

CHAPTER 97

INTERNAL AFFAIRS UNIT

Authority

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SUBCHAPTER 1. GENERAL PROVISIONS

13:97-1.1 Purpose and scope

(a) The purpose of this chapter is to establish policies and procedures regarding the use of force by Internal Affairs investigators, both on duty and off duty. Policies and procedures regarding the use of force by juvenile corrections officers employed in the Commission's secure facilities, secure facility satellite and Stabilization and Reintegration Program (Boot Camp) are set forth in N.J.A.C. 13:95. Policies and procedures regarding the use of force by juvenile parole officers are set forth in N.J.A.C. 13:96.

(b) This chapter shall be applicable to investigators employed by the Internal Affairs Unit of the New Jersey Juvenile Justice Commission, in the following titles: Principal Investigator Secured Facilities; Senior Investigator, Secured Facilities; and Investigator, Secured Facilities.

13:97-1.2 Definitions

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

"Adjudicated juvenile" means a juvenile inmate, juvenile parolee or a juvenile probationer as defined in this section.

"Central Communications Unit" means the centralized communication center within the New Jersey Department of Corrections which coordinates certain functions of the Commission's Internal Affairs Unit on a 24-hour, seven-days-a-week basis.

"Chemical agent" means an aerosol spray which may be used to gain control of individuals who resist arrest or for the purpose of self-defense against an attack.

"Chief Investigator" means Chief Investigator of the Internal Affairs Unit in the New Jersey Juvenile Justice Commission.

"Commission" means the New Jersey Juvenile Justice Commission.

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

"Deputy Executive Director" means the Deputy Executive Director of the New Jersey Juvenile Justice Commission.

"Executive Director" means the Executive Director of the New Jersey Juvenile Justice Commission.

"Internal Affairs Unit" means the unit responsible for conducting investigations within the Commission at the direction of the Executive Director.

“Investigator” means juvenile corrections officers employed in the following titles utilized by the Commission, who have been sworn as peace officers:

1. Principal Investigator, Secured Facilities;
2. Senior Investigator, Secured Facilities; and
3. Investigator, Secured Facilities.

“Juvenile inmate” means an individual who has been adjudicated delinquent and sentenced to a term of incarceration to be served under the custody of the New Jersey Juvenile Justice Commission. For the purpose of this chapter, “juvenile inmate” shall only refer to those individuals residing in a New Jersey Juvenile Justice Commission facility.

“Juvenile parolee” means an adjudicated delinquent who is subject to the jurisdiction of the New Jersey State Parole Board, and who has been released on parole, and/or post-incarceration supervision, or any individual released from another State juvenile secure facility who resides in New Jersey under the terms of the Juvenile Compacts for the Supervision of Parolees and Probationers. For the purposes of this chapter, juvenile parolee includes any individual, regardless of age, who is completing a term of parole or post-incarceration supervision pursuant to an adjudication of delinquency.

“Juvenile probationer” means an individual who has been adjudicated delinquent and sentenced by a judge of the Superior Court of New Jersey to a term of probation with the condition that he or she participate in a New Jersey Juvenile Justice Commission community-based residential or day program. For the purpose of this chapter, “juvenile probationer” shall only refer to those individuals enrolled in a New Jersey Juvenile Justice Commission program.

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

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

“Police Training Commission” or “PTC” means the agency established in the Department of Law and Public Safety by the provisions of N.J.S.A. 52:17B-70 et seq., to, among other things, review and approve the development of an educational and training curriculum, including firearms instruction, for law enforcement officers.

13:97-1.3 Oath of office form

An oath of office form shall be reproduced from originals that are available by contacting the Juvenile Justice Commissions’ Office of Training.

13:97-1.4 Confidentiality of information

All information contained in the master lists or reports maintained or submitted by employees of the Commission pursuant to the requirements of this chapter shall be confidential and such master lists and reports shall not be subject to public inspection or copying pursuant to the “Right to Know Law,” N.J.S.A. 47:1A-1 et seq.

SUBCHAPTER 2. USE OF FORCE WHILE ON DUTY

13:97-2.1 Investigators authorized to carry firearms while on duty

(a) Prior to being permitted to carry a firearm on duty, investigators shall:

1. Pursuant to N.J.S.A. 52:17B-66 et seq., have taken and successfully completed the PTC-approved Basic Course for Investigators, or have taken and completed an equivalent PTC-approved course for State or county corrections officers to substitute for this requirement;
2. Have taken and successfully completed the basic firearms training course approved by the PTC; and
3. Shall have been sworn as a peace officer by taking the oath of office and completing the Commission’s Oath of Office form.

