

7. When an officer with a rank of Sergeant or above is satisfied that there is a clear indication that an inmate is carrying or concealing contraband on his or her person, or in the inmate's anal or vaginal cavity.

(c) A strip search shall be conducted:

1. At a location where the search cannot be observed by unauthorized persons;
2. In a professional and dignified manner, with maximum courtesy and respect for the inmate's person;
3. By the number of custody staff deemed reasonably necessary to provide security; and
4. By custody staff of the same sex as the inmate except as set forth in (d) below.

(d) Strip searches of inmates may be conducted by custody staff of the opposite sex under emergent conditions as ordered by the Superintendent, Assistant Superintendent or the highest ranking custody supervisor on duty.

(e) In emergent circumstances, strip searches may be observed by persons, such as, but not limited to, the on-call Ombudsman, Internal Affairs Investigator(s) or SOG Unit members required to be present who are not conducting the search and who may be of the opposite sex to help ensure:

1. The secure and orderly operation of the procedure;
2. The accurate recordkeeping regarding the emergent circumstances and incident;
3. That the strip search is conducted in a professional and dignified manner, with maximum courtesy and respect for the inmate's person.

(f) Under no circumstances shall invasive body cavity searches be conducted in accordance with this section. Body cavity searches shall be conducted pursuant to N.J.A.C. 10A:3-5.8.

Amended by R.1988 d.406, effective September 6, 1988.

See: 20 N.J.R. 1331(a), 20 N.J.R. 2294(a).

Changed frisk to pat and added (g).

Amended by R.1994 d.374, effective July 18, 1994.

See: 26 N.J.R. 1937(b), 26 N.J.R. 2903(a).

Amended by R.1997 d.41, effective January 21, 1997.

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

Inserted (b)6; deleted (c), relating to administrative segregation, prehearing detention, Management Control Units, South Hall, and other closed custody units; deleted (d)1 and (d)2 and recodified (d) as (a)7, (e) as (c) with substantial amendment, and (g) as (d); and deleted (f), prohibiting searches as punishment or discipline.

Amended by R.1997 d.324, effective August 4, 1997.

See: 29 N.J.R. 2231(a), 29 N.J.R. 3451(a).

In (d), added “, Assistant Superintendent or the highest ranking custody supervisor on duty”; added (e); and recodified the former last sentence of (d) as (f) and amended.

Amended by R.1998 d.263, effective May 18, 1998.

See: 30 N.J.R. 966(a), 30 N.J.R. 1811(a).

Rewrote (c); and in (d), substituted “custody staff” for “officers”.

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

(a) Under no circumstances shall a body cavity search be conducted on an inmate unless the correction officer in charge is satisfied that a reasonable suspicion exists that contraband will be found in the inmate's body cavity.

(b) In the event an officer in charge is reasonably satisfied that contraband is being concealed in the inmate's body cavity, the inmate shall be escorted immediately to the hospital or medical department in the correctional facility and the following procedure shall be followed for examination of the inmate and removal of contraband.

1. A body cavity search shall be conducted:

- i. Under sanitary conditions;
- ii. At a location where the search cannot be observed by unauthorized person;
- iii. By a physician or registered nurse of either sex;
- iv. In the presence of only those correction officers deemed necessary for security, who are of the same sex as the inmate; and
- v. In a professional and dignified manner, with maximum courtesy and respect for the inmate's person.

2. The inmate may:

- i. Remove the object in the presence of the physician or registered nurse and a correction officer(s) of the same sex as the inmate; or
- ii. Be examined by the physician or registered nurse who may remove the object without the use of force.

3. If a correction officer in charge determines there is a reasonable suspicion to believe that a foreign object which contains metal is present in the inmate's body cavity, such object may be removed only by the physician with or without the use of force.

4. In the event the officer in charge, the physician or the registered nurse has determined that nonmetal contraband is being concealed in the inmate's body cavity, and the inmate refuses to permit contraband removal, the inmate shall receive appropriate disciplinary charges and may be placed in prehearing detention or medical isolation. During prehearing detention, medical isolation or disciplinary detention, if any, the inmate may be kept under visual surveillance to detect removal or elimination of the contraband.

