

**CHAPTER 3
SECURITY AND CONTROL**

Authority

N.J.S.A. 2A:154-3 and 4, 2C:58-15, 30:1B-6, 30:1B-10, 30:4-123.47c, 52:14B-5.1c and 52:17B-169.

Source and Effective Date

R.2007 d.294, effective August 20, 2007.
See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 3, Security and Control, expires on February 16, 2015. See: 46 N.J.R. 1928(a).

Chapter Historical Note

Chapter 3, Security and Control, was 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: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

Subchapter 8, Fingerprinting and Photographing Juvenile Inmates, was repealed by R.2001 d.197, effective June 18, 2001. See: 32 N.J.R. 2637(a), 33 N.J.R. 2082(a).

Chapter 3, Security and Control, was readopted as R.2002 d.171, effective May 8, 2002. See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Chapter 3, Security and Control, was readopted as R.2007 d.294, effective August 20, 2007. As a part of R.2007 d.294, Subchapter 1, Introduction, was renamed General Provisions, effective September 17, 2007. See: Source and Effective Date. See, also, section annotations.

Subchapter 11, Security Threat Groups, was recodified in part from Subchapter 6 of Chapter 5 of this Title and adopted as new rules in part by R.2011 d.277, effective November 7, 2011. See: 43 N.J.R. 1562(a), 43 N.J.R. 3024(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 3, Security and Control, was scheduled to expire on August 20, 2014. See: 43 N.J.R. 1203(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 10A:3-1.1 Purpose
- 10A:3-1.2 Scope
- 10A:3-1.3 Definitions
- 10A:3-1.4 Forms

SUBCHAPTER 2. KEEP SEPARATE STATUS

- 10A:3-2.1 Recommending placement of an inmate in keep separate status
- 10A:3-2.2 Authorization of placement of inmate in keep separate status

- 10A:3-2.3 Procedures for tracking transfers of inmates in keep separate status
- 10A:3-2.4 Recommending removal from keep separate status
- 10A:3-2.5 Authorization for removal from keep separate status

SUBCHAPTER 3. USE OF FORCE

- 10A:3-3.1 Custody staff authority
- 10A:3-3.2 Use of force
- 10A:3-3.3 Non-deadly force; when justified
- 10A:3-3.4 Deadly force; when justified and when restricted
- 10A:3-3.5 Use of force against persons other than inmates; duties outside the correctional facility security perimeter
- 10A:3-3.6 Use of force while off-duty
- 10A:3-3.7 Reports
- 10A:3-3.8 Use of mechanical restraints
- 10A:3-3.9 Use of chemical or natural agents; storage
- 10A:3-3.10 Training
- 10A:3-3.11 Penalties for violation
- 10A:3-3.12 Correctional facility internal management procedures

SUBCHAPTER 4. USE OF FIREARMS WHILE ON-DUTY AND USE OF PERSONAL FIREARMS WHILE OFF-DUTY

- 10A:3-4.1 Custody staff authorized to carry firearms while on-duty
- 10A:3-4.2 On-duty firearms training, qualification and requalification
- 10A:3-4.3 On-duty firearm
- 10A:3-4.4 Personnel authorized to carry firearms while off-duty
- 10A:3-4.5 Authorized off-duty firearms, ammunition, holsters and security
- 10A:3-4.6 Off-duty firearm
- 10A:3-4.7 Firearm instructors
- 10A:3-4.8 Off-duty firearms training, qualification and requalification
- 10A:3-4.9 Storage of off-duty firearms while on-duty
- 10A:3-4.10 Unauthorized use of personal weapons while off-duty
- 10A:3-4.11 Possession of firearms within a casino or casino simulcasting facility
- 10A:3-4.12 Reporting incidents
- 10A:3-4.13 Penalties for violation
- 10A:3-4.14 Post orders and procedures

SUBCHAPTER 5. SEARCHES OF INMATES AND FACILITIES

- 10A:3-5.1 Purpose
- 10A:3-5.2 Search plan
- 10A:3-5.3 Searches of inmates and facilities
- 10A:3-5.4 Inspection of security devices
- 10A:3-5.5 Use of scanning/testing devices
- 10A:3-5.6 Pat search
- 10A:3-5.7 Strip searches
- 10A:3-5.8 Body cavity searches of an inmate(s)
- 10A:3-5.9 Canine searches
- 10A:3-5.10 Testing for prohibited substances
- 10A:3-5.11 Collection, storage and analysis of specimens
- 10A:3-5.12 (Reserved)
- 10A:3-5.13 Orientation and training

SUBCHAPTER 6. CONTRABAND AND DISPOSITION OF CONTRABAND

- 10A:3-6.1 Procedures for handling contraband upon discovery
- 10A:3-6.2 Disposal of contraband personal property seized in reception units
- 10A:3-6.3 Disposal of contraband personal property seized within a correctional facility
- 10A:3-6.4 Disposal of contraband, State issued property
- 10A:3-6.5 Disposal of contraband threatening to security or disruptive to operations

- 10A:3-6.6 Confiscation and disposal of unauthorized money, unauthorized checks or currency
 10A:3-6.7 Disciplinary reports
 10A:3-6.8 Introduction or discharge of contraband into or from a facility by a visitor
 10A:3-6.9 Introduction or discharge of contraband into or from a facility by the mail

SUBCHAPTER 7. POLYGRAPH EXAMINATIONS

- 10A:3-7.1 Use of polygraph examinations with inmates
 10A:3-7.2 Use of polygraph examinations with staff
 10A:3-7.3 Requesting a polygraph examination
 10A:3-7.4 Scheduling polygraph examinations
 10A:3-7.5 Procedural limitations
 10A:3-7.6 Use of polygraph examinations with juveniles

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. TRANSPORTATION OF INMATES

- 10A:3-9.1 Use of State-owned and privately owned vehicles
 10A:3-9.2 Transporting inmates by aircraft
 10A:3-9.3 Transport of medium, maximum or close custody status inmates
 10A:3-9.4 Transporting reduced custody status inmates
 10A:3-9.5 Transportation documents
 10A:3-9.6 Recall to court
 10A:3-9.7 Inmate supervision
 10A:3-9.8 Emergencies
 10A:3-9.9 Transporting parole violators and escapees with physical injuries
 10A:3-9.10 Clothing
 10A:3-9.11 Interstate Escort Unit
 10A:3-9.12 Medical transportation
 10A:3-9.13 Transportation costs in a civil action
 10A:3-9.14 Written internal management procedures

SUBCHAPTER 10. SECURITY PROCEDURES FOR ADMINISTRATIVE TRANSFERS OF INMATES FROM SATELLITE UNITS AND COMMUNITY BASED PROGRAMS

- 10A:3-10.1 Use of mechanical restraints
 10A:3-10.2 Inmate personal property
 10A:3-10.3 Inmate supervision

SUBCHAPTER 11. SECURITY THREAT GROUPS

- 10A:3-11.1 Scope
 10A:3-11.2 Definitions
 10A:3-11.3 Prohibited security threat group(s) and activity(ies)
 10A:3-11.4 Responsibilities of the Corrections Intelligence Center of the Special Investigations Division
 10A:3-11.5 Security threat group designation and member identification

SUBCHAPTER 1. GENERAL PROVISIONS

10A:3-1.1 Purpose

(a) The purpose of this chapter is to establish policies and procedures regarding:

1. The use of force by custody staff members, both on-duty and off-duty;
2. The use of firearms on-duty and off-duty;
3. The search of inmates and facilities in order to control and deter contraband;

4. Contraband seizure and disposal;
5. Testing for prohibited substances;
6. The use of polygraph examinations to ensure that they are used only under limited and appropriate circumstances;
7. The transportation of inmates outside the correctional facility and from one jurisdiction to another;
8. The placement of inmates into and removing inmates from keep separate status; and
9. Security threat groups.

