

CHAPTER 4

INMATE DISCIPLINE

Authority

N.J.S.A. 30:1B-6 and 30:1B-10.

Source and Effective Date

R.2001 d.221, effective July 2, 2001.
See: 33 N.J.R. 1289(a), 33 N.J.R. 2291(a).

Chapter Expiration Date

Chapter 4, Inmate Discipline, expires on July 2, 2006.

Chapter Historical Note

Chapter 4, Inmate Discipline was adopted as R.1986 d.283, effective July 21, 1986. See: 18 N.J.R. 27(a), 18 N.J.R. 1465(a).

Subchapter 13, Resident Discipline Program for the Training School for Boys at Skillman, was repealed by R.1988 d.239, effective June 6, 1988. See: 20 N.J.R. 496(a), 20 N.J.R. 1224(a).

Subchapter 12, Appeal to Office of Administrative Law (OAL), was repealed by R.1988 d.543, effective November 21, 1988. See: 20 N.J.R. 496(b), 20 N.J.R. 2928(a).

Pursuant to N.J.S.A. 30:7-1, the following correctional facilities in Chapter 4 were redesignated: Training School for Juveniles at Jamesburg to the New Jersey Training School for Boys; Girls Unit and The Boys Unit of the Training School for Boys at Skillman to the Lloyd McCorkle Training School for Boys and Girls; Clinton Correctional Institution to the Edna Mahan Facility for Women; Trenton State Prison to the New Jersey State Prison. See: 21 N.J.R. 558(a).

Pursuant to Executive Order No. 66(1978), Chapter 4, Inmate Discipline, was readopted as R.1991 d.276, effective May 7, 1991. See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Pursuant to Executive Order No. 66(1978), Chapter 4, Inmate Discipline, was readopted as R.1996 d.237, effective April 26, 1996. See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b). Pursuant to Executive Order No. 66(1978), Chapter 4, Inmate Discipline, expired on April 26, 2001.

Chapter 4, Inmate Discipline, was adopted as new rules by R.2001 d.221, effective July 2, 2001. See: 33 N.J.R. 1289(a), 33 N.J.R. 2291(a).

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SUBCHAPTER 1. INTRODUCTION

10A:4-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish policies to assure that inmate discipline and control are consistent with the correctional objectives of the Department of Corrections and the correctional facility;
2. Establish a comprehensive code of offenses and set of permissible punishments in order that prescribed behavior may be known by both inmates and staff;
3. Establish administrative due process safeguards in the disciplinary process as required by the United States Supreme Court in *Wolff v. McDonnell*, 418 U.S. 539 (1974) and the New Jersey Supreme Court in *Avant v. Clifford*, 67 N.J. 496 (1975);
4. Enforce rules and impose appropriate sanctions for infractions;
5. Stimulate application of disciplinary procedures which encourage future voluntary acceptance of certain behavior limitations that are necessarily being imposed upon the inmate;
6. Build and maintain morale among inmates and between staff and inmates by providing impartial and fair procedures throughout the disciplinary process.

Amended by R.1991 d. 276, effective June 3, 1991.
 See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).
 Corrected reference to Chapter in (a).
 Amended by R.1996 d.237, effective May 20, 1996.
 See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Case Notes

Correctional institution regulations held constitutional (citing former N.J.A.C. 10:35). *Avant v. Clifford*, 67 N.J. 496, 341 A.2d 629 (1975).

10A:4-1.2 Scope

(a) This chapter shall be applicable to the Division of Operations unless otherwise indicated.

(b) This chapter shall apply to State sentenced inmates incarcerated at adult county correctional facilities.

Amended by R.1987 d. 506, effective December 21, 1987.
 See: 19 N.J.R. 1531(a), 19 N.J.R. 2403(a).
 Added "the Girls Unit . . . Boys at Skillman".
 Amended by R.1988 d. 239, effective June 6, 1988.
 See: 20 N.J.R. 496(a), 20 N.J.R. 1224(a).
 Added Boys Unit to the Girls Unit.
 Administrative correction, effective January 27, 1989.
 See: 21 N.J.R. 558(a).
 Institutional name change.
 Amended by R.1994 d.182, effective April 4, 1994.
 See: 26 N.J.R. 727(a), 26 N.J.R. 1506(a).
 Amended by R.1996 d.237, effective May 20, 1996.
 See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

10A:4-1.3 Definitions

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

"Administrative Close Supervision Unit" means a long term close custody unit to which an inmate may be assigned because of one or more disciplinary infractions or other administrative considerations.

"Adjustment Committee" shall mean the committee within a facility that is authorized to hear and adjudicate inmate violations of prohibited acts.

"Administrative Segregation" shall mean removal of an inmate from the general population to a long term close custody unit because of one or more disciplinary infractions or other administrative considerations.

"Asterisk offense" shall mean a prohibited act preceded by a number and an asterisk.

"Bodily fluid" shall mean saliva, blood, urine, feces, seminal fluid or any other bodily fluid (see N.J.S.A. 2C:12-12).

"Bodily injury" shall mean physical pain, illness or any impairment of physical condition (see N.J.S.A. 2C:11-1).

“Capital Sentence Unit” means the close custody unit to which inmates sentenced to death pursuant to N.J.S.A. 2C:11-3 are assigned until such time that the execution is carried out, or the sentence is commuted or changed to a lesser penalty.

“Close custody unit” shall mean an area within a correctional facility designated for assigning inmates who are removed from the general population for disciplinary or administrative reasons.

“Commissioner” shall mean the Commissioner of the New Jersey Department of Corrections.

“Counsel substitute” means an individual, such as an inmate paralegal, teacher or social worker, who represents and defends an inmate at a disciplinary hearing proceeding which is conducted within a correctional facility under the jurisdiction of the Department of Corrections.

“Custody status” shall mean the degree of supervision that is required for an inmate to enter or leave a correctional facility.

“Department” shall mean the New Jersey Department of Corrections.

“Disciplinary Detention” shall mean removal of an inmate from the general population to a short term close custody unit because of a disciplinary infraction(s).

“Disciplinary Hearing Officer” shall mean a Department staff member designated to hear and adjudicate inmate violations of prohibited acts.

“Disciplinary report” shall mean a form on which a violation of a prohibited act is recorded along with other pertinent information.

“Disciplinary Sanction” shall mean a prescribed penalty that is imposed for violation of a prohibited act.

“Extra duty” shall mean a task(s) other than those related to an inmate’s work or program assignment(s) to which an inmate has been assigned as a result of a violation of a prohibited act.

“Handbook on Discipline” means a handbook published by the Department of Corrections that is provided to inmates which contains the inmate’s rights and responsibilities, the acts and activities which are prohibited, and the disciplinary procedures and sanctions imposed.