(c) A written report of the results of a body cavity search shall be made part of the inmate's record and shall include, but not be limited to, the following information:

1. A statement of facts indicating reasonable suspicion for the search;
2. The name of the officer in charge who authorized the search;

3. The name(s) of the correction officer(s) present during the search and the reason for his or her presence;
4. The name(s) of the person(s) conducting the search;
5. An inventory of any item(s) found during the search; and
6. The reason(s) for use of force, if necessary.

10A:3-5.9 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).

Recodified from 10A:3-5.8 by R.1997 d.41, effective January 21, 1997.

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

Former rule recodified to N.J.A.C. 10A:3-5.10.

10A:3-5.10 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 any drug not authorized for possession or use by the inmate.

(b) Inmates shall 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;
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;
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 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).

Recodified from 10A:3-5.9 and amended by R.1997 d.41, effective January 21, 1997.

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

Substituted a general reference to drug use for more specified references, in (a); substituted "use by the inmate" for "use by the correctional facility staff"; and in (b), substituted "shall" for "may". Former rule recodified to N.J.A.C. 10A:3-5.11.

Case Notes

Evidence of chain of custody of inmate's urine sample met constitutional requirements. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Sanctions against prison officials for violation of court ordered chain-of-custody requirements unwarranted. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Inmate not entitled to compensation for prison's failure to comply with court-ordered chain-of-custody requirements. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Random urinalysis program did not violate due process. *Laird v. McBride*, N.D.Ind.1993, 858 F.Supp. 822.

Failure to follow chain of custody procedures set forth on random urinalysis program form did not violate due process. *Laird v. McBride*, N.D.Ind.1993, 858 F.Supp. 822.

10A:3-5.11 Collection, storage and analysis of urine samples

(a) Each time a urine specimen is collected for the reasons stated in N.J.A.C. 10A:3-5.10, Form 172-I Continuity of Evidence—Urine Specimen shall be completed and submitted with the urine sample to the Internal Affairs Officer or the staff member responsible for maintaining custody over the specimen until transfer to the testing facility.

(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 include 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, the prescription medication that the inmate is currently taking, and the inmate's signature. Should the inmate refuse to sign, the correction officer or staff member who witnessed the voiding of the sample shall indicate the refusal on the label and on Form 172-I.

(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 responsible 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 record on Form 172-I 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 urine sample from the correctional facility, as well as the date and time of its receipt by the testing facility shall be noted on Form 172-I by the person(s) performing these functions.

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

Recodified from 10A:3-5.10 and amended by R.1997 d.41, effective January 21, 1997.

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

In (b)3, inserted inmate signature requirement and procedure upon inmate's refusal to sign. Former rule recodified to N.J.A.C. 10A:3-5.12.

Petition for Rulemaking.

See: 30 N.J.R. 3340(a).

Case Notes

Evidence of chain of custody of inmate's urine sample met constitutional requirements. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Sanctions against prison officials for violation of court-ordered chain-of-custody requirements unwarranted. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Inmate not entitled to compensation for prison's failure to comply with court-ordered chain-of-custody requirements. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Random urinalysis program did not violate due process. *Laird v. McBride*, N.D.Ind.1993, 858 F.Supp. 822.

Failure to follow chain of custody procedures set forth on random urinalysis program form did not violate due process. *Laird v. McBride*, N.D.Ind.1993, 858 F.Supp. 822.

10A:3-5.12 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).
 Recodified from 10A:3-5.11 by R.1997 d.41, effective January 21, 1997.
 See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).
 Former rule recodified to N.J.A.C. 10A:3-5.12.

10A:3-5.13 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).
 Recodified from 10A:3-5.12 by R.1997 d.41, effective January 21, 1997.
 See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

SUBCHAPTER 6. CONTRABAND AND DISPOSITION OF CONTRABAND

Cross References

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

10A:3-6.1 Procedures for handling contraband upon discovery

(a) Whenever an item, article or material is determined to be contraband, it shall be immediately seized.

1. The correction officer or staff member making the seizure shall submit the contraband to the unit supervisor who shall submit it to the Internal Affairs Unit or Central Control of the correctional facility, together with a fully completed Form 171-I, Seizure of Contraband Report. The contraband report must be submitted no later than the end of the shift during which the contraband was seized.

2. Care should be taken at all times to carefully record the chain of possession of the contraband.

3. The correction officer or staff member shall also give an inmate from whose control or possession contraband is taken, an itemized, signed and dated receipt (Form 171-II, Inmate Receipt, Contraband Seizure), a copy of which shall also go to the Internal Affairs Unit or to the correctional facility Central Control. The contents of this form shall be either read or explained to the inmate if necessary.

