary Hearing Officer/Adjustment Committee conclusion, the money or currency shall be turned over to the correctional facility Business Manager with a copy of the adjudicated disciplinary report. The Business Manager will be responsible for depositing and recording the funds to the appropriate account.

5. Money or currency forfeited by the inmate which is not the subject of disciplinary action as determined by the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent shall be deposited in the inmate's account in accordance with N.J.A.C. 10A:2.

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

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

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

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

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

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

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

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

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

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

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

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

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

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

Cross References

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

10A:3-6.7 Disciplinary reports

(a) When disciplinary reports are issued resulting from application of this Subchapter, such reports shall be issued and adjudicated in accordance with Chapter 4, INMATE DISCIPLINE.

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

Administrative Correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).

Institutional name change.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 7. POLYGRAPH EXAMINATIONS

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

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

1. When there are issues of credibility regarding serious incidents or allegations which may result in a disciplinary charge; or

2. As part of a reinvestigation of a disciplinary charge, when the Superintendent is presented with new evidence or finds serious issues of credibility.

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

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

Case Notes

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

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

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

10A:3-7.3 Requesting a polygraph examination

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

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

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

10A:3-7.4 Scheduling polygraph examinations

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

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

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

10A:3-7.5 Procedural limitations

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

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

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

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

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

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

SUBCHAPTER 8. FINGERPRINTING AND PHOTOGRAPHING JUVENILE INMATES
10A:3-8.1 Fingerprints of juvenile inmates

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

10A:3-8.2 Photographs of juvenile inmates

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

10A:3-8.3 Confidentiality

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

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

10A:3-8.4 Written policy and procedures

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

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

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

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

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

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