13:97-2.2 Firearms training, qualification and requalification

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

(b) An investigator shall requalify in accordance with the New Jersey Attorney General’s Semi Annual Qualification and Requalification Standards for New Jersey Law Enforcement.

(c) Only those investigators 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 an investigator has qualified on his or her approved firearm, the investigator shall receive the official State of New Jersey Firearms Unit Weapons Card. The investigator shall be required to carry the weapons card, the official badge and the photo identification card of the New Jersey Juvenile Justice Commission while on duty.

(e) The Chief Investigator, Secured Facilities, or his or her designee, shall be responsible for preparing and maintaining a current master list of each investigator authorized to carry a firearm.

1. The master list shall be maintained by the Chief Investigator, Secured Facilities, or his or her designee, to indicate the investigator's firearms qualification date, the qualification expiration date, and the authorized on-duty firearm's model name, number and serial number.

2. Each time an investigator registers a firearm in accordance with this section, the Chief Investigator, Secured Facilities, or his or her designee, shall be responsible for comparing the firearms qualification date, the qualification expiration date, the firearm model name, number, and firearm serial number contained on the master list against the investigator's State of New Jersey Firearms Unit Weapons Card accompanying the firearm.

(f) The Chief Investigator, Secured Facilities, or his or her designee, shall be responsible for preparing and maintaining a current master list of each Juvenile Justice Commission on-duty firearm assigned to an investigator.

1. The master list shall indicate the name of the investigator receiving the firearm, the make, model number and serial number of the firearm, the date the firearm was issued and the date the firearm is returned to the Chief Investigator, Secured Facilities, or his or her designee.

13:97-2.3 On-duty firearm

(a) An investigator shall be responsible for his or her on-duty firearm at all times.

(b) An investigator 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 investigator's duties; or
5. When ordered by the Chief Investigator for inspection.

(c) An investigator, 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 an unauthorized location except under unusual or special circumstances, such as when an investigator removes 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 secrete the firearm within a locked compartment. If an unusual or

special circumstance arises, the investigator shall document the circumstance in writing to his or her immediate supervisor.

(d) An investigator may elect to carry his or her on-duty firearm as his or her sole authorized off-duty weapon.

(e) An investigator entering any residential or secure facility of the New Jersey Juvenile Justice Commission shall store his or her firearm at the main secure facility or at an approved New Jersey Juvenile Justice Commission authorized weapons storage unit.

(f) When an investigator has a reasonable belief or knows that his or her authorized firearm and/or ammunition has been lost or stolen, the investigator shall immediately report this fact to the local law enforcement authority and to the Chief Investigator, Secured Facilities, or his or her designee.

(g) When an investigator has a reasonable belief or knows that a State of New Jersey Firearms Unit Weapons Card, official photo identification card or badge of the New Jersey Juvenile Justice Commission has been lost or stolen, the investigator shall notify the local law enforcement authority and the Chief Investigator, Secured Facilities, or his or her designee, as soon as practicable.

(h) An investigator shall not carry his or her on-duty and off-duty firearms simultaneously.

(i) An investigator shall be authorized to carry his or her on-duty firearm and chemical agent to and from work.

13:97-2.4 Use of force

(a) In any case when an investigator uses force while on duty, the investigator shall only use force that is objectively reasonable under the totality of the circumstances as known by the investigator at the time the investigator uses force.

(b) An investigator may use the amount of force reasonably and imminently necessary to accomplish the law enforcement objective. If an adjudicated juvenile resists, the investigator may increase the degree of force as reasonably necessary to accomplish the law enforcement objective, but as soon as the juvenile submits, the investigator shall reduce the degree of force used.

13:97-2.5 Non-deadly force; when justified

(a) The New Jersey Juvenile Justice Commission justifies the use of non-deadly force against juveniles 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 facility regulations where expressly permitted by the New Jersey Juvenile Justice Commission or in situations where an investigator reasonably believes that the juvenile's failure to comply constitutes an immediate threat to facility security or personal safety.

(b) Non-deadly force includes the use of chemical agents, mechanical restraints and other weapons which are not likely to cause death or serious injury.