4. When contraband is removed from mail, such as, letters and packages, the correction officer or staff member making the seizure shall send the inmate to whom the mail was addressed a completed copy of Form 171-II indicating that the specified items were removed.

5. The inmate shall have three days to appeal the seizure to the Superintendent or his or her designee.

(b) The Internal Affairs Unit or correctional facility Central Control shall maintain a log of all Seizure of Contraband and Inmate Receipt forms (Forms 171-I and 171-II). It shall be the responsibility of these units to record the disposition of the contraband on the Seizure of Contraband Report (Form 171-I).

(c) All contraband seized shall be clearly and appropriately marked and securely stored by the Internal Affairs Unit or the correctional facility Central Control.

(d) If disciplinary charges are issued in connection with the seizure of contraband, the Internal Affairs Unit or the correctional facility Central Control shall present evidence of the contraband at the disciplinary hearing unless the contraband was seized pursuant to N.J.A.C. 10A:3-6.5. If the contraband was seized pursuant to N.J.A.C. 10A:3-6.5, the Disciplinary Hearing Officer/Adjustment Committee shall arrange to view the contraband outside the inmate's presence.

(e) Contraband shall be disposed of by the Internal Affairs Unit or the correctional facility Central Control in accordance with this Subchapter.

Administrative Correction, effective January 27, 1989.
 See: 21 N.J.R. 558(a).
 Institutional name change.
 Recodified from 10A:3-6.2 and amended by R.1997 d.41, effective January 21, 1997.
 See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).

In (a)3, deleted references to specified training schools for boys and girls; and in (d), substituted "present evidence of the contraband" for "present the contraband". Section was "Contraband defined".

10A:3-6.2 Disposal of contraband personal property seized in reception units

(a) When an inmate is delivered to a Department of Corrections reception unit with items of personal property not authorized for retention or possession, the items shall be seized.

(b) The staff member making the seizure shall give the inmate an itemized, signed and dated receipt for the property seized, and shall notify the inmate that such items are

contraband, and that the inmate has three working days, from the date of the seizure of the contraband, to appeal the classification of any or all items as contraband to the Superintendent.

1. If the Superintendent or his or her designee shall determine that any or all of the items are not contraband, they shall be returned to the inmate.

2. If the Superintendent shall determine that any item is contraband, the inmate shall be given two working days to indicate which of the following means of disposal should be used with respect to the property. The contraband shall either be:

7. When an officer with a rank of Sergeant or above is satisfied that there is a clear indication that an inmate is carrying or concealing contraband on his or her person, or in the inmate's anal or vaginal cavity.

(c) A strip search shall be conducted:

1. At a location where the search cannot be observed by unauthorized persons;
2. In a professional and dignified manner, with maximum courtesy and respect for the inmate's person;
3. By the number of custody staff deemed reasonably necessary to provide security; and
4. By custody staff of the same sex as the inmate except as set forth in (d) below.

(d) Strip searches of inmates may be conducted by custody staff of the opposite sex under emergent conditions as ordered by the Superintendent, Assistant Superintendent or the highest ranking custody supervisor on duty.

(e) In emergent circumstances, strip searches may be observed by persons, such as, but not limited to, the on-call Ombudsman, Internal Affairs Investigator(s) or SOG Unit members required to be present who are not conducting the search and who may be of the opposite sex to help ensure:

1. The secure and orderly operation of the procedure;
2. The accurate recordkeeping regarding the emergent circumstances and incident;
3. That the strip search is conducted in a professional and dignified manner, with maximum courtesy and respect for the inmate's person.

(f) Under no circumstances shall invasive body cavity searches be conducted in accordance with this section. Body cavity searches shall be conducted pursuant to N.J.A.C. 10A:3-5.8.

Amended by R.1988 d.406, effective September 6, 1988.

See: 20 N.J.R. 1331(a), 20 N.J.R. 2294(a).

Changed frisk to pat and added (g).

Amended by R.1994 d.374, effective July 18, 1994.

See: 26 N.J.R. 1937(b), 26 N.J.R. 2903(a).

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

Inserted (b)6; deleted (c), relating to administrative segregation, prehearing detention, Management Control Units, South Hall, and other closed custody units; deleted (d)1 and (d)2 and recodified (d) as (a)7, (e) as (c) with substantial amendment, and (g) as (d); and deleted (f), prohibiting searches as punishment or discipline.