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".

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Rewrote the section.

Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

Rewrote the section.

Amended by R.2011 d.277, effective November 7, 2011.

See: 43 N.J.R. 1562(a), 43 N.J.R. 3024(a).

In (a)7, deleted "and" from the end; in a(8), substituted "; and" for a period at the end; and added (a)9.

10A:3-1.2 Scope

This chapter shall be applicable to the Department of Corrections unless otherwise indicated in this chapter.

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).

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

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

Rewrote the section.

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:

"Imminent danger" means threatened harmful actions or outcomes that may occur during an encounter absent action by the custody staff member. The period of time involved is dependent on the circumstances and facts evident in each situation and is not the same in all situations. The threatened harm does not have to be instantaneous, for example, imminent danger may be present even if an individual is not at that instant pointing a weapon at another individual, but is carrying a weapon and running for cover.

the supporting documents shall be forwarded to the Supervising Classification Officer to be filed in the inmate's classification folder.

(c) A copy of the removal notice Form 173-II shall be sent to the Classification Department of the correctional facility at which the other inmate(s) involved in the keep separate status is housed.

(d) The computerized inmate information recordkeeping systems shall be updated when a decision to remove an inmate from keep separate status has been authorized by the Administrator.

Recodified from 10A:3-2.4 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.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a), substituted "Administrator" for "Superintendent"; added (d).

Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

In (b), substituted "Supervising" for "Senior".

SUBCHAPTER 3. USE OF FORCE

10A:3-3.1 Custody staff authority

(a) Custody staff are authorized to use appropriate means to enforce correctional facility rules and regulations. Such means include, but are not limited to:

1. "Constructive authority," which means authority that does not involve actual physical contact with the individual, but involves the use of the custody staff member's authority to exert control over the individual. Examples of constructive authority include, but are not limited to, verbal commands, gestures, warnings and unholstering a weapon. Pointing a firearm at an individual is an element of constructive authority to be used only in appropriate situations; and

2. "Physical contact," which means routine or procedural contact with an individual necessary to effectively accomplish a legitimate law enforcement objective. Examples of physical contact include, but are not limited to, holding an individual's arm while escorting the individual, handcuffing an individual, maneuvering or securing an individual for a search, and guiding the individual into a vehicle.

(b) Custody staff members are encouraged to interrupt the flow of events to help ensure that a fellow custody staff member does not resort to employing an inappropriate or excessive use of force.

New Rule, R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Former N.J.A.C. 10A:3-3.1, Correction officers authorized to carry firearms while on-duty, recodified to N.J.A.C. 10A:3-4.1.

10A:3-3.2 Use of force

(a) In any case that a custody staff member uses force while on-duty, the custody staff member shall only use that force that is objectively reasonable under the totality of the circumstances as known by the custody staff member at the time force is used.

(b) A custody staff member may use the amount of force reasonably necessary to accomplish the law enforcement objective. If the individual resists, the custody staff member may increase the degree of force as necessary to accomplish the law enforcement objective but as soon as the individual submits, the custody staff member shall reduce the degree of force used.

Recodified from 10A:3-3.1 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 use of objectivity reasonable force for reference to use of minimum force possible; and added (b). Former rule recodified to N.J.A.C. 10A:3-3.7.

Recodified from N.J.A.C. 10A:3-3.4 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Substituted "custody staff member" for "correction officer" throughout. Former N.J.A.C. 10A:3-3.2, Firearms training, qualification and requalification, recodified to N.J.A.C. 10A:3-4.2.

10A:3-3.3 Non-deadly force; when justified

(a) The Department of Corrections justifies the use of non-deadly force against persons 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 prevent damage to property;
4. To prevent escape;
5. To prevent or quell a riot or disturbance;
6. To prevent a suicide or attempted suicide; or
7. To enforce correctional facility regulations where expressly permitted by Department of Corrections regulations or in situations where a custody staff member with the rank of Sergeant or above believes that the inmate's failure to comply constitutes an immediate threat to correctional facility security or personal safety.

(b) Non-deadly force includes, but is not limited to, the use of the following:

1. "Physical force" which means contact with an individual beyond that which is generally utilized to effect a law enforcement objective. Physical force is employed when necessary to overcome an individual's physical resistance to the exertion of the custody staff member's authority, or to protect persons or property. Examples of physical

force include, but are not limited to, wrestling a resisting individual to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation; and

2. "Mechanical force" which means the use of some device or substance, other than a firearm, to overcome an individual's resistance to the exertion of the custody staff member's authority. Examples of mechanical force include, but are not limited to, the use of a baton or other object, canine physical contact with an individual, or use of a chemical or natural agent spray.

Recodified from 10A:3-3.2 and amended by R.1997 d.41, effective January 21, 1997.

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

Substantially amended section. Former rule recodified to N.J.A.C. 10A:3-3.8.

Recodified from N.J.A.C. 10A:3-3.5 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a)7, substituted "a custody staff member" for "an officer" preceding "with the rank"; rewrote (b). Former N.J.A.C. 10A:3-3.3, On-duty firearm, recodified to N.J.A.C. 10A:3-4.3.

10A:3-3.4 Deadly force; when justified and when restricted

(a) Deadly force may be used against persons, consistent with provisions of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., and upon authorization of the following:

1. The Commissioner;
2. The Deputy Commissioner;
3. The Chief of Staff;
4. The Assistant Commissioner, Division of Operations;
5. The Directors, Division of Operations;
6. The Administrator;
7. The Associate Administrator/Assistant Superintendent;
8. The Director of Custody Operations; or
9. The unit supervisor, Special Operations Group.

(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 custody staff member reasonably believes that deadly force is immediately necessary to protect the custody staff member or another person from imminent danger of death or serious bodily harm. However, deadly force is not justifiable if the custody staff member can otherwise secure his or her complete safety or the complete safety of the protected person;

2. When the custody staff member reasonably believes that deadly force is immediately necessary to prevent or stop an individual 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; or

3. When the custody staff member reasonably believes that deadly force is immediately 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 custody staff member reasonably believes that the force employed creates no substantial risk of injury to innocent persons.

