

TITLE 10A

DEPARTMENT OF CORRECTIONS

CHAPTER 1

ADMINISTRATION, ORGANIZATION
AND MANAGEMENT

Authority

N.J.S.A. 30:1B-6, 30:1B-10 and the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.

Source and Effective Date

R.2003 d.176, effective April 9, 2003.
See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Chapter Expiration Date

Chapter 1, Administration, Organization and Management, expires on April 9, 2008. Subchapter 3, Disability Grievance Procedure, is exempt from expiration under 28 C.F.R. Part 35. See: 35 N.J.R. 331(a).

Chapter Historical Note

Chapter 1, Administration, Organization and Management, was adopted as R.1987 d.282, effective July 6, 1987. See: 19 N.J.R. 620(a), 19 N.J.R. 1214(a).

Subchapter 2, General Provisions, was adopted as R.1988 d.240, effective June 6, 1988. See: 20 N.J.R. 493(a), 20 N.J.R. 1222(c).

Subchapters 3 through 10, (Reserved), and Subchapter 11, Personal Property of Inmates, were adopted as R.1988 d.306, effective July 5, 1988. See: 20 N.J.R. 494(a), 20 N.J.R. 1559(b).

Pursuant to Executive Order No. 66(1978), Chapter 1, Administration, Organization and Management, was readopted as R.1992 d.269, effective June 1, 1992. See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Pursuant to Executive Order No. 66(1978), Subchapter 1, Operation and Procedures of the Department of Corrections; Subchapter 2, General Procedures; Subchapters 4 through 9, (Reserved); Subchapter 10, Research; and Subchapter 11, Personal Property of Inmates, expired on June 1, 1997.

Subchapter 1, Operation and Procedures of the Department of Corrections; Subchapter 2, General Procedures; Subchapters 4 through 9, (Reserved); Subchapter 10, Research; and Subchapter 11, Personal Property of Inmates, were adopted as R.1997 d.527, effective December 15, 1997. See: 29 N.J.R. 4231(a), 29 N.J.R. 5296(a).

Subchapter 3, Disability Discrimination Grievance Procedure, was adopted as R.1993 d.617, effective December 6, 1993. See: 25 N.J.R. 1326(b), 25 N.J.R. 5474(a).

Chapter 1, Administration, Organization and Management, was readopted as R.2003 d.176, effective April 9, 2003. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. OPERATION, PROCEDURES
AND RULEMAKING ACTIVITY OF THE
DEPARTMENT OF CORRECTIONS

10A:1-1.1 Functions of the agency

(a) The Department of Corrections (D.O.C.), created by statute in 1976, is a principal Department in the Executive

Branch of New Jersey State Government. The functions of the D.O.C. are to:

1. Protect the public and provide for the custody, care, discipline, training and treatment of persons committed to State correctional facilities;
2. Supervise and assist in the treatment and training of persons in local correctional and detention facilities, so that such persons may be prepared for release and reintegration into the community;
3. Cooperate with other law enforcement agencies of the State to encourage a more unified system of criminal justice.
4. Provide maximum security confinement for offenders whose demonstrated propensity to acts of violence requires that these offenders be separated from the community;
5. Develop alternatives to conventional incarceration for offenders who can be dealt with more effectively in less restrictive community based facilities and programs;
6. Provide an environment for incarcerated persons which encourages rehabilitation and reintegration into the community; and
7. Protect the incarcerated offender from victimization within the correctional facilities of the D.O.C.

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

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

In (a)1, deleted "or released on parole" following "committed to State correctional facilities".

10A:1-1.2 Procedure to petition for rulemaking

(a) An interested person may apply to petition for the promulgation, amendment or repeal of any rule of the Department of Corrections. A petition shall:

1. Be in writing;
2. Be legible and intelligible; and
3. Be signed by the petitioner.

(b) Each petition shall contain the following information:

1. The full name and address of the petitioner;
2. Citation of the rule for which the proposal is made, using N.J.A.C. references, where applicable;
3. A clear and concise statement summarizing the substance of the rule sought or change to be suggested;
4. A specific statement explaining why the suggestion is being offered and summary of reasons therefor; and
5. A citation of statutory authority under which the Department of Correction is authorized to act.

(c) The petition shall be sent to the Director, Office of Policy and Planning, Department of Corrections, Cubberly Building, PO Box 863, Trenton, New Jersey 08625-0863.

(d) When the Commissioner, or designee, accepts the petition which satisfies the requirements of (a), (b) and (c) above, the Department of Corrections shall file the document for publication as a notice of petition for a rule in the New Jersey Register pursuant to N.J.A.C. 1:30-4.1(c).

(e) No later than 60 days following receipt of an accepted petition, the Department of Corrections shall mail to the petitioner and file for publication in the New Jersey Register a notice of action on the petition which shall contain the information described by (b) above. The notice of action shall include either:

1. A statement denying the petition and including a written statement of the reason(s);
2. A notice granting the petition and including a statement that the Department shall initiate a rulemaking proceeding within 90 days of granting the petition; or
3. A statement that the matter is being referred for further deliberations, the nature of which shall be specified and which shall be concluded within 90 days of referring the matter for further deliberations.

(f) Upon conclusion of further deliberations, as established in (e)3 above, the Department shall mail to the petitioner and file for publication in the New Jersey Register another notice of action on the petition which shall either deny the petition and include a statement of the reasons(s), or grant the petition and include a statement that the Department shall initiate rulemaking proceedings within 90 days of granting the petition.

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)-(d).

Administrative Correction in (d) and (e).

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

Administrative Change.