Amended by R.1997 d.324, effective August 4, 1997.

See: 29 N.J.R. 2231(a) 29 N.J.R. 3451(a).

In (d), added "Assistant Superintendent or the highest ranking custody supervisor on duty"; added (e); and recodified the former last sentence of (d) as (f) and amended.

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See: 30 N.J.R. 966(a), 30 N.J.R. 1811(a).

Rewrote (c); and in (d), substituted "custody staff" for "officers".

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

(a) Under no circumstances shall a body cavity search be conducted on an inmate unless the correction officer in charge is satisfied that a reasonable suspicion exists that contraband will be found in the inmate's body cavity.

(b) In the event an officer in charge is reasonably satisfied that contraband is being concealed in the inmate's body cavity, the inmate shall be escorted immediately to the hospital or medical department in the correctional facility and the following procedure shall be followed for examination of the inmate and removal of contraband.

1. A body cavity search shall be conducted:

- i. Under sanitary conditions;
- ii. At a location where the search cannot be observed by unauthorized person;
- iii. By a physician or registered nurse of either sex;
- iv. In the presence of only those correction officers deemed necessary for security, who are of the same sex as the inmate; and
- v. In a professional and dignified manner, with maximum courtesy and respect for the inmate's person.

2. The inmate may:

- i. Remove the object in the presence of the physician or registered nurse and a correction officer(s) of the same sex as the inmate; or
- ii. Be examined by the physician or registered nurse who may remove the object without the use of force.

3. If a correction officer in charge determines there is a reasonable suspicion to believe that a foreign object which contains metal is present in the inmate's body cavity, such object may be removed only by the physician with or without the use of force.

4. In the event the officer in charge, the physician or the registered nurse has determined that nonmetal contraband is being concealed in the inmate's body cavity, and the inmate refuses to permit contraband removal, the inmate shall receive appropriate disciplinary charges and may be placed in prehearing detention or medical isolation. During prehearing detention, medical isolation or disciplinary detention, if any, the inmate may be kept under visual surveillance to detect removal or elimination of the contraband.

(c) A written report of the results of a body cavity search shall be made part of the inmate's record and shall include, but not be limited to, the following information:

1. A statement of facts indicating reasonable suspicion for the search;
2. The name of the officer in charge who authorized the search;

3. The name(s) of the correction officer(s) present during the search and the reason for his or her presence;
4. The name(s) of the person(s) conducting the search;
5. An inventory of any item(s) found during the search; and
6. The reason(s) for use of force, if necessary.

10A:3-5.9 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.

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Former rule recodified to N.J.A.C. 10A:3-5.10.

10A:3-5.10 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 any drug not authorized for possession or use by the inmate.

(b) Inmates shall 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;

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;

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 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).

Recodified from 10A:3-5.9 and amended by R.1997 d.41, effective January 21, 1997.

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

Substituted a general reference to drug use for more specified references, in (a); substituted "use by the inmate" for "use by the correctional facility staff"; and in (b), substituted "shall" for "may". Former rule recodified to N.J.A.C. 10A:3-5.11.

Case Notes

Evidence of chain of custody of inmate's urine sample met constitutional requirements. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Sanctions against prison officials for violation of court ordered chain-of-custody requirements unwarranted. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

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(a) Each time a urine specimen is collected for the reasons stated in N.J.A.C. 10A:3-5.10, Form 172-I Continuity of Evidence—Urine Specimen shall be completed and submitted with the urine sample to the Internal Affairs Officer or the staff member responsible for maintaining custody over the specimen until transfer to the testing facility.

(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 include 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, the prescription medication that the inmate is currently taking, and the inmate's signature. Should the inmate refuse to sign, the correction officer or staff member who witnessed the voiding of the sample shall indicate the refusal on the label and on Form 172-I.

(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 responsible 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 record on Form 172-I 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 urine sample from the correctional facility, as well as the date and time of its receipt by the testing facility shall be noted on Form 172-I by the person(s) performing these functions.

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

Recodified from 10A:3-5.10 and amended by R.1997 d.41, effective January 21, 1997.

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

In (b)3, inserted inmate signature requirement and procedure upon inmate's refusal to sign. Former rule recodified to N.J.A.C. 10A:3-5.12.

Petition for Rulemaking.

See: 30 N.J.R. 3340(a), 30 N.J.R. 3703(a).