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

(d) Where feasible, before using a firearm, the custody staff member shall attempt to identify himself or herself as a custody staff member and state his or her intent to shoot. A custody staff member shall not discharge a firearm as a signal for help or as a warning shot.

(e) The custody staff member shall not discharge a firearm if there is a substantial risk of injury to innocent persons.

(f) A custody staff member shall not engage in a high-speed vehicle pursuit. A custody staff member shall not fire his or her firearm from a moving vehicle or at the driver or occupant of a moving vehicle or engage in any vehicle contact action, such as ramming, unless the custody staff member reasonably believes that:

1. There exists an imminent danger of death or serious bodily harm to the custody staff member or another person; and
2. No other means are available at that time to avert or eliminate the danger.

(g) A custody staff member shall not fire a weapon solely to disable a moving vehicle.

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

(i) A custody staff member is under no obligation to retreat or desist when resistance is encountered or threatened. However, a custody staff member shall not resort to the use of deadly force if the custody staff member reasonably believes that an alternative to the use of deadly force will avert or eliminate an imminent danger of death or serious bodily harm, and achieve the law enforcement objective at no increased risk to the custody staff member or another person.

(j) A custody staff member shall not use deadly force to subdue persons whose actions are only destructive to property.

(k) Deadly force shall not be used against persons whose conduct is injurious only to themselves.

(l) The discharge of any projectile from a firearm is considered to be deadly force, including less lethal means such as, but not limited to, bean bag ammunition or rubber bullets. For that reason, these and similar less lethal means of deadly force can only be used when a custody staff member reasonably believes such action is immediately necessary to protect the custody staff member or another person from imminent danger of death or serious bodily harm.

(m) Written post orders shall govern the use of deadly force by custody staff members.

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.

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

In (a), substituted "Deputy Commissioner" for "Chief of Staff" in 2, and deleted "(Superintendent)" in 5.

Recodified from N.J.A.C. 10A:3-3.6 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Rewrote the section. Former N.J.A.C. 10A:3-3.4, Use of force, recodified to N.J.A.C. 10A:3-3.2.

Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

Added new (a)3; and recodified former (a)3 through (a)8 as (a)4 through (a)9.

10A:3-3.5 Use of force against persons other than inmates; duties outside the correctional facility security perimeter

(a) While engaged in roving patrol or other duty outside the correctional facility security perimeter, appropriate force may be used against persons other than prison inmates when a custody staff member observes what he or she 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 custody staff member 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 custody staff member 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 custody staff member reasonably believes that the person presents an imminent threat of death or serious bodily harm.

(f) The custody staff member 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.

Recodified from N.J.A.C. 10A:3-3.7 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Substituted "custody staff member" for "correction officer" throughout. Former N.J.A.C. 10A:3-3.5, Non-deadly force, when justified, recodified to N.J.A.C. 10A:3-3.3.

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:3-3.6 Use of force while off-duty

(a) Although N.J.S.A. 2A:154-4 authorizes peace officers to exercise law enforcement powers, custody staff members are not required to exercise those powers or to carry firearms during off-duty hours.

(b) Custody staff members, while off-duty, should use extreme caution to determine when and under what circumstances to become involved with day-to-day law enforcement duties that are under the jurisdiction of Federal, State or local law enforcement agencies. As an example, when a custody staff member observes what he or she believes to be a violation of the law, he or she should take note of the vehicle description, license plate numbers and letters, 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 Communications Unit, New Jersey Department of Corrections. Custody staff should avoid stopping or detaining vehicles or persons.

(c) The utmost discretion shall be exercised by the custody staff member 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 of force exists, the custody staff member must take the action

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

(d) A custody staff member shall be deemed to have acted within the scope of his or her employment or in the law 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.

Recodified from N.J.A.C. 10A:3-4.7 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Rewrote section. Former N.J.A.C. 10A:3-3.6, Deadly force; when justified, recodified to N.J.A.C. 10A:3-3.4.

Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

In (b), substituted "use extreme caution to determine when and under what circumstances" for "not", "day-to-day" for "routine" and "As an example, when" for "When", and inserted "Federal, State or" and "and letters".

10A:3-3.7 Reports

(a) The custody staff member shall immediately contact his or her shift commander and shall write a special report when the custody staff member 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 harm; and/or
3. An individual alleges that serious bodily harm has 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 commander shall forward, as soon as possible, all special reports to the Special Investigations Division of the correctional facility and the Director of Custody Operations for review. The Director of Custody Operations shall forward all reports to the Administrator. The Administrator

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.

Administrative change.

See: 32 N.J.R. 303(a).

Recodified from N.J.A.C. 10A:3-3.8 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Rewrote (a) and (c). Former N.J.A.C. 10A:3-3.7, Use of force against persons other than inmates; duties outside security perimeter, recodified to N.J.A.C. 10A:3-3.5.

10A:3-3.8 Use of mechanical restraints

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

1. When transporting an inmate from one place to another;
2. When the inmate's history, disciplinary record, behavior or present emotional state indicates a 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 custody staff member(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.

Recodified from N.J.A.C. 10A:3-3.9 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a), substituted "shift commander" for "Shift Supervisor" in the introductory paragraph and substituted "one place to another" for "place to place" in 1; in (d), substituted "custody staff member(s)" for "correction officer(s)". Former N.J.A.C. 10A:3-3.8, Reports, recodified to N.J.A.C. 10A:3-3.7.

10A:3-3.9 Use of chemical or natural agents; storage

(a) Only Department of Corrections approved chemical or natural agents shall be used by custody staff members in accordance with applicable provisions of this subchapter.

(b) Whenever chemical or natural agents are used as a means of control, staff members shall comply with the reporting procedure in this subchapter.

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

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

(e) Chemical or natural agents shall be safely stored, legibly labeled to show the chemical or natural name and expiration date, and properly inventoried to ensure 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.

Recodified from N.J.A.C. 10A:3-3.10 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Inserted "or natural" following "chemical" and substituted "custody staff member" for "correction officer" throughout; in (a), substituted "applicable provisions of this subchapter" for "N.J.A.C. 10A:3-3"; in (b), substituted "this subchapter" for "N.J.A.C. 10A:3-3". Former N.J.A.C. 10A:3-3.9. Use of mechanical restraints, recodified to N.J.A.C. 10A:3-3.8.

10A:3-3.10 Training

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

(b) All security and custody personnel shall receive annual training in proper methods and techniques of using force and in the lawful and appropriate use of 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.

Recodified from N.J.A.C. 10A:3-3.11 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a), deleted "Thomas M. Cooper" preceding "Corrections"; substituted "lawful and appropriate use of" for "legal aspects of using" preceding "force" throughout. Former N.J.A.C. 10A:3-3.10. Use of chemical agents: storage, recodified to N.J.A.C. 10A:3-3.9.

Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

In (b), substituted "custody" for "custodial".

10A:3-3.11 Penalties for violation

(a) Custody staff action which does not conform to the provisions of this subchapter and any internal management 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 custody staff member.