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

Amended by R.2001 d.220, effective July 2, 2001.

See: 33 N.J.R. 1288(a), 33 N.J.R. 2290(a).

Rewrote (c); in (d), inserted " , or designee," preceding "accepts the petition", substituted references to (a), (b) and (c) for references to (a) and (b), and amended the N.J.A.C. reference; rewrote (e); added (f).

10A:1-1.3 Public and inmate information requests

(a) Members of the public, other than inmates, may obtain general information from the Department of Corrections by writing to the Department of Corrections, Office of Public Information at PO Box 863, Trenton, New Jersey 08625-0863, by accessing the official Department of Corrections website at www.state.nj.us/corrections, or by making a telephone call to (609) 292-9340.

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

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

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

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

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

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

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

Amended by R.1992 d.269, effective July 6, 1992.
See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Revised definition “youth complex”.

Amended by R.1993 d.246, effective June 7, 1993.
See: 25 N.J.R. 1043(a), 25 N.J.R. 2591(b).

Amended by R.1998 d.364, effective July 20, 1998.
See: 30 N.J.R. 1367(b), 30 N.J.R. 2618(b).

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

Amended by R.1998 d.526, effective November 2, 1998.
See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

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

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

Amended by R.1999 d.187, effective June 7, 1999 (operative July 1, 1999).

See: 31 N.J.R. 831(a), 31 N.J.R. 1487(b).

Inserted “Special needs inmate”.

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

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

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

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

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

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

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

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

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

Case Notes

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

10A:1-2.3 Chief Executive Officer

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

10A:1-2.4 Rulemaking and exemption authority

(a) The Commissioner, pursuant to N.J.S.A. 30:1B-1 et seq., is authorized to formulate, adopt, issue and promulgate rules and regulations for the administration of correctional facilities, community programs and operational units within the Department of Corrections.

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

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

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

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

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

Revised (c).

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

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

Rewrote (c).

10A:1-2.5 Expiration of rule exemptions

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

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

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

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

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

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

Amended by R.2003 d.176, effective May 5, 2003.
See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

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

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

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

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

10A:1-2.7 Procedure for requesting rule exemptions

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

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

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

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

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

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

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

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

Amended by R.1992 d.269, effective July 6, 1992.
See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Revised (d)-(h).
Administrative Correction in (e) and (f).
See: 24 N.J.R. 4390(a).
Administrative Change.
See: 25 N.J.R. 4105(a).

Amended by R.2003 d.176, effective May 5, 2003.
See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Substituted "Administrator" for "Superintendent" throughout.

10A:1-2.8 Forms

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

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

(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.

SUBCHAPTER 3. DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

10A:1-3.1 Definitions

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

“ADA” means the Americans with Disabilities Act, 42 U.S.C.A. § 12101 et seq.

“Agency” means the New Jersey Department of Corrections.

“Designated decision maker” means the Commissioner of the Department of Corrections or designee.

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

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

In “Designated decision maker”, substituted “of the Department of Corrections or designee” for “of Corrections or his or her designee” following “Commission”.

10A:1-3.2 Purpose

(a) These rules are adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the agency pursuant to N.J.A.C. 10A:1-3.5 through 3.8.

10A:1-3.3 Required ADA notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency’s compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances alleging any action prohibited by the U.S. Department of Justice regulations implementing Title 11 of the Americans with Disabilities Act. Title 11 states, in part, that “no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination” in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 10A:1-3. As those rules indicate, grievances should be addressed to the agency’s designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator
New Jersey Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863

1. A grievance may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. In cases of employment related grievances, the procedures established by the Department of Personnel, N.J.A.C. 4A:7-1.1 et seq. will be followed where applicable.

2. A grievance should be filed promptly within 30 days after the grievant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3. An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency’s designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.

4. In most cases a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision

maker and a copy forwarded to the grievant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the agency relating to the grievances filed.

6. The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA grievance with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

Case Notes

Inmates' ability to challenge statutory imposition of co-payments for medical care, via disability discrimination grievance procedures, adequately protected inmates' due process rights. Mourning v. Correctional Medical Services, (CMS) of St. Louis, Missouri, 300 N.J.Super. 213, 692 A.2d 529 (A.D.1997).

10A:1-3.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the agency is:

ADA Coordinator
New Jersey Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863

(b) All inquiries regarding the agency's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.

(c) All grievances alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 10A:1-3.5 through 3.8.

10A:1-3.5 Grievance procedure

A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 10A:1-3.4 within 30 days of the grievant becoming aware of the alleged violation. A grievance alleging employment discrimination will be processed pursuant to the rules of the Department of Personnel, N.J.A.C. 4A:7-1.1 through 3.4, if those rules are applicable.

10A:1-3.6 Grievance contents

(a) A grievance submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 10A:1-3.7.

(b) A grievance submitted pursuant to this subchapter shall include the following information:

- 1. The name of the grievant, and/or any alternate contact person designated by the grievant to receive communication or provide information for the grievant;
2. The address and telephone number of the grievant or alternate contact person; and
3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.

10A:1-3.7. Americans with Disabilities Act Grievance Form 100

The following Americans with Disabilities Act Grievance Form 100 may be utilized for the submission of a grievance pursuant to this subchapter:

Americans with Disabilities Act Grievance Form 100

Date: _____

Name of grievant: _____

Address of grievant: _____

Telephone number of grievant: _____

Name, address and telephone number of alternate contact person: _____

Agency alleged to have denied access:

Department: _____

Division: _____

Bureau or office: _____

Location: _____

Incident or barrier: _____