“Inmate handbook” means a booklet published by the correctional facility which contains correctional facility rules and procedures, and information about correctional facility services and programs.

“Major violations” shall mean the violation of a prohibited act that is preceded by an asterisk.

“Minor violations” shall mean the violation of a prohibited act that is not preceded by an asterisk.

“On-the-spot correction” shall mean the immediate imposition of a sanction upon an inmate for the violation of a minor prohibited act.

“Prehearing detention” shall mean removal of an inmate from the general population pending an investigation and a hearing into an alleged violation of a prohibited act.

“Prison Complex” shall mean state correctional facilities designated to house inmates serving prison sentences.

“Prohibited acts” shall mean conduct in violation of rules and regulations, which will result in imposition of sanctions.

“Serious bodily injury” shall mean bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ (see N.J.S.A. 2C:11-1).

“Special Classification Committee” (S.C.C.) shall mean the body composed of representatives from the Prison and Youth Complexes within the Division of Operations, which considers the transfer of inmates between complexes.

“Weapon” shall mean anything readily capable of lethal use or of inflicting serious bodily injury (see N.J.S.A. 2C:39-1).

“Youth Complex” shall mean state correctional facilities designated to house inmates between the ages of 15 and 26 years, who have not previously been sentenced to a state prison in this State or in any other state.

Amended by R.1991 d.276, effective June 3, 1991.
See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Added definitions for “administrative close supervision unit”, “Capital sentence unit” and “counsel substitute”; amended definition for “superintendent”.

Amended by R.1994 d.182, effective April 4, 1994.
See: 26 N.J.R. 727(a), 26 N.J.R. 1506(a).

Amended by R.1996 d.237, effective May 20, 1996.
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Deleted “Superintendent” and “Vroom Readjustment Unit”; added “Inmate handbook”, and amended “Extra duty”, “Handbook on Discipline” and “Special Classification Committee”.

Amended by R.2004 d.180, effective May 3, 2004.
See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

Deleted “Institutional Classification Committee (I.C.C.)” and “Inter-Institutional Classification Committee (I.I.C.C.)”

10A:4-1.4 Forms

(a) The following forms related to Inmate Discipline are printed by the Bureau of State Use Industries—DEPTCOR and each correctional facility shall purchase a supply of these forms by contacting the Bureau:

1. 254-I Discipline Record Card;
2. 259 Disciplinary Report;

3. 259A Adjudication of Disciplinary Report.

(b) The following forms related to Inmate Discipline shall be reproduced by each correctional facility from originals that are available by contacting the Administrative Rules Unit:

1. 251-I Chronic Violator Notice;
2. 251-II Chronic Violator Adjudication Notice;
3. 252 Inmate Disciplinary Hearing Attendance Refusal Notice;
4. 253-I On-The-Spot Disciplinary Report/Adjudication;
5. 255-I Authorization for Prehearing Detention;
6. 256-I Appeal of Disciplinary Decision;
7. 256-II Disposition of Disciplinary Appeal.

(c) The following form related to inmate discipline shall be reproduced by each correctional facility from an original that is available by contacting the Health Services Unit:

1. HSU-010 Request for Psychological/Psychiatric Evaluation.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

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

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

Added (c).

Administrative change.

See: 35 N.J.R. 1137(a).

(b) At the time of arrival at a correctional facility, each inmate shall receive a copy of the correctional facility Inmate Handbook which contains correctional facility rules, procedures and information about services and programs. The correctional facility Inmate Handbook shall be provided as part of the admission-orientation program in accordance with N.J.A.C. 10A:8. Each inmate shall be required to sign a form acknowledging receipt of the correctional facility Inmate Handbook. A refusal by the inmate to sign shall be noted on the form by the issuing staff member.

(c) All changes in disciplinary rules shall be posted in housing units and other areas of the correctional facility and incorporated into the next revision of the Handbook on Discipline and when appropriate, in the correctional facility Inmate Handbook.

(d) When a correctional facility has a large number of inmates in the population who speak a foreign language, the rules shall be printed and presented verbally in the foreign language.

(e) For illiterate inmates or inmates otherwise unable to read or write due to a physical/medical inability, the rules shall be verbally communicated and assistance shall be provided to those inmates unable to provide written acknowledgement.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Corrected internal N.J.A.C. cite to Handbook.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

10A:4-2.2 Review of inmate rules

The Administrator of the correctional facility shall be responsible for maintaining an ongoing rule review process to ensure that the rules are current and appropriate.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

10A:4-2.3 Promulgation of rules

(a) The rules of a correctional facility shall be published and promulgated only upon the approval of the Administrator.

(b) The disciplinary rules shall be published and promulgated only upon the approval of the Commissioner, New Jersey Department of Corrections.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Added requirement of approval by Commissioner.

Case Notes

Department of Corrections is not exempt from the requirements of the Administrative Procedure Act (citing rule proposal at 18 N.J.R. 27(a)). *Dep't of Corrections v. McNeil*, 209 N.J.Super. 120, 506 A.2d 1291 (App.Div.1986) certification denied 104 N.J. 422, 517 A.2d 418 (1986).

SUBCHAPTER 2. PUBLICATION OF RULES

10A:4-2.1 Notification of inmates about rules and regulations

(a) At the time of reception into the New Jersey Department of Corrections, each inmate shall receive a copy of the Handbook on Discipline and thereby be advised in writing of his or her rights and responsibilities, the acts and activities which are prohibited, the rules which must be followed and the disciplinary process within the correctional facilities of the Department of Corrections. Each inmate shall be required to sign a form acknowledging receipt of the Handbook on Discipline. A refusal by the inmate to sign shall be noted on the form by the issuing staff member.

SUBCHAPTER 3. INMATE RIGHTS AND RESPONSIBILITIES

10A:4-3.1 Notification of inmates of their rights and responsibilities

(a) The following rights are found in the Handbook on Discipline which is provided to each inmate as part of reception into the Department of Corrections.

1. You have the right to be treated respectfully, impartially and fairly by all personnel.
2. You have the right to be informed of the rules, procedures and schedules concerning the operation of the correctional facility.
3. You have the right to freedom of religious affiliation and voluntary religious worship within the correctional facility.
4. You have the right to health care which includes nutritious meals, proper bedding and clothing, a laundry schedule for cleanliness of same, an opportunity to shower regularly, sufficient warmth, proper ventilation, fresh air, a regular exercise period, toilet articles and medical and dental treatment.
5. You have the right to correspond with and receive visits from family members, friends and other persons where there is no threat to security or order in keeping with the rules and schedules of the correctional facility.
6. You have the right to unrestricted and confidential access to the courts by correspondence.
7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence. You have the right to receive help when it is available through a legal assistance program.
8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems.
9. You have the right to a wide range of reading material for educational purposes and for your own enjoyment.
10. You have the right to participate in counseling, education, vocational training, and employment as far as resources are available and in keeping with your interests, needs and abilities.