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

Recodified from N.J.A.C. 10A:3-3.12 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a), substituted "custody staff member" for "correction officer" throughout and inserted "internal management" preceding "procedures" in the introductory paragraph. Former N.J.A.C. 10A:3-3.11. Training, recodified to N.J.A.C. 10A:3-3.10.

10A:3-3.12 Correctional facility internal management procedures

(a) Each correctional facility shall prepare suitable written post orders and internal management procedures to govern the use of force and storage of chemical agents, consistent with this subchapter.

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

Recodified from 10A:3-3.9 and amended by R.1997 d.41, effective January 21, 1997.

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

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

In (c), substituted "Commissioner or designee" for "Chief of Staff". Recodified from N.J.A.C. 10A:3-3.13 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Inserted "internal management" preceding "procedures" throughout; deleted former (b) and recodified former (c) as new (b). "Former N.J.A.C. 10A:3-3.12. Penalties for violation, recodified to N.J.A.C. 10A:3-3.11.

SUBCHAPTER 4. USE OF FIREARMS WHILE ON-DUTY AND USE OF PERSONAL FIREARMS WHILE OFF-DUTY

10A:3-4.1 Custody staff authorized to carry firearms while on-duty

(a) Prior to being permitted to carry a firearm on-duty, custody staff shall:

1. Have taken and successfully completed the Police Training Commission (P.T.C.) approved basic course for State correction officers as set forth in N.J.S.A. 52:17B-66 et seq. (The Department of Corrections shall allow completion of an equivalent P.T.C. approved course for county correction officers to substitute for this requirement);

2. Have taken and successfully completed the firearms training course at the Corrections Staff Training Academy (CSTA), New Jersey Department of Corrections; and

3. Have been sworn as peace officers by taking the Oath of Office and completing Form 156-I Oath of Office.

Recodified from N.J.A.C. 10A:3-3.1 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a), substituted "custody staff" for "corrections officer" in the introductory paragraph and deleted "Thomas M. Cooper" preceding "Corrections Staff" in 1. Former N.J.A.C. 10A:3-4.1, Personnel authorized to carry firearms while off-duty, recodified to N.J.A.C. 10A:3-4.4. Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

In (a)3, substituted the first instance of "Oath of Office" for "oath of office".

10A:3-4.2 On-duty firearms training, qualification and requalification

(a) As required by N.J.S.A. 2C:39-1 et seq., all custody staff members shall be initially trained and shall qualify in the use and handling of approved on-duty firearms.

(b) Custody staff members shall requalify annually on a range approved by the New Jersey Department of Corrections.

(c) Only those custody staff members who achieve and maintain the required level of proficiency during range qualification and requalification shall be authorized to possess firearms while on-duty.

(d) Once a custody staff member has qualified on his or her Departmentally approved firearms, the custody staff member shall receive the official State of New Jersey, Firearms Unit Weapons Card. Custody staff members shall be required to carry the weapons card, the official badge and photo identification card of the New Jersey Department of Corrections while on-duty.

(e) Each Director of Custody Operations, Unit Chief, or their designee shall be responsible for preparing and maintaining a current master list of each custody staff member authorized to carry a firearm.

1. The master list shall be maintained by the Director of Custody Operations, Unit Chief, or their designee to indicate the custody staff member's firearm qualification date (new or expired).

2. In the event that a custody staff member is assigned to a post that requires the issuance of a firearm for that custody staff member's exclusive use while on-duty, the Director of Custody Operations, Unit Chief, or their designee shall maintain a list that indicates the custody staff member's issued firearm, model name and number, and serial number of the firearm.

Recodified from N.J.A.C. 10A:3-3.2 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Substituted "custody staff member" for "correction officer" throughout; in (d), inserted "Departmentally" preceding "approved firearms"; in (e), rewrote 1 and 2. Former N.J.A.C. 10A:3-4.2, Authorized off-duty firearms, ammunition and holsters, recodified to N.J.A.C. 10A:3-4.5.

10A:3-4.3 On-duty firearm

(a) The authorized on-duty firearm shall be the responsibility of the custody staff member at all times.

(b) The custody staff member shall not draw or exhibit his or her firearm except for one of the following circumstances:

1. For maintenance of the firearm;
2. To secure the firearm;
3. When commanded by the firearms staff during training exercises, range practice, qualification or requalification with the firearm;
4. When circumstances create a reasonable belief that it may be necessary to use the firearm in the performance of the custody staff member's duties; or
5. When circumstances create a reasonable belief that display of a firearm as an element of constructive authority will help establish or maintain control in a potentially dangerous situation in an effort to discourage resistance and ensure custody staff safety.

(c) A custody staff member, if required to carry a firearm while on-duty, shall carry his or her on-duty firearm on his or her person at all times unless otherwise instructed by his or her immediate supervisor. The firearm shall:

1. Remain in the holster while in a rest room; and
2. Not be left in a motor vehicle or other unauthorized location except under unusual or special circumstances, such as when a custody staff member must remove his or her on-duty firearm and another authorized staff member is unavailable to take custody of the firearm. Under an unusual or special circumstance, every effort shall be made to secure the firearm within a locked compartment.

(d) The custody staff member entering any residential or correctional facility of the Department of Corrections shall store his or her firearm at the main correctional facility or at an approved Department of Corrections authorized weapons storage unit.

(e) When an authorized firearm is believed to have been lost or stolen, the custody staff member shall report this fact to the local law enforcement authorities and to the New Jersey Department of Corrections within three hours from the time the custody staff member is aware that the firearm is missing.

(f) 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 custody staff member shall notify the local law enforcement authorities and the Director of Custody Operations, Unit Chief, or their designee as soon as practicable.

Recodified from N.J.A.C. 10A:3-3.3 and amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Substituted "custody staff member" for "correction officer" throughout; added (b)5. Former N.J.A.C. 10A:3-4.3, Off-duty firearm, recodified to N.J.A.C. 10A:3-4.6.

Amended by R.2010 d.276, effective December 6, 2010.

See: 42 N.J.R. 1841(a), 42 N.J.R. 2959(b).

In (c)2, inserted a comma following "circumstance" and substituted "secure" for "secrete".

10A:3-4.4 Personnel authorized to carry firearms while off-duty

(a) Firearms may be carried off-duty only by Department:

1. Custody staff holding the rank of Senior Correction Officer and higher who meet the following requirements:

i. Have taken and successfully completed the Police Training Commission (P.T.C.) approved basic course for State correction officers as set forth in N.J.S.A. 52:17B-66 et seq. (The Department of Corrections shall allow completion of an equivalent P.T.C. approved course for county correction officers to substitute for this requirement.);

ii. Have qualified in the use and handling of approved off-duty firearms at the firearms training course of the Corrections Staff Training Academy (CSTA), New Jersey Department of Corrections; and

iii. Have been sworn as a peace officer by taking the Oath of Office and completing Form 156-I Oath of Office; and

2. Administrative staff authorized by the Commissioner or designee who have taken and successfully completed the firearms training course at the Corrections Staff Training Academy (CSTA), New Jersey Department of Corrections.

Amended by R.1987 d.515, effective December 7, 1987.

See: 19 N.J.R. 1717(a), 19 N.J.R. 2302(a).

Added Superintendents and Assistant Superintendents.

New Rule, R.1988 d.107, effective March 7, 1988.

See: 20 N.J.R. 42(a), 20 N.J.R. 532(a).

Repealed text from old rule and inserted new.

Administrative correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1991 d.503, effective October 7, 1991.

See: 23 N.J.R. 1259(a), 23 N.J.R. 3031(b).

Administrative title changes made and correction of an internal N.J.S.A. citation.

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.

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

In (a), inserted "N.J.A.C." following "provided by" in the introductory paragraph, substituted "Commissioner or designee" for "Chief of Staff" and deleted "Thomas M. Cooper" preceding "Corrections" in 2. Recodified from N.J.A.C. 10A:3-4.1 and amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a), rewrote the introductory paragraph, substituted "custody staff" for "correction officer" in 1, deleted "Thomas M. Cooper" preceding "Corrections Staff" throughout. Former N.J.A.C. 10A:3-4.4, Firearm instructors, recodified to N.J.A.C. 10A:3-4.7.

10A:3-4.5 Authorized off-duty firearms, ammunition, holsters and security

(a) Eligible employees who are trained and meet qualification specifications shall be permitted to have a maximum of two authorized firearms for off-duty use. An eligible em-

ployee shall be authorized to carry only one such firearm at a time on his or her person while off-duty.

(b) A firearm intended for use as an off-duty weapon must have been obtained and registered pursuant to State and local laws of the State in which the employee lives. Employees may not loan or improperly transfer personal firearms.

(c) Only off-duty firearm makes and models approved and authorized by the New Jersey Department of Corrections may be carried while off-duty.

(d) Trigger locking devices that are approved by the Department of Corrections shall be used, in accordance with this section and the operating instructions and standards provided by the manufacturer of the trigger locking device(s).

(e) Ammunition for the off-duty firearm(s) shall be approved and authorized by the New Jersey Department of Corrections.

(f) Only shoulder, waist and ankle holsters shall be used for off-duty use. A holster must hold the firearm firmly when inverted and have no internal clips. An off-duty firearm shall be carried in the approved holster on the body. No purse holsters or holstered firearms in purses are approved.

(g) The waist holster is the only holster approved for use while qualifying with the off-duty firearm(s).

(h) Personnel who elect to use a shoulder or ankle holster for off-duty use shall demonstrate proficiency in the use of that holster during firearms requalification but need not qualify while using the holster.

(i) The employee shall be responsible for assuming the cost of the firearm(s), ammunition, holsters, and trigger locking device(s) and for maintaining his or her firearm(s) in a safe, secure and serviceable condition.

(j) An employee who possesses an authorized off-duty firearm or a Departmentally issued firearm at a premises under the control of an employee shall:

1. Store the off-duty firearm in a securely locked box or container; and
2. Secure the off-duty firearm with a trigger locking device(s) that is approved by the Department of Corrections.

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.

Recodified from N.J.A.C. 10A:3-4.2 and amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Rewrote section. Former N.J.A.C. 10A:3-4.5, Firearms training, requalification and requalification, recodified to N.J.A.C. 10A:3-4.8.

Amended by R.2004 d.90, effective March 1, 2004.

See: 35 N.J.R. 496(a), 36 N.J.R. 1192(b).

Added new (d); recodified existing (d) through (i) as (e) through (j); in (i), inserted "trigger locking devices" following "holsters" and rewrote (j).

Amended by R.2005 d.31, effective January 18, 2005.

See: 36 N.J.R. 3978(a), 37 N.J.R. 285(a).

In (j), inserted "or unauthorized adult" following "a minor".

Amended by R.2006 d.261, effective July 17, 2006.

See: 38 N.J.R. 911(b), 38 N.J.R. 3031(a).

Rewrote (j).

10A:3-4.6 Off-duty firearm

(a) The authorized off-duty firearm shall be the responsibility of the employee at all times.

(b) The employee shall not draw or exhibit his or her firearm except for one of the following circumstances:

1. For maintenance of the firearm;
2. To secure the firearm;
3. When commanded by the firearms staff during training exercises, range practice, qualification, or requalification with the firearm; or
4. When circumstances create a reasonable belief that it may be necessary to use the firearm.

Recodified from N.J.A.C. 10A:3-4.3 by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Former N.J.A.C. 10A:3-4.6, Storage of personal firearms while on-duty, recodified to N.J.A.C. 10A:3-4.9.

10A:3-4.7 Firearm instructors

(a) As established by the New Jersey Division of Criminal Justice requirement, only those persons who have successfully completed a Police Training Commission (P.T.C.) approved firearms instruction course and are P.T.C. certified as Firearm Instructors shall instruct in the Department of Corrections Firearms Training Program at the Corrections Staff Training Academy (C.S.T.A.).

(b) As established by the New Jersey Division of Criminal Justice, all firearms training instructors engaged by the Department of Corrections for annual and requalification firearms training shall satisfy at least one of the following requirements:

1. Be certified by the P.T.C.;
2. Possess training equivalent to the P.T.C. approval firearms instructor course and are able to demonstrate a knowledge of and skill with a firearm; or
3. Have successfully completed some other recognized firearms instructor course as determined by the Commissioner of the Department of Corrections.

Recodified from 10A:3-4.3 by R.1997 d.41, effective January 21, 1997.

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

Substantially amended (a); and added (b). Former rule recodified to N.J.A.C. 10A:3-4.5.

Recodified from N.J.A.C. 10A:3-4.4 and amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Former N.J.A.C. 10A:3-4.7, Use of force while off-duty, recodified to N.J.A.C. 10A:3-3.6.

10A:3-4.8 Off-duty firearms training, qualification and requalification

(a) All personnel authorized by the DOC to carry firearms off-duty must be initially trained and shall qualify in the use and handling of approved off-duty firearms.

(b) Department of Corrections personnel who carry off-duty firearms shall requalify annually on a range approved by the New Jersey Department of Corrections.

(c) Only those employees who achieve and maintain the required level of proficiency during range qualification and requalification shall be authorized to possess firearms while off-duty.

(d) Once an individual has qualified on his or her approved personal off-duty firearm(s), he or she shall receive the official State of New Jersey, Firearms Unit Weapons Card. The off-duty firearm he or she carries must be identified on the off-duty weapons card. Authorized personnel shall be required to carry their off-duty weapons card, the official badge and photo identification card of the New Jersey Department of Corrections at all times while carrying their off-duty firearm.

(e) The Director of Custody Operations or designee at each correctional facility shall be responsible for preparing and maintaining a current master list of each employee authorized to carry an off-duty firearm.

1. The master list shall indicate the employee's firearms qualification date (new or expired), model name and number, and serial number of the authorized off-duty firearm(s).