13:97-2.6 Deadly force; when justified

(a) Deadly force may be used against persons on order of the:

1. Executive Director; or
2. Deputy Executive Director.

(b) An investigator may use deadly force against juveniles when the investigator reasonably believes that a lesser degree of force will be ineffective and an adjudicated juvenile presents imminent threat of deadly force or serious bodily harm to the investigator or a third party.

(c) Deadly force may be used in the following situations:

1. When an investigator reasonably believes that deadly force is imminently necessary to protect himself or herself against the use of unlawful force which the investigator believes may result in death or serious bodily harm;
2. When an investigator reasonably believes that deadly force is imminently necessary to protect another against the use of unlawful force which the investigator believes may result in death or serious bodily harm. However, deadly force is not justifiable if the investigator can otherwise secure the complete safety of the protected person; or
3. When an investigator reasonably believes that deadly force is imminently necessary to prevent or stop juveniles from committing or continuing a criminal offense which would endanger human life or inflict serious bodily harm upon another person.

(d) Deadly force shall not be utilized to prevent an escape, except as set forth in (a) through (c) above.

(e) Where feasible, before discharging a firearm, an investigator shall attempt to identify himself or herself as an investigator and state his or her intent to shoot.

(f) Warning shots are not authorized by the New Jersey Attorney General and are prohibited by the New Jersey Juvenile Justice Commission.

(g) An investigator shall not discharge a firearm if there is a substantial risk of injury to innocent persons.

(h) Pursuits in a motor vehicle are prohibited.

(i) An investigator involved in a foot pursuit shall not fire his or her firearm at an individual or a moving vehicle, except as a last resort to prevent imminent death or serious injury to the investigator or another person where deadly force would otherwise be justified.

(j) Whenever feasible, an investigator shall contact the Central Communications Unit to request assistance before engaging in any use of force that reasonably could result in serious bodily injury.

(k) Written procedures from the Internal Affairs Unit shall govern the use of deadly force by investigators.

13:97-2.7 Use of force against persons other than juveniles; duties outside security perimeter

(a) While on duty, reasonable force may be used against persons other than juveniles when an investigator observes what the investigator believes to be a violation of the law and when there is also imminent peril of damage to or destruction of property or bodily harm to any individual.

(b) Whenever feasible, an investigator shall contact the Central Communications Unit and the local law enforcement authority to request assistance before engaging in any use for force.

(c) In situations where a violation of law is suspected, but no imminent danger is present, an investigator shall immediately contact the Central Communications Unit and the local law enforcement authority.

(d) Non-deadly force may be used upon or toward persons other than juveniles 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 damage to or loss of property, bodily harm or a breach of the peace;
4. To prevent a suicide or attempted suicide;
5. To prevent an 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 juveniles when an investigator reasonably believes that the person presents an imminent threat of death or serious bodily harm.

(f) An investigator shall not discharge a firearm if there is substantial risk of injury to innocent persons.

13:97-2.8 Reports

(a) An investigator shall immediately contact his or her supervisor, or his or her designee, and prepare a Juvenile Justice Commission Use of Force Report form when the investigator participated in or witnessed an incident in which:

1. A firearm was discharged outside of the firing range;
2. A use of force resulted in death or serious bodily injury;
3. An individual alleged that a serious bodily injury had been inflicted; and/or
4. Any other incidents as required of a specific investigator on a case-by-case basis by the Chief Investigator, Secured Facilities.

(b) The Juvenile Justice Commission Use of Force Report form 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, participants or witnesses.

(c) The investigator shall forward, as soon as practicable, but within 24 hours of the occurrence, all completed Juvenile Justice Commission Use of Force Report forms to the Chief Investigator, Secured Facilities, for review. The Chief Investigator, Secured Facilities, shall forward the report to the Superintendent if applicable. The Chief Investigator, Secured Facilities, or his or her designee, shall forward a copy of the Juvenile Justice Commission Use of Force Report form to the Office of the Executive Director in the New Jersey Juvenile Justice Commission for further review and investigation.

(d) Immediately upon receipt of notification that an incident as set forth at (a) above has occurred, the Chief Investigator, Secured Facilities, or his or her designee, shall advise the Executive Director, or his or her designee, of the following:

1. A description of the incident;

2. The persons involved;
3. The action taken; and
4. A current assessment of the situation.

13:97-2.9 Use of mechanical restraints

(a) An investigator may use mechanical restraints in the following instances:

1. When transporting an adjudicated juvenile from place to place;
2. When the personal history, disciplinary record, behavior or present emotional state of an adjudicated juvenile indicates the likelihood that bodily injury to any person, damage to property or escape by the juvenile; or
3. On current medical advice, to prevent the juvenile 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 juvenile.

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

(d) An adjudicated juvenile in restraints shall be under continuous observation by an investigator(s).

13:97-2.10 Use of chemical agents; storage

(a) Only New Jersey Juvenile Justice Commission-approved chemical agents shall be used by investigators in accordance with this chapter.

(b) An investigator shall not be permitted to carry or use chemical agents unless he or she has received appropriate training and semi-annual retraining in chemical agent use and effects.

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

(d) Whenever an investigator uses a chemical agent, the investigator shall complete the Juvenile Justice Commission Use of Force Report form and forward it in accordance with N.J.A.C. 13:97-2.8(c).

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

13:97-2.11 Training

(a) Training in the proper methods and techniques of using force and in the legal aspect of using force shall be provided as part of the Police Training Commission's approved Basic Course for Investigators or an equivalent course substituted in accordance with N.J.A.C. 13:97-2.1(a)1.

(b) All investigators and the Chief Investigator, Secured Facilities, shall receive semiannual training in the proper methods and techniques of using force and in the legal aspects of using force. In addition to semi-annual training, retraining may be repeated as needed. Such training shall be provided by the New Jersey Juvenile Justice Commission's Office of Training.

13:97-2.12 Penalties for violation

(a) An investigator's action that does not conform to the provisions of this chapter and any procedures implemented in connection with this chapter 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 investigator.

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

13:97-2.13 Internal Affairs Unit procedures

(a) The Internal Affairs Unit shall develop and maintain written procedures consistent with this subchapter.

(b) All new and revised procedures developed in accordance with this subchapter shall be submitted to the Executive Director, or his or her designee, for approval before implementation.

SUBCHAPTER 3. USE OF PERSONAL FIREARMS AND USE OF FORCE WHILE OFF DUTY
13:97-3.1 Personnel authorized to carry firearms while off duty

(a) Prior to being permitted to carry a firearm off duty, investigators shall:

1. Pursuant to N.J.S.A. 52:17B-66 et seq., have taken and successfully completed the PTC-approved Basic Course for Investigators or have successfully completed an equivalent PTC-approved course for State or county correction officers to substitute for this requirement;

2. Have qualified in the use and handling of approved off-duty firearms at a PTC-approved firearms training course; and

3. Have been sworn as a peace officer by taking the oath of office and completing the Commission's oath of office form.

13:97-3.2 Authorized off-duty firearms, ammunition and holsters

(a) The Executive director shall develop, in consultation with firearms experts, a list specifying the types of firearms and ammunition that shall be authorized by the Juvenile Justice Commission for use by off-duty investigators who train and qualify pursuant to N.J.A.C. 13:97-3.5. The list of authorized firearms and ammunition shall be reviewed annually and modified as appropriate by the Executive Director. The Juvenile Justice Commission's Office of Training shall distribute the current list of authorized firearms and ammunition to the Commission's Deputy Executive Director and Chief Investigator, Secured Facilities.

(b) Eligible investigators who are trained and meet qualification specifications shall be permitted only one firearm authorized for off duty use.

(c) A firearm intended for use as an off-duty weapon shall have been obtained and registered pursuant to state and local laws of the state in which the investigator lives. An investigator may not lend or improperly transfer personal firearms.

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

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

(f) An investigator who elects 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.

(g) The investigator shall be responsible for assuming the cost of the firearm, ammunition, holsters and for maintaining his or her firearm in a safe, secure and serviceable condition.

13:97-3.3 Off-duty firearm

(a) An investigator shall be responsible for his or her authorized off-duty firearm at all times.

(b) An investigator 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 conformance with this chapter; or
5. When ordered by the Chief Investigator for inspection.

13:97-3.4 Firearm instructors

(a) As established by the New Jersey Department of Law and Public Safety, Division of Criminal Justice, only those persons who have successfully completed a PTC-approved firearms instruction course and are PTC-certified as Firearm Instructors shall instruct in the New Jersey Juvenile Justice Commission Firearms Training Program at the Division of Criminal Justice/Juvenile Justice Commission Satellite Training Academy.

(b) As established by the New Jersey Department of Law and Public Safety, Division of Criminal Justice, all firearms training instructors engaged by the New Jersey Juvenile Justice Commission for semiannual and requalification firearms training shall be certified by the PTC.