(b) The following responsibilities are found in the Handbook on Discipline which is provided to each inmate as a part of reception into the Department of Corrections.

1. You have the responsibility to treat others, both employees and inmates, respectfully, impartially and fairly.
2. You have the responsibility to know and abide by the rules, procedures and schedules concerning the operation of the correctional facility.

3. You have the responsibility to recognize and respect the rights of others to freedom of religious affiliation and voluntary religious worship within the correctional facility.

4. It is your responsibility to follow the laundry and shower schedules, to maintain neat and clean living quarters, to seek medical and dental care as you may need it, and not to waste food.

5. It is your responsibility to conduct yourself properly during visits, to refuse to accept or pass contraband, and to comply with Department rules and State or Federal laws through your correspondence.

6. You have the responsibility to present honestly and fairly your petitions, questions and problems to the court.

7. It is your responsibility to use the services of an attorney honestly and fairly.

8. It is your responsibility to use the law library resources in keeping with the correctional facility procedures and schedule prescribed and to respect the rights of other inmates in the use of this legal material.

9. It is your responsibility to seek and utilize reading material for your personal benefit, without depriving others of their right to use same.

10. You have the responsibility to take advantage of activities (such as counseling, education, vocational training and employment) which may help you live a successful and law abiding life within the correctional facility and in the community. You will be expected to abide by the regulations governing the use of such activities.

Administrative Correction: Responsibilities have been substantially amended.

See: 19 N.J.R. 1573(a).

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Petition for Rulemaking.

See: 32 N.J.R. 3499(a).

SUBCHAPTER 4. INMATE PROHIBITED ACTS

10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee with the exception of those violations disposed of by way of an on-the-spot correction. Prohibited acts preceded by an asterisk (*) are considered the most serious and result in the most severe sanctions (see N.J.A.C. 10A:4-5, Schedule of sanctions for prohibited acts).

*.001 killing

*.002 assaulting any person

- *.003 assaulting any person with a weapon
- *.004 fighting with another person
- *.005 threatening another with bodily harm or with any offense against his or her person or his or her property
- *.006 extortion, blackmail, protection: demanding or receiving favors, money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing
- *.007 hostage taking
- *.008 abuse/cruelty to animals
- *.009 misuse or possession of electronic equipment not authorized for use or retention by an inmate such as, but not limited to, a cellular telephone(s), two-way radio(s), other communication device(s) and/or computer(s) and/or related device(s) and peripheral(s)
- *.010 participating in an activity(ies) related to a security threat group
- *.011 possession or exhibition of anything related to a security threat group
- *.012 throwing bodily fluid at any person or otherwise purposely subjecting such person to contact with a bodily fluid
- .013 unauthorized physical contact with any person, such as, but not limited to, physical contact not initiated by a staff member, volunteer or visitor
- *.014 unauthorized physical contact with any person with an article, item or material such as anything readily capable of inflicting bodily injury
- *.050 sexual assault
 - .051 engaging in sexual acts with others
 - .052 making sexual proposals or threats to another
 - .053 indecent exposure
- *.054 refusal to register as a sex offender
- *.101 escape
- *.102 attempting or planning escape
- .103 wearing a disguise or mask
- *.150 tampering with fire alarms, fire equipment or fire suppressant equipment
- *.151 setting a fire
- .152 destroying, altering, or damaging government property, or the property of another person
- *.153 stealing (theft)
- *.154 tampering with or blocking any locking device
- *.155 adulteration of any food or drink
- *.201 possession or introduction of an explosive, incendiary device or any ammunition
- *.202 possession or introduction of a weapon, such as, but not limited to, a sharpened instrument, knife or unauthorized tool
- *.203 possession or introduction of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff
- *.204 use of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff
- *.205 misuse of authorized medication
- .206 possession of money or currency (\$50.00 or less) unless specifically authorized
- *.207 possession of money or currency (in excess of \$50.00) unless specifically authorized
- .208 possession of property belonging to another person
- .209 loaning of property or anything of value
- .210 possession of anything not authorized for retention or receipt by an inmate or not issued to him or her through regular correctional facility channels
- .211 possessing any staff member's clothing and/or equipment
- .212 possessing unauthorized clothing
- .213 mutilating or altering clothing issued by the government
- *.214 possession of unauthorized keys or other security equipment
- *.215 possession with intent to distribute or sell prohibited substances such as drugs, intoxicants or related paraphernalia
- *.216 distribution or sale of prohibited substances such as drugs, intoxicants or related paraphernalia
- *.251 rioting
- *.252 encouraging others to riot
- *.253 engaging in, or encouraging, a group demonstration
- .254 refusing to work, or to accept a program or housing unit assignment
- *.255 encouraging others to refuse to work or to participate in work stoppage
- .256 refusing to obey an order of any staff member
- .257 violating a condition of any community release program
- *.258 refusing to submit to testing for prohibited substances
- *.259 failure to comply with an order to submit a specimen for prohibited substance testing (see N.J.A.C. 10A:3-5)
- *.260 refusing to submit to mandatory medical or other testing such as, but not limited to, mandatory testing required by law or court order
- *.261 tampering with a test specimen
- .301 unexcused absence from work or any assignment; being late for work
- .302 malingering, feigning an illness
- .303 failing to perform work as instructed by a staff member
- .304 using abusive or obscene language to a staff member
- .305 lying, providing a false statement to a staff member
- *.306 conduct which disrupts or interferes with the security or orderly running of the correctional facility
- .351 counterfeiting, forging or unauthorized reproduction or use of any document not enumerated in prohibited act *.352
- *.352 counterfeiting, forging or unauthorized reproduction or use of any classification document, court document, psychiatric, psychological or medical report, money or any other official document
- *.360 unlawfully obtaining or seeking to obtain personal information pertaining to an inmate's victim or the victim's family
- .401 participating in an unauthorized meeting or gathering
- .402 being in an unauthorized area
- .451 failure to follow safety or sanitation regulations
- .452 using any equipment or machinery which is not specifically authorized

- .453 using any equipment or machinery contrary to instructions or posted safety standards
- .501 failing to stand count
- .502 interfering with the taking of count
- *.551 making intoxicants, alcoholic beverages or prohibited substances such as narcotics and controlled dangerous substances or making related paraphernalia
- *.552 being intoxicated
- .553 smoking where prohibited
- .554 possession of tobacco products or matches where not permitted
- .601 gambling
- .602 preparing or conducting a gambling pool
- .603 possession of gambling paraphernalia
- .651 being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards
- .652 tattooing or self mutilation
- .701 unauthorized use of mail or telephone
- .702 unauthorized contacts with the public
- .703 correspondence or conduct with a visitor in violation of regulations
- *.704 perpetrating frauds, deceptions, confidence games, riots or escape plots
- .705 commencing or operating a business or group for profit or commencing or operating a non-profit enterprise without the approval of the Superintendent
- .706 soliciting funds and/or noncash contributions from donors within or without the correctional facility except where permitted by the Administrator.
- .707 failure to keep a scheduled appointment with medical, dental or other professional staff
- *.708 refusal to submit to a search
- .709 failure to comply with a written rule or regulation of the correctional facility
- *.751 giving or offering any official or staff member a bribe or anything of value
- .752 giving money or anything of value to, or accepting money or anything of value from, another inmate
- .753 purchasing anything on credit
- .754 giving money or anything of value to, or accepting money or anything of value from, a member of another inmate's family or another inmate's friend with an intent to circumvent any correctional facility or Departmental rule, regulation or policy or with an intent to further an illegal or improper purpose
- .802 attempting to commit any of the above acts, aiding another person to commit any of the above acts or making plans to commit any of the above acts shall be considered the same as a commission of the act itself
- *.803 attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act or making plans to commit such acts shall be considered the same as a commission of the act itself
- Notice of Correction: .352 was omitted from the end of .351.
See: 19 N.J.R. 1658(c).
Amended by R.1991 d.276, effective June 3, 1991.
See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).
Added .150 and amended *.151.
Administrative Corrections in (a): In .150 corrected suppressant.
See: 24 N.J.R. 2731(a).
Amended by R.1993 d.488, effective October 4, 1993.
See: 25 N.J.R. 3416(a), 25 N.J.R. 4599(a).
Administrative Correction.
See: 26 N.J.R. 1228(a).
Amended by R.1994 d.254, effective May 16, 1994.
See: 26 N.J.R. 1286(a), 26 N.J.R. 2129(a).
Amended by R.1994 d.264, effective June 6, 1994.
See: 26 N.J.R. 1287(a), 26 N.J.R. 2285(b).
Amended by R.1995 d.237, effective May 1, 1995.
See: 27 N.J.R. 436(a), 27 N.J.R. 1801(c).
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).
In (a) added refusing a breathalyzer test.
Amended by R.1996 d.237, effective May 20, 1996.
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).
In (a) added exception for on-the-spot corrections, in .254 added refusal of housing unit assignment, and deleted provision for transfer to the Vroom Readjustment Unit.
Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking.
See: 29 N.J.R. 813(b), 29 N.J.R. 948(a).
Amended by R.1997 d.225, effective June 2, 1997.
See: 29 N.J.R. 834(a), 29 N.J.R. 2562(b).
In (a), inserted “*.260 refusing to submit to mandatory medical testing”.
Amended by R.1997 d.276, effective July 7, 1997.
See: 29 N.J.R. 1663(a), 29 N.J.R. 2836(a).
In Schedule of Prohibited Acts, added .261 (tampering with a urine specimen).
Amended by R.1997 d.325, effective August 4, 1997.
See: 29 N.J.R. 2542(a), 29 N.J.R. 3452(a).
In (a), upgraded .150 (tampering with fire alarms, fire equipment or fire suppressant equipment) and .154 (tampering with or blocking any locking device) into asterisk offenses.
Amended by R.1998 d.366, effective July 20, 1998.
See: 30 N.J.R. 1719(a), 30 N.J.R. 2619(a).
Inserted new prohibited acts .010 and .011.
Amended by R.1999 d.333, effective October 4, 1999.
See: 31 N.J.R. 1847(a), 31 N.J.R. 2891(a).
In (a), in prohibited act .351, inserted an asterisk preceding “.352”, and inserted prohibited act .360.
Petition for Rulemaking.
See: 32 N.J.R. 3668(a).
Amended by R.2004 d.3, effective January 5, 2004.
See: 35 N.J.R. 4168(a), 36 N.J.R. 195(a).
Amended prohibited act 260 to include references to mandatory testing.

Cross References

Possession of inter-office envelopes, see N.J.A.C. 10A:18-2.26, 10A:18-3.13.

Case Notes

Punishment of Christian Scientist inmate who refused to submit to tuberculosis test furthered compelling state interest in preventing spread of tuberculosis in prison, as would justify such test's substantial burden on inmate's right of free exercise of religion under Religious Freedom Restoration Act. *Karolis v. New Jersey Dept. of Corrections*, D.N.J. 1996, 935 F.Supp. 523.

Contact-visit loss component of zero tolerance drug-alcohol policy was enforceable against inmate who violated disciplinary rule prohibiting possession of drugs after announcement of policy but before formal

Notice of Correction: Asterisk was omitted for *.306.
See: 18 N.J.R. 2138(d).
Amended by R.1987 d.154, effective April 6, 1987.
See: 19 N.J.R. 178(a), 19 N.J.R. 534(a).
Added *.008 abuse/cruelty to animals.

amendment of regulation. *Walker v. Department of Corrections*, 324 N.J.Super. 109, 734 A.2d 795 (N.J.Super.A.D. 1999).

Standard embodied in inmate disciplinary rule prohibiting using abusive or obscene language to staff member was not valid basis for imposing disciplinary punishment for inmate's vulgar and offensive statement in context of psychotherapy that was not threatening or exhortative of disobedience or violence. *Pryor v. New Jersey Dept. of Corrections*, 288 N.J.Super. 355, 672 A.2d 717 (A.D.1996).

Amendment to administrative code that added refusal to register as sex offender to list of prohibited acts was not unconstitutional. *A.F. v. Fauver*, 287 N.J.Super. 354, 671 A.2d 155 (A.D.1996).

Determination whether remark constitutes threat; objective analysis whether remark conveys basis for fear. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Finding that inmate threatened guard with bodily harm was supported by evidence. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Prison officials' decision to place inmate in nonpunitive management control unit was supported by record. *Taylor v. Beyer*, 265 N.J.Super. 345, 627 A.2d 166 (A.D.1993).

State prison sanctions for infractions only applicable if county inmate notified of infractions. *Bryan v. Department of Corrections*, 258 N.J.Super. 546, 610 A.2d 889 (A.D.1992).

Procedural safeguards not properly applied in prison disciplinary proceeding involving confidential informant. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

Information provided by confidential informant for use in prison disciplinary hearing must be part of confidential record. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

New prison disciplinary hearing required when procedural safeguards were absent in first hearing or in presence of newly discovered evidence. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D. 1990).

10A:4-4.2 Reports to the prosecutor on prohibited acts

All prohibited acts which may constitute crimes of the first, second, third or fourth degree under the Criminal Code of the State of New Jersey (N.J.S.A. 2C:1-1 et seq.) shall be referred to the prosecutor of the county in which the correctional facility is located. (See N.J.A.C. 10A:21 Reporting Violations of the Criminal Statutes.)

SUBCHAPTER 5. SCHEDULE OF SANCTIONS FOR PROHIBITED ACTS

10A:4-5.1 Schedule of sanctions for prohibited acts committed at the Prison Complex

(a) A finding of guilt for any offense preceded by an asterisk (*) shall render the offender subject to one or more of the following sanctions:

1. Up to 15 days Disciplinary Detention;
2. Loss of one or more correctional facility privileges up to 30 days;

3. Administrative Segregation for a specified time not to exceed one year, subject to confirmation by the Institutional Classification Committee;

4. Loss of commutation time up to 365 days, subject to confirmation by the Administrator;

5. Loss of furlough privileges for up to two months;

6. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days;

7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7);

8. Confiscation;

9. Up to 14 hours extra duty, to be performed within a maximum of two weeks;

10. Up to two weeks confinement to room or housing area; and/or

11. Referral to the Mental Health Unit for appropriate care/treatment.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1. Up to 15 days Disciplinary Detention;

2. Loss of one or more correctional facility privileges up to 30 days;

3. Up to 60 days loss of commutation time, subject to confirmation by the Administrator;

4. Administrative Segregation for a specified time not to exceed 90 days subject to confirmation by the Institutional Classification Committee;

5. Loss of furlough privileges for up to two months;

6. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days;

7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7);

8. Confiscation;

9. Up to 14 hours extra duty, to be performed within a maximum of two weeks;

10. Up to two weeks confinement to room or housing area; and/or

11. Referral to the Mental Health Unit for appropriate care/ treatment.

(c) Pursuant to the Zero Tolerance Drug/Alcohol Policy as defined in N.J.A.C. 10A:1-2.2, a finding of guilt to any of the following prohibited acts shall result in termination of contact visit privileges and ineligibility for consideration for any custody status lower than medium custody until after contact visit privileges are reinstated:

1. *.203 possession or introduction of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff;
2. *.204 use of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff;
3. *.205 misuse of authorized medication (such as narcotics and controlled dangerous substances);
4. *.215 possession with intent to distribute or sell prohibited substances such as drugs, intoxicants or related paraphernalia;
5. *.216 distribution or sale of prohibited substances such as drugs, intoxicants or related paraphernalia;
6. *.258 refusing to submit to testing for prohibited substances;
7. *.259 failure to comply with an order to submit a specimen for prohibited substance testing (see N.J.A.C. 10A:3-5);
8. *.261 tampering with a test specimen;
9. *.551 making intoxicants, alcoholic beverages or prohibited substances such as narcotics and controlled dangerous substances or making related paraphernalia;
10. *.552 being intoxicated;
11. *.708 refusal to submit to a search (when the inmate has been given advance verbal notice that the search is being conducted due to reasonable suspicion related to possession, sale or use of prohibited substances such as drugs, alcohol or intoxicants and the advance notice has been documented on Form 259 Disciplinary Report); and
12. *.803 attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act or making plans to commit such acts shall be considered the same as a commission of the act itself.

(d) In accordance with N.J.S.A. 30:4-140.1, a finding of guilt to *.360 unlawfully obtaining or seeking to obtain personal information pertaining to an inmate's victim or victim's family shall subject an inmate to the forfeiture of up to 365 accumulated commutation credits and up to 72 work time credits.

(e) In addition to the sanctions in (a), (b), (c) and (d) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of

the Disciplinary Hearing Officer/Adjustment Committee or the Administrator. Such administrative action may include, but not be limited to, the following:

1. Recommending transfer to a more appropriate correctional facility or unit (excluding units not considered punitive, such as, but not limited to, a Security Threat Group Management Unit);
2. Increasing custody status;
3. Changing work or housing assignments;
4. Assigning to a treatment program;
5. Assessing restitution for damage, alteration or destruction of State property, the property of another person, or violation of prohibited act .707 which results in undue expenditure of State funds;
6. Recommending loss of telephone, radio, television, and contact visit privileges for up to one year;
7. Disposal of an item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.3(b)2, 3 and 4; and/or
8. For New Jersey State Prison only: placing in a "DRY" cell during prehearing and lockup status.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Added sanctions of up to 14 hrs. extra duty and up to 2 weeks of confinement to room or housing area.

Amended by R.1993 d.584, effective November 15, 1993.

See: 25 N.J.R. 4435(a), 25 N.J.R. 5169(a).

Amended by R.1994 d.254, effective May 16, 1994.

See: 26 N.J.R. 1286(a), 26 N.J.R. 2129(a).

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Deleted reference to the Adult Diagnostic and Treatment Center and the Edna Mahan Correctional Facility for Women, in (c)5 added damage to property of another person, and in (c)6 added loss of telephone, radio and television privileges.

Administrative correction.

See: 29 N.J.R. 2563(a).

In (c)7, changed N.J.A.C. reference.

Amended by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

Added a new (c); and rewrote and recodified former (c) as (d).

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

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

Substituted references to the Administrator for references to the Superintendent throughout; and in (a) and (b), added 11.

Amended by R.2000 d.143, effective April 3, 2000.

See: 32 N.J.R. 166(a), 32 N.J.R. 1216(a).

Inserted a new (d); and recodified former (d) as (e), and made an internal reference change in the introductory paragraph.

Petition for Rulemaking.

Amended by R.2002 d.99, effective April 1, 2002.

See 33 N.J.R. 4194(a), 34 N.J.R. 1426(a).

In (c), added "and ineligibility for consideration for any custody status lower than medium custody until after contact visit privileges are reinstated;" following "privileges" in the introductory paragraph.

Amended by R.2004 d.180, effective May 3, 2004.

See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

In (e), substituted "of" for "or" following "upon the recommendation" in the introductory paragraph and deleted ". (This shall be subject

to confirmation by the Inter-Institutional Classification Committee.)” in 1.

10A:4-5.2 Schedule of sanctions for prohibited acts committed at the Youth Complex

(a) A finding of guilt for prohibited acts preceded by an asterisk (*) render the offender subject to one or more of the following sanctions:

1. Up to 15 days Disciplinary Detention;
2. Up to two weeks confinement to room or housing area;
3. Up to 30 days loss of one or more correctional facility privileges;
4. Up to 14 hours extra duty, to be performed within a maximum of two weeks;
5. Loss of furlough privileges for up to two months;
6. Confiscation;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7);
8. Administrative Segregation for a specific term not to exceed one year subject to confirmation by the Institutional Classification Committee;
9. Loss of commutation time up to 365 days, subject to confirmation by the Administrator (inmates serving indeterminate sentences are not subject to this sanction, but inmates housed in the youth complex who are serving prison terms are subject to this sanction);
10. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days; and/or
11. Referral to the Mental Health Unit for appropriate care/treatment.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1. Up to 15 days Disciplinary Detention;
2. Loss of one or more correctional facility privileges up to 30 days;
3. Up to 60 days loss of commutation time subject to confirmation by the Administrator (inmates serving prison terms);
4. Administrative Segregation for a specified time not to exceed 90 days subject to confirmation by the Institutional Classification Committee (does not include transfer to the Prison Complex);
5. Up to two weeks confinement to room or housing area;
6. Up to 14 hours extra duty, to be performed within a maximum of two weeks;

7. Loss of furlough privileges for up to two months;
8. Confiscation;
9. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7);
10. Suspension of one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days; and/or
11. Referral to the Mental Health Unit for appropriate care/treatment.

(c) Pursuant to the Zero Tolerance Drug/Alcohol Policy as defined in N.J.A.C. 10A:1-2.2, a finding of guilt to any of the following prohibited acts shall result in termination of contact visit privileges and ineligibility for consideration for any custody status lower than medium custody until after contact visit privileges are reinstated.

1. *.203 possession or introduction of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff;
2. *.204 use of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff;
3. *.205 misuse of authorized medication (such as narcotics and controlled dangerous substances);
4. *.215 possession with intent to distribute or sell prohibited substances such as drugs, intoxicants or related paraphernalia;
5. *.216 distribution or sale of prohibited substances such as drugs, intoxicants or related paraphernalia;
6. *.258 refusing to submit to testing for prohibited substances;
7. *.259 failure to comply with an order to submit a specimen for prohibited substance testing (see N.J.A.C. 10A:3-5);
8. *.261 tampering with a test specimen;
9. *.551 making intoxicants, alcoholic beverages or prohibited substances such as narcotics and controlled dangerous substances or making related paraphernalia;
10. *.552 being intoxicated;
11. *.708 refusal to submit to a search (when the inmate has been given advance verbal notice that the search is being conducted due to reasonable suspicion related to possession, sale or use of prohibited substances such as drugs, alcohol or intoxicants and the advance notice has been documented on Form 259 Disciplinary Report); and

12. *.803 attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act or making plans to commit such acts shall be considered the same as a commission of the act itself.

(d) In accordance with N.J.S.A. 30:4-140.1, a finding of guilt to *.360 unlawfully obtaining or seeking to obtain personal information pertaining to an inmate's victim or victim's family shall subject an inmate to the forfeiture of up to 365 accumulated commutation credits and up to 72 work time credits.

(e) In addition to the sanctions in (a), (b), (c) and (d) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Administrator. Such administrative action may include, but not be limited to, the following:

1. Changing work, time, housing or program;
2. Assigning to a treatment program;
3. Assessing restitution for damage, alteration or destruction of State property, the property of another person, or a violation of prohibited act .707 which results in undue expenditure of State funds;
4. Recommending transfer to a more appropriate correctional facility or unit (excluding units not considered punitive, such as, but not limited to, a Security Threat Group Management Unit);
5. Increasing custody status;
6. Recommending loss of telephone, radio, television, and contact visit privileges for up to one year; and/or
7. Disposal of an item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.3 and 6.4.

Amended by R.1987 d.155, effective April 6, 1987.
See: 19 N.J.R. 178(b), 19 N.J.R. 534(b).

Added new (b)3; recodified old (b)3.-8. to (b)4.-9.
Amended by R.1991 d.276, effective June 3, 1991.
See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Language added to clarify to whom the loss of commutation time applies; added recommending loss of privileges at (c)5.

Amended by R.1993 d.584, effective November 15, 1993.

See: 25 N.J.R. 4435(a), 25 N.J.R. 5169(a).

Amended by R.1994 d.254, effective May 16, 1994.

See: 26 N.J.R. 1286(a), 26 N.J.R. 2129(a).

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (c)3 added damage to property of another person, and in (c)6 added loss of telephone, radio and television privileges.

Amended by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

Added a new (c); and rewrote and recodified former (c) as (d).

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

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

Substituted references to the Administrator for references to the Superintendent throughout; in (a) and (b), added 11; and in (d)7, changed N.J.A.C. reference.

Amended by R.2000 d.143, effective April 3, 2000.

See: 32 N.J.R. 166(a), 32 N.J.R. 1216(a).

Inserted a new (d); and recodified former (d) as (e), and made an internal reference change in the introductory paragraph.

Petition for Rulemaking.

See: 34 N.J.R. 784(b).

Amended by R.2002 d.99, effective April 1, 2002.

See 33 N.J.R. 4194(a), 34 N.J.R. 1426(a).

In (c), added "and ineligibility for consideration for any custody status lower than medium custody until after contact visit privileges are reinstated;" following "privileges" in the introductory paragraph.

Amended by R.2004 d.180, effective May 3, 2004.

See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

Rewrote (a)8; in (e)4, deleted "and subject to confirmation by the Inter-Institutional Classification Committee" after "Security Threat Group Management Unit".

10A:4-5.3 Limitation on sanctions

(a) All disciplinary charges pending when the inmate begins serving time in Disciplinary Detention must be adjudicated prior to the completion of the inmate's Disciplinary Detention time. No inmate may receive more than 15 days in Disciplinary Detention as a result of a single disciplinary charge except as established in N.J.A.C. 10A:4-6, Chronic violator.

1. If an inmate is found guilty of more than one disciplinary charge arising out of one incident, the inmate may receive up to 15 days for each disciplinary charge provided that the total time to be served in the Disciplinary Detention does not exceed 30 days.

2. If an inmate is found guilty of more than one disciplinary charge arising out of separate incidents and occurring before the inmate begins serving time in Disciplinary Detention, the inmate may receive up to 15 days for each disciplinary charge provided that the total time to be served in Disciplinary Detention does not exceed 30 days.

3. If an inmate receives one or more disciplinary charges while serving in Disciplinary Detention, the inmate may receive up to 15 additional days in Disciplinary Detention per charge provided that the total time in Disciplinary Detention does not exceed a total of 30 days.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (a) added exception as established in 10A:4-6.

Recodified from N.J.A.C. 10A:4-5.4 by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

Former N.J.A.C. 10A:4-5.3 was repealed. Section was "Schedule of sanctions for prohibited acts committed at the New Jersey Training School for Boys and the Juvenile Medium Security Facility".

10A:4-5.4 (Reserved)

Recodified to N.J.A.C. 10A:4-5.3 by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

Section was "Limitation on Sanctions".

SUBCHAPTER 6. CHRONIC VIOLATOR

10A:4-6.1 Scope

The rules in this subchapter apply to all inmates serving prison sentences within the Division of Operations.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Rewrote section.

10A:4-6.2 Criteria for designating a chronic violator

An inmate may be designated a chronic violator if, while currently serving the maximum time in detention (30 days), the inmate continues to exhibit seriously assaultive or destructive behavior such as to constitute a continuing danger to other persons, and where alternative disciplinary sanctions or housing assignments would be inappropriate or ineffective.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Substituted detention for lockup.

10A:4-6.3 Procedures for designation of a chronic violator

(a) Disciplinary charges lodged against an inmate during the time the inmate is currently serving a 30 day term for other disciplinary violations shall be given directly to the Administrator in charge of the Administrative Close Supervision Unit (ACSU). A copy of each charge shall be given to the inmate within 48 hours unless exceptional circumstances exist.

(b) The Administrator in charge of the Administrative Close Supervision Unit (ACSU) shall be responsible for ordering that each charge be investigated and the Administrator shall review each charge and investigation to personally obtain all relevant information.

(c) If after review of all the reports and personal interviews with reporting staff that is deemed necessary to clarify facts or circumstances, the Administrator in charge of the Administrative Close Supervision Unit (ACSU) concludes that the inmate would pose a serious threat to persons or to the security or orderly operation of the Unit or correctional facility if released from detention, the Administrator shall schedule the case for a due process hearing before the Department's Disciplinary Hearing Officer.

(d) Prior to the hearing, the inmate shall be examined by a psychiatrist or psychologist to ascertain the inmate's mental condition, need for treatment or indication of need for transfer to a psychiatric facility (See N.J.A.C. 10A:16-13, Commitment for Psychiatric Treatment). The psychiatrist or psychologist shall visit the inmate at least once per month during the inmate's continued confinement in detention, and shall file a written report after each visit as to the inmate's mental condition and adjustment.

(e) The inmate shall receive at least 24 hours advance written notice on Form 251-I Chronic Violator Notice that the inmate is under consideration for designation as a chronic violator and that the inmate may have the assistance of an inmate paralegal at the scheduled hearing (See N.J.A.C. 10A:4-9, Disciplinary procedures and Form 251-I). The notice shall include a copy of the disciplinary charges which form the basis for this action.

(f) The hearing shall be held in accordance with N.J.A.C. 10A:4-9 and may be held before the expiration of the inmate's 30 day term.

(g) If after review of all reports and testimony, the Disciplinary Hearing Officer or Adjustment Committee concludes that the inmate cannot safely be released from detention at the expiration of the 30 day term, the inmate shall be designated a chronic violator. The Disciplinary Hearing Officer's/Adjustment Committee's decision shall be referred to the appropriate Institutional Classification Committee (I.C.C.) for review and approval. The inmate shall remain in Disciplinary Detention until, at a subsequent hearing, the Disciplinary Hearing Officer determines that the inmate has demonstrated that the inmate will control his or her behavior and will refrain from repetitive acts of assault or destruction of property.

(h) A due process hearing shall be held every 15 days to review the inmate's conduct and adherence to correctional facility regulations. The Disciplinary Hearing Officer shall review all disciplinary reports and shall ascertain from the reports, investigations, psychiatric evaluation and testimony where deemed necessary, whether the inmate's conduct is sufficiently under control to permit the inmate's safe release from detention.

(i) After the due process hearing has been completed, Form 251-II, Chronic Violator Adjudication Notice containing a written statement of the fact-findings shall be given to the inmate by the Disciplinary Hearing Officer. A copy of the due process hearing shall be kept in the Disciplinary Hearing Officers' records and in the inmate's classification folder.

(j) During the inmate's confinement as a chronic offender, a social worker and the shift or unit supervisor shall visit the inmate daily to monitor the inmate's needs and provide for programmatic involvement so far as is possible. The inmate shall be permitted to shower and participate in yard exercise as is consistent with correctional facility procedures, considering the safety of the inmate and the continued secure, orderly operation of the unit or correctional facility.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1989 d.136 effective March 20, 1989.

See: 21 N.J.R. 10(b), 21 N.J.R. 766(a).

References to Assistant Superintendents at the Administrative Close Supervision Unit (ACSU) and the Edna Mahan Correctional Facility for Women, added.

10A:4-9.9 Failure to adhere to time limits

(a) The failure to adhere to any of the time limits prescribed by this subchapter shall not mandate the dismissal of a disciplinary charge. However, the Disciplinary Hearing Officer or Adjustment Committee may, in its discretion, dismiss a disciplinary charge because of a violation of time limits. Such discretion shall be guided by the following factors:

1. The length of the delay;
2. The reason for the delay;
3. Prejudices to the inmate in preparing his/her defense; and,
4. The seriousness of the alleged infraction.

Case Notes

“Residuum evidence rule” inapplicable to Parole Board decisions (citing N.J.A.C. 10A:71-2.1, 10A:71-3.7, 10A:71-3.46); delay in scheduling parole hearing did not violate appellant’s due process rights warranting reversal on that ground; when parole rescission decision is based on expert opinion concerning wiretapped conversations said to show criminal activity not presented through tapes or transcripts or both, testifying officer should accurately recount them. *Gerardo v. N.J. State Parole Bd.*, 221 N.J.Super. 442, 534 A.2d 1037 (App.Div.1987).

Inmate not prejudiced because he received only 24 hours notice of his disciplinary report, subsequent to the completion of the investigation of the charges against him. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

10A:4-9.10 Excluding the inmate from the disciplinary hearing

(a) An inmate shall be permitted to be present throughout the disciplinary hearing except during the necessary deliberations of the Disciplinary Hearing Officer or Adjustment Committee and except in instances where correctional facility security would be jeopardized by the inmate’s presence.

(b) The reasons for excluding an inmate from the disciplinary hearing must be well documented in the record.

Amended by R.1996 d.237, effective May 20, 1996.
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).
Inserted disciplinary preceding hearing.

10A:4-9.11 In absentia hearings

(a) A full in absentia hearing shall be conducted if the inmate refuses to appear at the hearing.

(b) The following procedural process shall apply at all disciplinary hearings conducted in absentia which will enable the Disciplinary Hearing Officer or Adjustment Committee to ensure that the inmate has been given every opportunity to be present for his or her disciplinary hearing.

1. The escorting custody staff member shall report the inmate’s refusal to appear before the Disciplinary Hearing Officer or Adjustment Committee.

2. A custody staff member shall deliver to the inmate who refuses to appear Form 252 Inmate Disciplinary Hearing Attendance Refusal Notice that includes the following statement:

“I voluntarily refuse to appear at this hearing. I understand that the hearing will be held in my absence.”

3. The custody staff member shall advise the inmate that refusal to appear at the disciplinary hearing may result in an incomplete understanding by the Disciplinary Hearing Officer or Adjustment Committee of the circumstances surrounding the charges lodged against the inmate. If the inmate still refuses to appear at the disciplinary hearing, the inmate shall be requested to sign Form 252 immediately after the statement noted above in (b)2.

4. In the event the inmate refuses to sign his or her name where designated on Form 252 and still refuses to appear, Form 252 shall be returned to the Disciplinary Hearing Officer or Adjustment Committee Chairperson and the following statement on Form 252 shall be acknowledged by signature of the investigating custody staff member:

“Inmate refuses to sign _____.”
Signature of
Custody Staff Member

5. The Disciplinary Hearing Officer or Adjustment Committee shall ensure that the following statement shall be included in the inmate statement section of the Adjudication of Disciplinary Report form: “No statement taken as the inmate refused to appear at the hearing.”

Amended by R.1996 d.237, effective May 20, 1996.
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).
Inserted disciplinary preceding hearing.

10A:4-9.12 Aid in presentation of inmate’s case

(a) When an inmate has been charged with an asterisk offense, the inmate shall be afforded the right to request representation by a counsel substitute.

(b) When the Disciplinary Hearing Officer or Adjustment Committee determines that an inmate is illiterate or cannot adequately collect and present the evidence in his or her own behalf, the inmate may elect to receive the services of a counsel substitute or the inmate may request representation by a staff member.

(c) Where the inmate requests the services of a staff member, the Administrator or designee may appoint a staff member to provide representation.

(d) The counsel substitute shall be permitted reasonable time to speak to the inmate and shall be given at least 24 hours to prepare the inmate’s defense.

(e) If necessary, the inmate shall be allowed to present a defense through an interpreter.

Amended by R.1987 d.383, effective September 21, 1987.

See: 19 N.J.R. 913(b), 19 N.J.R. 1738(c).

(c): "may" was "shall".

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

10A:4-9.13 Opportunity to call witnesses and present evidence

(a) Inmates shall be allowed to call witnesses and present documentary evidence in their defense when permitting them to do so will not be unduly hazardous to correctional facility safety or goals. The Adjustment Committee or Disciplinary Hearing Officer shall review the evidence offered as reasonably available and necessary for proper understanding of the circumstances surrounding the charge. The Disciplinary Hearing Officer or Adjustment Committee has the discretion to keep the disciplinary hearing within reasonable limits and to refuse to call repetitive witnesses and witnesses who may create a risk of reprisal. For purposes of this subsection, "repetitive witnesses" are witnesses who provide the same account as a previous witness(es). "Repetitive witnesses" are not intended to refer to the calling of a witness(es) who previously provided written documentary evidence. Unavailable witnesses may be asked to submit written statements. If the Disciplinary Hearing Officer or Adjustment Committee shall refuse to call one or more witnesses, the reasons for each such refusal shall be separately specified on the Adjudication of Disciplinary Report form.

(b) Witnesses requested by the inmate who are called may be questioned by members of the Adjustment Committee or the Disciplinary Hearing Officer and the inmate or the inmate's counsel substitute. Inmates or their representatives may request that certain questions be directed by the Adjustment Committee members or the Disciplinary Hearing Officer to any witnesses. The Disciplinary Hearing Officer or Adjustment Committee may take testimony in a manner or form which is determined to be necessary to protect correctional facility safety or goals. Such manner or form shall include, but shall not be limited to, the consideration of confidential reports.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (a) inserted disciplinary preceding hearing.

Case Notes

Denying prisoner accused of threatening corrections officer access to the testimony of an alleged eyewitness violated his statutory right to call witnesses at disciplinary hearing, and thus, to the extent eyewitness's written statement informed the findings and conclusion reached by the hearing examiner, those determinations were flawed. *Jones v. Department of Corrections*, 359 N.J.Super. 70, 819 A.2d 1.

Hearing officers must record their reasons for refusing to call witness. *McDonald v. Pinchak*, 139 N.J. 188, 652 A.2d 700 (1995).

Disciplinary proceeding would be remanded to Department of Correction to clarify and amplify record. *McDonald v. Pinchak*, 139 N.J. 188, 652 A.2d 700 (1995).

10A:4-9.14 Confrontation and cross examination

(a) The opportunity for confrontation and cross examination, if requested, shall be provided to the inmate in such instances where the Adjustment Committee or Disciplinary Hearing Officer deems it necessary for an adequate presentation of the evidence, particularly when serious issues of credibility are involved.

(b) The Disciplinary Hearing Officer or Adjustment Committee may refuse confrontation and cross examination when said would be unduly hazardous to correctional facility safety or goals.

Case Notes

At disciplinary hearing, prisoner was entitled to confront and cross-examine corrections officer who accused prisoner of threatening him with bodily harm, and Department of Correction's violation of that right deprived prisoner of the fundamental opportunity to develop his defense by revealing weaknesses in accusation against him either on basis of accuser's credibility or otherwise; hearing officer's decision was based on a credibility finding favorable to corrections officer, which was a determination that could not be fairly reached without affording prisoner opportunity to address the credibility issue effectively. *Jones v. Department of Corrections*, 359 N.J.Super. 70, 819 A.2d 1.

Due process violated in disciplinary proceeding; information developed from confidential informants. *Hyson v. Neubert*, D.N.J.1993, 820 F.Supp. 184.

Where inmate was charged with a disciplinary infraction by virtue of conduct directed to or at a corrections officer and the matter turned on the credibility of the officer or inmate, the inmate, upon request, was entitled to confrontation and cross-examination of the officer, at least in the absence of any reasons that justify an exception as a matter of prison security. *Decker v. New Jersey Department of Corrections*, 331 N.J.Super. 353, 751 A.2d 1094 (N.J.Super. 2000).

In prison disciplinary hearing to address charges that inmate forged another inmate's signature on court documents, inmate was provided insufficient access to proofs against him, which included report of administrative investigation, handwriting samples of both inmates and handwriting and typeface analyses conducted by internal affairs unit, to satisfy requirements of due process. *Wakefield v. Pinchak*, 289 N.J.Super. 566, 674 A.2d 621 (A.D.1996).

Regulation provides more protection than Fourteenth Amendment. *McDonald v. Pinchak*, 139 N.J. 188, 652 A.2d 700 (1995).

Supreme Court would remand prison disciplinary proceeding. *McDonald v. Pinchak*, 139 N.J. 188, 652 A.2d 700 (1995).

Hearing officer in prison disciplinary proceeding has broad discretion to refuse a request for cross-examination and confrontation; denial of request for cross-examination of various individuals involved in drug-trafficking investigation was proper. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

10A:4-9.15 Evidence required

(a) A finding of guilt at a disciplinary hearing shall be based upon substantial evidence that the inmate has committed a prohibited act.

(b) Evidence relied upon in making a determination shall be specified on the Adjudication of Disciplinary Report form.