2. Each time the employee registers a firearm, the Director of Custody Operations, or designee, is responsible for comparing the firearms qualification date, firearm model name and number, and firearm serial number contained on the master list against the State of New Jersey, Firearms Unit Weapons Card accompanying the personal firearm.

(f) Should a personal firearm become unusable, stolen or unserviceable and the employee selects a personal off-duty firearm different from the one originally qualified for use, he or she must requalify on the different firearm before it can be used. This qualification may be completed prior to the next annual qualification period.

(g) Should the employee wish to change his or her authorized personal off-duty firearm(s) as a matter of preference, the employee shall notify the Department of Corrections Special Operations Group—Firearms Unit to arrange for qualification in the use and handling of his or her authorized personal off-duty firearm(s).

Recodified from 10A:3-4.4 and amended by R.1997 d.41, effective January 21, 1997.

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

Substantially amended section. Former rule recodified to N.J.A.C. 10A:3-4.6.

Recodified from N.J.A.C. 10A:3-4.5 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (d), deleted "the same one" preceding "identified"; in (e), deleted "his or her" preceding "designee" throughout. Former N.J.A.C. 10A:3-4.8, Use of non-deadly force while off-duty, repealed.

10A:3-4.9 Storage of off-duty firearms while on-duty

(a) An employee entering a correctional facility grounds while armed with an off-duty firearm must proceed directly to

the weapons collection station of the correctional facility. The off-duty firearm shall be turned in fully loaded, in its holster, attached to the State of New Jersey, Firearms Unit Weapons Card. One extra loaded magazine or one extra speedloader in a carrier may be turned into the weapons collection station of the correctional facility with the firearm. No other loose or additional ammunition shall be brought into the correctional facility or carried onto Department property.

(b) The employee must present his or her official photo identification card of the New Jersey Department of Corrections when checking the firearm and authorized ammunition 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 Administrator and approved by the Assistant Commissioner, Division of Operations. In those instances, only firearms approved by the Department may be used by qualified custody staff members.

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.

Recodified from N.J.A.C. 10A:3-4.6 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a), inserted a third sentence and inserted "other" preceding "loose" in the fourth sentence; in (b), inserted "and authorized ammunition" preceding "out of the weapons"; in (f), substituted "Administrator" for "Superintendent" and "custody staff members" for "officers". Former N.J.A.C. 10A:3-4.9, Use of deadly force while off-duty, repealed.

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) or any other Federal or State law is applicable;

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

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

4. When otherwise required by law or regulation; or

5. Any other situation where the Administrator/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, Deputy Commissioner, 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 Administrator/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.

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

In (a)6, substituted "Deputy Commissioner" for "Chief of Staff" following "Division of Operations"; substituted "Administrator" for "Superintendent" throughout.

Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

In (a)1, inserted "or any other Federal or State law"; deleted former (a)2; recodified former (a)3 through (a)6 as (a)2 through (a)5; and in (a)5, inserted "Chief of Staff."

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 Administrator/Unit Chief or their designee.

(c) Except as outlined in N.J.A.C. 10A:3-4.6(b)1 through 3, the employee shall immediately and without exception re-

port to the local law enforcement authorities and the correctional facility Administrator/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) The next working day after any incident as described in this section, the employee shall report in writing to the Administrator/Unit Chief or their designee the incident and identifying particulars of the incident. The Administrator/Unit Chief or their designee shall then forward the report for review to the Commissioner or designee, the Office of Public Information, and the Central Office Special Investigations Division.

(e) The employee shall, within three days, report to the correctional facility Administrator/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.

Administrative change.

See: 32 N.J.R. 303(a).

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

Substituted "Administrator" for "Superintendent" and "Commissioner or designee" for "Chief of Staff" throughout.

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (c), amended the N.J.A.C. reference in the introductory paragraph.

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 internal management 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 employee.

(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.

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a), inserted "internal management" preceding "procedures" in the introductory paragraph and substituted "employee" for "officer" in 4.

10A:3-4.14 Post orders and procedures

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

(b) All written post orders and procedures shall be forwarded to the Office of the Commissioner or designee 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).

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

In (b), substituted "Commissioner or designee" for "Chief of Staff".

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a), inserted "internal management" preceding "procedures".

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).

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

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

In (a), inserted "routine and random" preceding "searches"; in (b), substituted "a custody staff member" for "an officer"; in (c), inserted "and search results" following "Institutional Search Plan", and substituted "Administrator" for "Superintendent"; rewrote (d).

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

Substituted "Commissioner or designee" for "Chief of Staff" throughout.

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (b), substituted "of" for "at" prior to "a rank"; rewrote (c); and deleted (d).

10A:3-5.3 Searches of inmates and facilities

(a) All facility residential, work, training, visit areas and other areas to which inmates have access shall be searched thoroughly 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 in an internal management document prepared by each correctional facility Administrator or designee 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).

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

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

In (a), substituted "inmate" for "facility" preceding "residential" and inserted "visit" preceding "areas and other areas"; in (b), inserted "in an internal management document prepared" following "as set forth" and substituted a reference to Administrator or designee for a reference to Standard Operating Procedures.

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 commander for review by the Director of Custody Operations.

SUBCHAPTER 5. SEARCHES 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. 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.

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

Substituted "Procedures" for "The definition of contraband and all procedures".

10A:3-5.2 Search plan

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

(b) Each correctional facility shall appoint a custody staff member, of a rank no less than Captain, as Institutional Search Plan Coordinator.

(c) The Institutional Search Plan Coordinator shall submit monthly data to the Administrator and the Indicator Report Coordinator. The data shall include, but not be limited to, information regarding searches completed and contraband recovered. The reported data shall be included in the Monthly Indicator Report.

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

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

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (c), substituted "commander" for "supervisor".

10A:3-5.5 Use of scanning/testing devices

(a) Searches of inmates, areas and objects by the use of scanning/testing devices may be done routinely and randomly where necessary for security purposes. This may be, but is not limited to, a walk-through device or a handheld device which is passed over the fully clothed body of the inmate. A scanning/testing device may also be utilized in conjunction with a strip search.

(b) Scanning/testing device searches of inmates may be conducted by male or female custody staff members or scanning/testing device operators subject to the limitations set forth in N.J.A.C. 10A:3-5.7 and 5.8.

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

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

Rewrote the section.

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 area; or
3. Under any other circumstances where conditions indicate a need for such searches, such as, but not limited to, 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 reasonable suspicion that the inmate is carrying contraband. Factors which may form the basis for such search may include, but not be limited to:

1. Personal observations of activities or conditions which may be interpreted in light of the custody staff member'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 custody staff members regardless of the gender 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.

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

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

In (c)1, substituted "custody staff member's" for "correction officer's"; in (d), substituted "custody staff members" for "officers" and "gender" for "sex".

Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

In (b)2, substituted "area" for "room"; in (b)3, inserted "such" and substituted "but not limited to" for "for example"; and in the introductory paragraph of (c), substituted "reasonable suspicion" for "reasonably clear indication" and inserted ", but not be limited to".