Case Notes

Evidence of chain of custody of inmate's urine sample met constitutional requirements. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Sanctions against prison officials for violation of court-ordered chain-of-custody requirements unwarranted. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Inmate not entitled to compensation for prison's failure to comply with court-ordered chain-of-custody requirements. *Elkin v. Fauver*, C.A.3 (N.J.)1992, 969 F.2d 48, rehearing denied, certiorari denied 113 S.Ct. 473, 506 U.S. 977, 121 L.Ed.2d 379.

Random urinalysis program did not violate due process. *Laird v. McBride*, N.D.Ind.1993, 858 F.Supp. 822.

Failure to follow chain of custody procedures set forth on random urinalysis program form did not violate due process. *Laird v. McBride*, N.D.Ind.1993, 858 F.Supp. 822.

10A:3-5.12 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).

Recodified from 10A:3-5.11 by R.1997 d.41, effective January 21, 1997.

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

Former rule recodified to N.J.A.C. 10A:3-5.12.

10A:3-5.13 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).

Recodified from 10A:3-5.12 by R.1997 d.41, effective January 21, 1997.

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

SUBCHAPTER 6. CONTRABAND AND DISPOSITION OF CONTRABAND

Cross References

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

10A:3-6.1 Procedures for handling contraband upon discovery

(a) Whenever an item, article or material is determined to be contraband, it shall be immediately seized.

1. The correction officer or staff member making the seizure shall submit the contraband to the unit supervisor who shall submit it to the Internal Affairs Unit or Central Control of the correctional facility, together with a fully completed Form 171-I, Seizure of Contraband Report. The contraband report must be submitted no later than the end of the shift during which the contraband was seized.

2. Care should be taken at all times to carefully record the chain of possession of the contraband.

3. The correction officer or staff member shall also give an inmate from whose control or possession contraband is taken, an itemized, signed and dated receipt (Form 171-II, Inmate Receipt, Contraband Seizure), a copy of which shall also go to the Internal Affairs Unit or to the correctional facility Central Control. The contents of this form shall be either read or explained to the inmate if necessary.

4. When contraband is removed from mail, such as, letters and packages, the correction officer or staff member making the seizure shall send the inmate to whom the mail was addressed a completed copy of Form 171-II indicating that the specified items were removed.

5. The inmate shall have three days to appeal the seizure to the Superintendent or his or her designee.

(b) The Internal Affairs Unit or correctional facility Central Control shall maintain a log of all Seizure of Contraband and Inmate Receipt forms (Forms 171-I and 171-II). It shall be the responsibility of these units to record the disposition of the contraband on the Seizure of Contraband Report (Form 171-I).

(c) All contraband seized shall be clearly and appropriately marked and securely stored by the Internal Affairs Unit or the correctional facility Central Control.

(d) If disciplinary charges are issued in connection with the seizure of contraband, the Internal Affairs Unit or the correctional facility Central Control shall present evidence of the contraband at the disciplinary hearing unless the contraband was seized pursuant to N.J.A.C. 10A:3-6.5. If the contraband was seized pursuant to N.J.A.C. 10A:3-6.5, the Disciplinary Hearing Officer/Adjustment Committee shall arrange to view the contraband outside the inmate's presence.

(e) Contraband shall be disposed of by the Internal Affairs Unit or the correctional facility Central Control in accordance with this Subchapter.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Recodified from 10A:3-6.2 and amended by R.1997 d.41, effective January 21, 1997.

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

In (a)3, deleted references to specified training schools for boys and girls; and in (d), substituted "present evidence of the contraband" for "present the contraband". Section was "Contraband defined".

10A:3-6.2 Disposal of contraband personal property seized in reception units

(a) When an inmate is delivered to a Department of Corrections reception unit with items of personal property not authorized for retention or possession, the items shall be seized.

(b) The staff member making the seizure shall give the inmate an itemized, signed and dated receipt for the property seized, and shall notify the inmate that such items are

contraband, and that the inmate has three working days, from the date of the seizure of the contraband, to appeal the classification of any or all items as contraband to the Superintendent.

1. If the Superintendent or his or her designee shall determine that any or all of the items are not contraband, they shall be returned to the inmate.

2. If the Superintendent shall determine that any item is contraband, the inmate shall be given two working days to indicate which of the following means of disposal should be used with respect to the property. The contraband shall either be: