

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

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

Amended by R.1988 d.582, effective December 19, 1988.
See: 20 N.J.R. 2441(a), 20 N.J.R. 3155(a).
Added (b)-(d).

10A:3-5.3 Searches of facilities

(a) All inmate residential, work, training 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 by each correctional facility's Standard Operating Procedures, to be promulgated pursuant to the search plan required by N.J.A.C. 10A:3-5.2. Such procedures may provide that an inmate may be excluded from entry into an area being searched to facilitate the safe and effective performance of the search.

10A:3-5.4 Inspection of security devices

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

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

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

10A:3-5.5 Metal detector searches

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

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

10A:3-5.6 Pat search

(a) A pat search or pat-frisk shall be conducted while the inmate is fully clothed. A pat search or pat-frisk 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 of the inmate from any area where the inmate has had access to dangerous or valuable items;
2. Prior to entering the visiting room; or
3. Under any other circumstances where conditions indicate a need for such searches, as, for example, upon departure of inmates from kitchen or dining areas.

(c) In addition to the foregoing routine searches, a pat search may be conducted at any time when there is a reasonably clear indication that the inmate is carrying contraband. This search may be conducted only with prior approval of a supervisory level officer or staff member. Factors which may form the basis for such search may include:

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

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

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

10A:3-5.7 Strip searches

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

(b) Strip searches may be conducted in 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; or

5. During housing unit/wing searches.

(c) Strip searches may also be conducted before placement in administrative segregation, prehearing detention, disciplinary detention, protective custody, the Management Control Units, South Hall and all other close custody units, except that no visual examination of anal or genital parts shall be conducted in connection with these placements.

(d) In addition, an inmate may be strip searched when an officer with a rank of Sergeant or above is satisfied that there is a clear indication that an inmate is carrying contraband on his or her person or in his or her anal or vaginal cavity.

1. In the event an officer of the rank of Sergeant or above is reasonably satisfied that an inmate has secreted or inserted contraband into his or her anal or vaginal cavity, the inmate shall be escorted immediately to the facility's hospital or medical department.

2. The following procedures shall be followed for examination of the inmate and removal of contraband:

i. The inmate may remove the object in the presence of a medical staff person of either sex, and a correction officer of the same sex as the inmate.

ii. A medical doctor or registered nurse may examine the inmate and remove the object, without the use of force, in the presence of a correction officer of the same sex as the inmate.

iii. In the event a correction officer of the rank of Sergeant or above determines, by the use of a metal detector, that a foreign object which contains metal is present in the inmate's anal or vaginal cavity, such object may be removed by a medical doctor only, with or without the use of force, in the presence of such correction officers of the same sex as the inmate as are necessary to insure security.

iv. In the event the supervisory officer or medical staff person has determined that an inmate is concealing non-metal contraband in his or her anal or vaginal cavity, and the inmate refuses to permit its removal, the inmate shall receive appropriate disciplinary charges and may be placed in prehearing detention or medical isolation. During prehearing detention, medical isolation and disciplinary detention, if any, the inmate may be kept under visual surveillance to detect removal or elimination of the contraband. N.J.A.C. 10A:4, INMATE DISCIPLINE, shall apply to all such placements.

(e) All pat searches, strip searches and body cavity searches shall be conducted in a professional and dignified manner, with maximum courtesy and respect for the inmate's person. The number of officers present shall be only that number reasonably necessary to provide security. No member of the opposite sex shall be present during strip searches and body cavity searches except medical staff persons as set forth in (d) above, and as set forth in (g) below.

(f) No inmate shall be searched as punishment or discipline.

(g) Strip searches of inmates may be conducted by officers of the opposite sex under emergent conditions as ordered by the Superintendent. Under no circumstances shall invasive body cavity searches be conducted by anyone other than a medical doctor or registered nurse (R.N.).

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).

10A:3-5.8 Canine searches

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

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

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

New Rule, R.1987 d.397 effective October 5, 1987.

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

10A:3-5.9 Urine monitoring

(a) Urine monitoring may be conducted for the purpose of deterring and controlling the introduction of contraband or to detect the presence of opiates, methadone, barbiturates, amphetamines, cocaine, tranquilizers, darvon, marijuana, alcohol or any other drug not authorized for possession or use by the correctional facility medical staff.

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

1. A correction officer of the rank of Sergeant or above or an Internal Affairs Officer believes, based upon his or her education and experience, that there is a reasonable factual basis to suspect the inmate of using or possessing drugs or alcohol;

2. A supervising staff member or a licensed medical staff person in residential contract facilities and/or other community residential facilities utilizing non-custody staff believes based upon his or her education and experience that there is a reasonable factual basis to suspect the inmate of using or possessing drugs or alcohol;

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

4. A correction officer of the rank of Sergeant or above orders urine samples to be taken upon any inmate's return from furlough or other unsupervised temporary release from custody; or,

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

Recodification: this section was recodified from N.J.A.C. 10A:3-5.8.
See: 19 N.J.R. 1175(a), 19 N.J.R. 1813(a).

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, 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, 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, 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:3-5.10 Collection, storage and analysis of urine samples

(a) Each time a urine specimen is collected for the reasons stated in N.J.A.C. 10A:3-5.9(b), Form 172-I (Continuity of Evidence—Urine Specimen) shall be completed and submitted to the Internal Affairs Officer or the staff member responsible for maintaining custody of evidence.

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

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

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

3. The label shall indicate the inmate's name and number, the correctional facility to which the inmate is assigned, the name of the correction officer or staff member who witnessed the voiding of the sample, the date and time of the sample, and the prescription medication that the inmate is currently taking.

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

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

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

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

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

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

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

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

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

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

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

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.

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, 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, 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, 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 Breathalyzer testing of inmates

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

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

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

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

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

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

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

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

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

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

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

10A:3-5.12 Orientation and training

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

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

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

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

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

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

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

SUBCHAPTER 6. CONTRABAND AND DISPOSITION OF CONTRABAND

Cross References

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

10A:3-6.1 Contraband defined

(a) Contraband means:

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

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