13:97-3.5 Firearms training, qualification and requalification

(a) All investigators authorized by the New Jersey Juvenile Justice Commission to carry firearms off duty shall be initially trained and shall qualify in the use and handling of approved off-duty firearms.

(b) All investigators who carry off-duty firearms shall requalify semi-annually on a range approved by the New Jersey Juvenile Justice Commission.

(c) Only those investigators 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 investigator has qualified on his or her approved personal off-duty firearm, he or she shall receive the official State of New Jersey Firearms Unit Weapons Card. The off-duty firearm he or she carries shall be the same one identified on the off-duty weapons card. Authorized investigators shall be required to carry their off-duty weapons card, and the official badge and photo identification card of the New Jersey Juvenile Justice Commission at all times while carrying their off-duty firearm.

(e) The Chief Investigator, Secured Facilities, or his or her designee, shall be responsible for preparing and maintaining a current master list of each investigator authorized to carry an off-duty firearm.

1. The master list shall indicate the investigator's firearms qualification date, the qualification expiration date, the authorized off-duty firearm's model name, number and serial number.

2. Each time an investigator registers a firearm in accordance with this section, the Chief Investigator, Secured Facilities, or his or her designee, shall be responsible for comparing the firearms qualification date, the qualification expiration date, and the firearm model name, 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 an investigator selects a personal off-duty firearm different from the one originally qualified for use, he or she shall requalify on the different firearm before the weapon can be used. This qualification may be completed prior to the next semiannual qualification period.

(g) Should an investigator wish to change his or her authorized personal off-duty firearm as a matter of preference, the investigator shall notify the New Jersey Juvenile Justice Commission's Office of Training in writing to arrange for qualification in the use and handling of his or her authorized personal off-duty firearm prior to carrying same at the following address:

New Jersey Juvenile Justice Commission
Office of Training
Johnstone Campus
Tramburg Building
PO Box 534
Bordentown, New Jersey 08505-0534

13:97-3.6 Storage of personal firearms while on duty

(a) An investigator entering secure facility grounds while armed with an off-duty firearm shall proceed directly to the weapons collection station of the 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. No loose or additional ammunition shall be brought into the secure facility or carried onto Commission property.

(b) An investigator shall present his or her official photo identification card of the New Jersey Juvenile Justice Commission when checking the firearm out of the weapons collection station.

(c) Investigators are prohibited from storing off-duty weapons or ammunition in their personal vehicles while on property of the New Jersey Juvenile Justice Commission.

(d) Investigators entering Commission residential facilities shall store their firearms at the Commission's approved authorized weapons storage unit.

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

(f) Under no circumstances shall an investigator carry a personally owned firearm into a secure or residential facility beyond the weapons collection station. Personally owned firearms shall not be carried or used while on duty except when authorized by the Chief Investigator, Secured Facilities and approved by the Executive Director. In those instances, only firearms approved by the Commission may be used by qualified investigators.

13:97-3.7 Use of force while off duty

(a) Although N.J.S.A. 52:17B-174d authorizes an investigator to exercise law enforcement powers, no investigator is required to exercise those powers or to carry firearms during off-duty hours.

(b) Investigators, while off duty, shall not become involved with routine law enforcement duties as they apply to local law enforcement agencies. When an investigator observes what he or she believes to be a violation of the law, he or she should take note of vehicle description(s), license plate number(s), identifying characteristics of persons involved and other relevant information and report such information to the local law enforcement agency having jurisdiction. The investigator shall notify the Chief Investigator, Secured Facilities in writing that such action was taken. Investigators shall not stop or detain vehicles or persons. Pursuit in a motor vehicle is prohibited.

(c) In cases where an investigator has passed the qualifying firearms examination and does elect to carry a firearm off duty, the utmost discretion shall be exercised by the investigator 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 the use of force exists, the investigator shall take the action which is calculated to be the least dangerous or harmful to persons or property.

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

(e) An investigator 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 chapter and the procedures of the Internal Affairs unit consistent with this chapter.

13:97-3.8 Use of non-deadly force while off duty

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

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

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

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

1. An investigator makes known his or her identity and the purpose of the arrest;
2. An investigator reasonably believes that his or her identity and purpose are otherwise known by, or can reasonably be made known to, the person to be arrested; or
3. When the arrest is made under a warrant and the warrant is valid or reasonably believed by the investigator to be valid.

13:97-3.9 Use of deadly force while off duty

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

(b) Deadly force may be used in the following situations:

1. When an investigator reasonably believes that deadly force is imminently necessary to protect himself or herself against the use of unlawful force which he or she believes may result in death or serious bodily harm;
2. When an investigator reasonably believes that deadly force is imminently necessary to protect another against the use of unlawful force which he or she believes may result in death or serious bodily harm. However, deadly force is not justifiable if the investigator can otherwise secure the complete safety of the protected person;
3. When an investigator reasonably believes that deadly force is imminently necessary to prevent or stop the suspect from committing or continuing a criminal offense which would endanger human life or inflict serious bodily harm upon another person; and

4. When an investigator has reasonable belief to conclude that the suspect will pose an imminent threat of death or serious bodily harm to human life should the investigator not take immediate action by deadly force to effect an arrest.

(c) Where feasible, before using a firearm, an investigator shall attempt to identify himself or herself as an investigator.

(d) Warning shots are not authorized by the Attorney General and are prohibited by the New Jersey Juvenile Justice Commission.

(e) An investigator shall not discharge a firearm if there is a substantial risk of injury to innocent persons.

13:97-3.10 Unauthorized use of personal weapons while off duty

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

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

2. When an investigator has been suspended from duty for any violation by the Chief Investigator, Secured Facilities, or a higher official of the New Jersey Juvenile Justice Commission;

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

4. In accordance with Domestic Violence Laws at N.J.S.A. 2C:25-17 through 33;

5. When otherwise prohibited by law or regulation; or

6. On a case-by-case basis, in any other situation involving a specific investigator where the Chief Investigator, Secured Facilities, or his or her designee, may exercise his or her authority to withdraw off-duty firearms privileges, subject to the review of the Executive Director of the New Jersey Juvenile Justice Commission.

(b) In any of the instances in (a) above, the State of New Jersey Firearms Unit Weapons Card shall be turned in to the Chief Investigator, Secured Facilities, or his or her designee.

13:97-3.11 Possession of firearms within a casino or casino simulcasting facility

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

13:97-3.12 Reporting incidents

(a) Whenever an investigator believes that his or her off-duty firearm and/or ammunition has been lost or stolen, the investigator shall report this fact to the local law enforce-

ment authority and to the Chief Investigator, Secured Facilities, immediately upon learning that the firearm is missing.

(b) An investigator shall notify the local law enforcement authority and the Chief Investigator, Secured Facilities, or his or her designee, as soon as practicable, whenever he or she believes that his or her New Jersey Firearms Unit Weapons Card, official photo identification card or New Jersey Juvenile Justice Commission badge has been lost or stolen.

(c) Except as provided in N.J.A.C. 13:97-3.3(b), an investigator shall immediately and without exception report to the local law enforcement authority and the Chief Investigator, Secured Facilities:

1. Any incident where the investigator displayed, drew or fired his or her off-duty firearm;

2. Any incident or injury which occurred from the use of the investigator's off-duty firearm; or

3. When an off-duty firearm discharge results in injury or death. In such instance, the investigator shall immediately notify the local police or law enforcement agency with local jurisdiction to assist in securing and safeguarding the scene. The investigator shall then remain at the scene or criminal investigatory agency headquarters unless otherwise directed by that agency. The investigator shall protect his or her weapon for submission to the investigatory agency for examination and ballistic tests.

(d) As soon as possible, but not later than within 24 hours of the occurrence of any incident as described in this section, the investigator shall make a report on the Juvenile Justice Commission Use of Force Report form to the Chief Investigator, Secured Facilities, detailing the incident and identifying particulars of the incident. The Chief Investigator, Secured Facilities, shall then forward the report for review to the Executive Director.

(e) The investigator shall, within three days, report to the Chief Investigator, Secured Facilities, in writing whenever a registered authorized off-duty firearm has been sold or is no longer in use.

13:97-3.13 Penalties for violation

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

1. Disciplinary action pursuant to N.J.A.C. 4A:2;

2. Personal, civil or criminal liability;

3. Denial of indemnification; and/or

4. Refusal by the Office of the Attorney General to represent the officer.

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

13:97-3.14 Procedures

(a) The Internal Affairs Unit shall develop and maintain written procedures consistent with this subchapter.

(b) All new and revised procedures developed in accordance with this subchapter shall be submitted to the Executive Director, or his or her designee, for approval before implementation.