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) A strip search of an inmate(s) 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 constant observation or suicide watch; or
7. When a custody staff member with a rank of Sergeant or above is satisfied that there is a reasonable suspicion 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 gender as the inmate and may include a scanning/testing device operator(s) of

the same gender as the inmate except as set forth in (d) below.

(d) Strip searches of inmates may be conducted by custody staff and a scanning/testing device operator(s) of the opposite gender under emergent conditions as ordered by the Administrator, Associate Administrator, 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 Corrections Ombudsperson, a Special Investigations Division Investigator(s), or Special Operations Group (SOG) Unit members required to be present who are not conducting the search and who may be of the opposite gender to help ensure:

1. The secure and orderly operation of the procedure;
2. The accurate recordkeeping regarding the emergent circumstances and incident; and
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".
Administrative change.

See: 32 N.J.R. 303(a).

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

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

In (b), inserted "of an inmate(s)" in the introductory paragraph and in 7 substituted "a custody staff member" for "an officer"; in (c), rewrote 4; rewrote (d); in (e), substituted "gender" for "sex".

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (e) substituted "a Special Investigations Division" for "an Internal Affairs" and inserted "Special Operations Group" following "Investigator(s) or".

Petition for Rulemaking.

See: 35 N.J.R. 5312(a).

Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

In the introductory paragraph of (b), substituted "A strip search" for "Strip searches"; in (b)6, substituted "constant" for "psychological"; and in (b)7, substituted "reasonable suspicion" for "clear indication".

Amended by R.2012 d.038, effective February 21, 2012.

See: 43 N.J.R. 2718(a), 44 N.J.R. 504(a).

In the introductory paragraph of (e), substituted "Corrections Ombudsperson" for "Ombudsman", and inserted a comma following "Investigators(s)"; and in (e)2, inserted "and" at the end.

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

(a) A body cavity search shall be conducted on an inmate when the custody staff member in charge is satisfied that a reasonable suspicion exists that contraband will be found in the inmate's body cavity.

(b) In the event the custody staff member in charge has reasonable suspicion to believe that contraband is being concealed in the inmate's body cavity, the inmate shall immediately be escorted to the infirmary of the correctional facility and ordered to remove the contraband. The custody staff member in charge shall advise the inmate that medical assistance is available to the inmate for removal of the contraband.

(c) The health care provider at the correctional facility shall provide assistance to the inmate under the following conditions:

1. The inmate has requested assistance from the health care provider staff in order to remove the contraband from the inmate's body cavity; or

2. If during or after removal of the contraband by the inmate, the health care provider staff determines that the inmate is in need of medical assistance. In that event, medical treatment shall be rendered to the inmate unless the inmate refuses such treatment.

(d) If the inmate refuses to remove the contraband from his or her body cavity, the inmate shall receive appropriate disciplinary charges and shall be:

1. Isolated and kept under visual surveillance until the contraband is eliminated from the inmate's body cavity; or

2. Transported to an outside hospital or medical facility for removal of the contraband, if necessary for the well being of the inmate, or the safe, secure and orderly operation of the correctional facility. The health care provider staff at the correctional facility shall make the necessary arrangements with the outside hospital or medical facility for any procedures that are necessary for the safe removal of the contraband.

(e) If the suspected contraband cannot be removed from the inmate's body cavity without the use of force, a court order may be sought if the following circumstances exist:

1. The inmate cannot be confined to a dry cell until the contraband is eliminated from the inmate's body, because the nature of the suspected contraband presents a safety or security risk to staff, other inmates or the facility; or

2. Suspected contraband has been secreted in an inmate's vaginal cavity, the inmate has been confined to a dry cell for a 48-hour time period, and the inmate continues to refuse to remove the contraband with or without the assistance of a health care professional.

(f) Any request for a court order must be approved by the Commissioner or designee. If approval by the Commissioner or designee has been granted, the Administrator or designee of the correctional facility in which the inmate is housed shall contact the Division of Law. The Administrator or designee shall provide the assigned Deputy Attorney General with a sufficient factual basis for concluding that a court order is necessary, in accordance with the criteria in (e) above.

(g) The custody staff member in charge shall prepare a written report of the results of a body cavity search that shall be made part of the inmate's record and shall include, but is not limited to, the following information:

1. A statement of facts indicating reasonable suspicion for the search;
2. The name of the custody staff member in charge who authorized the search;
3. The name(s) of the custody staff member(s) present during the search and the reason(s) 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 applicable.

(h) The correctional health care providers shall document the medical assistance rendered or offered to the inmate in the inmate's Electronic Medical Record and/or the Medical Reference File. The documentation shall include, but is not limited to, the following:

1. The name of the health care professional(s) providing medical assistance;
2. The names of all individuals present during the removal of the contraband;
3. An inventory of any item(s) removed from the inmate's body cavity; and
4. A description of the medical assistance that was offered or provided to the inmate.

(i) If the inmate has been transported to an outside hospital or medical facility, the health care provider staff of the correctional facility shall ensure that a report is made by the outside hospital or medical facility. This report, together with the report of the custody staff member in charge, shall be entered into the inmate's Electronic Medical Record and/or the Medical Reference File. The report from the hospital or medical facility health care provider staff shall include, but is not limited to, the following:

1. The name of any health care professional(s) providing medical assistance; and
2. A description of the medical procedures that were conducted.

Amended by R.2001 d.197, effective June 18, 2001.
See: 32 N.J.R. 2637(a), 33 N.J.R. 2082(a).

Rewrote (a) and the introductory paragraph of (b); in (b), substituted "gender" for "sex" throughout; in (c)6, substituted "applicable" for "necessary"; substituted references to custody staff member for references to officer and to correction officer throughout section.

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Rewrote the section.

Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

In the introductory paragraphs of (h) and (i), substituted "Medical Record and/or the Medical Reference File" for "Medical/Dental Record".

10A:3-5.9 Canine searches

All inmates and their possessions and all correctional facilities, areas, objects and properties under the jurisdiction of the Department of Corrections are subject to routine and random searches by canine teams, specially trained to discover and indicate to the handler(s) the presence of various substances and/or materials.

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.

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

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

Rewrote the section.

10A:3-5.10 Testing for prohibited substances

(a) Testing for prohibited substances may be conducted for the purpose of deterring and controlling the introduction of contraband or to detect the presence of any substance not authorized for possession or use by the inmate.

(b) Inmates shall be tested:

1. When the name of the inmate appears on a computer-generated randomly selected list of names, regardless of how often the name of the inmate is randomly selected;
2. Prior to commencing participation in any unsupervised community release program such as, but not limited to, furlough or work release;
3. During the 72 hour period prior to an inmate's release from custody on parole;
4. During the 10 calendar days prior to the inmate's release from custody on expiration of maximum sentence;
5. In accordance with drug treatment program requirements;
6. When a custody staff member of the rank of Sergeant or above or a Special Investigations Division Investigator believes, based upon his or her education and experience, that there is a reasonable factual basis to suspect the inmate of using or possessing a non-alcoholic prohibited substance;
7. When a supervising staff member or a licensed medical staff person in a residential community program

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 a non-alcoholic prohibited substance;

8. When the Administrator, Associate Administrator, Assistant Superintendent or the Director of Custody Operations orders all inmates of a particular housing unit, work detail or other functional unit to be tested;

9. When a custody staff member of the rank of Sergeant or above orders testing upon any inmate's return from furlough or other unsupervised temporary release from custody; or

10. When a Disciplinary Hearing Officer/Adjustment Committee orders testing as part of a sanction for a prohibited substance related prohibited act.

(c) An inmate's refusal to submit to testing, or failure to comply with an order to submit a specimen shall result in disciplinary action in accordance with N.J.A.C. 10A:4.

(d) When an inmate is scheduled for release on parole and either the initial test result is positive, or the inmate refuses to submit to testing, or the inmate fails to comply with an order to submit a specimen, the initial positive test result or documentation of the inmate's refusal to provide or failure to comply shall be forwarded to the New Jersey State Parole Board. If an inmate scheduled for release on parole receives a disciplinary charge(s) based upon either positive test results, or refusal to be tested or a failure to comply with an order to submit a specimen, the disciplinary adjudication result(s) shall be forwarded to the New Jersey State Parole Board.

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.

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

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

Rewrote the section.

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (b)6, inserted "a non-alcoholic" following "possessing"; in (b)7, substituted "facility" for "facilities" throughout, and inserted "a non-alcoholic" following "possessing".

Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

In (b)7, substituted "person" for "persons", deleted "contract facility and/or other" preceding "community" and substituted "program" for "residential facility"; and in (b)10, substituted "prohibited act" for "infraction".

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 specimens

(a) Testing shall be conducted by staff who have been trained to perform the test(s).

(b) Specimens shall be collected, labeled, handled and, when necessary, sealed, stored, and transported in accordance with the instructions/standards provided by the manufacturer of the test.

(c) Testing shall be conducted using methods deemed reliable by the Department of Corrections.

(d) If the initial test result is positive, the specimen shall be subject to a confirmation test of equal or greater sensitivity than the initial test.

(e) Each time a specimen is collected for the reasons stated in N.J.A.C. 10A:3-5.10, form 172-I Continuity of Evidence-Urine Specimen or form 172-II Continuity of Evidence-On Site Urine Specimen Testing shall be completed and maintained with the specimen.

1. Verbal assistance or interpretation, and assistance in signing the continuity of evidence forms shall be provided to illiterate inmates, inmates not sufficiently conversant with the English language or inmates otherwise unable to read or write due to physical/medical inability. Such assistance shall be documented on the continuity of evidence form by the custody staff member or other authorized staff member who witnessed the voiding of the specimen.

2. Should the inmate refuse to sign, the custody staff member or other authorized staff member who witnessed the voiding of the specimen shall indicate the refusal on the continuity of evidence form.

(f) If testing is conducted through urinalysis, specimens taken from inmates shall be voided directly into an approved specimen container and immediately labeled in the presence of the inmate and at least one custody staff member or other authorized staff member of the same gender as the inmate.

1. A minimum of 30 milliliters must be voided to ensure a sufficient quantity for all required testing.

2. Urine specimen testing shall be performed on-site or at a licensed laboratory as determined by the Commissioner or designee.

3. For initial on-site and confirmatory on-site testing of a urine specimen, the labeled specimen shall be tested and handled in accordance with the instructions/standards provided by the manufacturer of the on-site test. Chain of custody of the specimen shall be maintained.

4. For initial laboratory and confirmatory laboratory testing of a urine specimen, the labeled specimen shall immediately be closed and sealed in the presence of the inmate by the custody staff member or other authorized staff member. Chain of custody of the specimen shall be maintained.

5. The specimen label shall include the inmate's name and number, the correctional facility to which the inmate is assigned, the name of the custody staff member or other authorized staff member who witness the voiding of the specimen, the date and time the specimen was voided, and the inmate's signature. Verbal assistance or interpretation, and assistance to inmates signing the specimen label shall be provided to illiterate inmates, inmates not sufficiently conversant with the English language or inmates otherwise unable to read or write due to physical/medical inability. Such assistance shall be documented on the continuity of evidence form. Should the inmate refuse to sign, the custody staff member or other authorized staff member who witnessed the voiding of the specimen shall indicate the refusal on the label and on the continuity of evidence form.

6. When an initial urine test result is positive, the custody staff member or other authorized staff member who signs the label as witness shall, as soon as reasonably practicable, deliver the urine specimen to the Special Investigations Division Investigator or other custody staff member responsible for maintaining custody over evidence.

7. For laboratory confirmatory testing, the urine specimen shall be placed in a locked and secure refrigerator or freezer by the custody staff member or other authorized staff member responsible for maintaining custody over evidence as soon as reasonably practical, but in no event later than eight hours after the specimen was voided.

8. The custody staff member or other authorized staff member who receives custody of the urine specimen shall record on the continuity of evidence form the date and time the specimen was received, the name of the staff member from whom it was received, and the date and time of specimen placement into the evidence locker and/or locked refrigerator.

9. Inmate urine specimens transported out of the correctional facility for laboratory testing shall be transported, where reasonably practical, in an iced cooler or similar device. The date and time of the removal of the urine specimen from the correctional facility, as well as the date and time of specimen receipt by the testing facility shall be noted on the continuity of evidence form by the person(s) performing these functions.

10. Laboratory testing of urine specimens shall be conducted only when the urine specimen arrives at the testing facility in a sealed and approved urine specimen container.

(g) Inmates charged with the use of prohibited substances not prescribed by the medical staff based upon the results of testing shall be advised of the results of any tests at least 24 hours prior to any disciplinary hearing ordered because of those charges.

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

(i) No inmate shall be disciplined for refusing to provide a specimen or failing to comply with an order to submit a specimen unless that inmate has been given a reasonable physical opportunity to comply with such order.

1. For the purposes of urine testing, 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 specimen unless he or she provides a specimen in the presence of a custody staff member or other authorized staff member.

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

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).

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

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

Rewrote the section.

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Amended by R.2004 d.223, effective June 21, 2004.

See: 36 N.J.R. 1168(a), 36 N.J.R. 3057(a).

In (e), added 1 and 2; in (f)5, deleted "the current use of non-use of prescription medication by the inmate," following "voided," and added the second and third sentences.

Amended by R.2007 d.294, effective September 17, 2007.

See: 39 N.J.R. 2191(a), 39 N.J.R. 3936(b).

In the introductory paragraph of (e), deleted "a continuity of evidence" preceding "form", and inserted "172-I Continuity of Evidence-Urine Specimen or form 172-II Continuity of Evidence-On Site Urine Specimen Testing"; and in (i)1, substituted "may be" for "maybe".

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.