

**CHAPTER 4**

**INMATE DISCIPLINE**

**Authority**

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

**Source and Effective Date**

R.2011 d.157, effective May 4, 2011.  
See: 43 N.J.R. 366(a), 43 N.J.R. 1343(a).

**Chapter Expiration Date**

Chapter 4, Inmate Discipline, expires on May 4, 2018.

**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Subchapter 13, Resident Discipline Program for the Training School for Boys at Skillman, was repealed by R.1988 d.239, effective June 6, 1988.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Subchapter 12, Appeal to Office of Administrative Law (OAL), was repealed by R.1988 d.543, effective November 21, 1988.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).

Subchapter 12, Zero Tolerance Policies of the Department of Corrections, was adopted as emergency new rules by R.2005 d.435, effective November 15, 2005, to expire on January 14, 2006. See: 37 N.J.R. 4575(a). Subchapter 12, Zero Tolerance Policies of the Department of Corrections, was adopted as concurrent new rules by R.2006 d.58, effective January 11, 2006. See: 37 N.J.R. 4575(a), 38 N.J.R. 993(a).

Chapter 4, Inmate Discipline, was readopted as R.2006 d.398, effective October 24, 2006. As a part of R.2006 d.398, Subchapter 1, Introduction, was renamed General Provisions, effective November 20, 2006. See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 4, Inmate Discipline, was scheduled to expire on April 21, 2014. See: 43 N.J.R. 1203(a).

Chapter 4, Inmate Discipline, was readopted as R.2011 d.157, effective May 4, 2011. See: Source and Effective Date. See, also, section annotations.

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#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 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.

“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).

“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.

“Fact witness” means a witness who provides a factual account of the incident based upon his or her being personally involved in, or having personally observed the incident or aspects thereof. For example, a Department of Corrections staff member who administers a test for prohibited substances may be considered a fact witness if a question of fact exists with regard to the taking, initial testing or custody of the specimen.

“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.

“Repetitive witness” means a witness who is expected to provide substantially the same testimony as a previous witness.

“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.

“Unavailable witness” is a witness who is unable, for medical, leave or other valid reason, to attend the disciplinary hearing.

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.)”  
Amended by R.2004 d.293, effective August 2, 2004.

See: 36 N.J.R. 1867(a), 36 N.J.R. 3551(a).

Inserted “Fact witness”, “Repetitive witness” and “Unavailable witness”.

Amended by R.2006 d.151, effective May 1, 2006.

See: 38 N.J.R. 96(a), 38 N.J.R. 1836(a).

Deleted a comma in the introductory paragraph; deleted the definitions for “Asterisk offense”, “Capital Sentence Unit”, “Close custody unit”, “Commissioner”, “Custody status”, “Department”, “Disciplinary Hearing Officer”, “Disciplinary report”, “Disciplinary Sanction”, “Handbook on Discipline”, “Inmate handbook”, “On-the-spot correction”, “Prehearing detention”, “Prison Complex”, “Prohibited acts” and “Youth Complex”.

Amended by R.2007 d.198, effective July 2, 2007.

See: 39 N.J.R. 834(b), 39 N.J.R. 2538(a).

Deleted definitions “Counsel substitute” and “Disciplinary Detention”.

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

Deleted definition “Administrative Segregation”.

Amended by R.2011 d.157, effective June 6, 2011.

See: 43 N.J.R. 366(a), 43 N.J.R. 1343(a).

Deleted definition “Weapon”.

### 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. 253-I On-The-Spot Disciplinary Report/Adjudication;
2. 254-I Discipline Record Card;
3. 259 Disciplinary Report;
4. 259A Adjudication of Disciplinary Report.

(b) The following forms related to Inmate Discipline are available by accessing the Department of Corrections computer network (DOCNet). Interested individuals who do not have access to DOCNet may obtain copies of forms by contacting the Administrative Rules Unit, New Jersey Department of Corrections:

1. 251-I Chronic Violator Notice;
2. 251-II Chronic Violator Adjudication Notice;
3. 252 Inmate Disciplinary Hearing Attendance Refusal Notice;
4. 255-I Authorization for Prehearing Detention;
5. 256-I Appeal of Disciplinary Decision;
6. 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).

Amended by R.2006 d.419, effective December 4, 2006.

See: 38 N.J.R. 3226(a), 38 N.J.R. 5161(a).

Added new (a)1; recodified former (a)1 through (a)3 as (a)2 through (a)4; in the introductory paragraph of (b), deleted "shall be reproduced by each correctional facility from originals that" preceding "are available", inserted "by accessing the Department of Corrections computer network (DOCNet). Interested individuals who do not have access to DOCNet may obtain copies of forms" and ", New Jersey Department of Corrections"; deleted former (b)4; and recodified former (b)5 through (b)7 as new (b)4 through (b)6.

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).

## 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.

(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

### 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).

evidence. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

Inmate charged with prison drug trafficking not entitled to verbatim recording of disciplinary proceeding; documents in support of hearing officer's determination were admissible as exceptions to hearsay rule. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

#### 10A:4-9.16 Modification of charge during disciplinary hearing

(a) Whenever it becomes apparent at a disciplinary hearing that an incorrect prohibited act is cited in the disciplinary report but that the inmate may have committed another prohibited act, the Adjustment Committee or Disciplinary Hearing Officer shall modify the charge. The inmate shall be given the option of a 24-hour postponement to prepare his or her defense against the new charge or have the new charge adjudicated at that time.

(b) If, after reviewing the charge, the inmate's past disciplinary record and any special reports, the Disciplinary Hearing Officer or Adjustment Committee concludes that the infraction is of a minor nature that is suitable for handling as an on-the-spot correction, the charge may be referred back to the appropriate custody staff supervisor for handling under N.J.A.C. 10A:4-7, On-The-Spot Correction.

Amended by R.2006 d.398, effective November 20, 2006.  
See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a), substituted ". The inmate shall be given" for "and give the inmate", "his or her" for "his/her" and "have" for "adjudicate" and inserted "adjudicated"; and in (b), inserted "that is" and substituted "custody staff supervisor" for "Shift Supervisor".

#### Case Notes

Inmates charged with disciplinary violations should be informed of constitutional rights. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Inmate will be deemed informed of rights to confront and cross-examine witnesses in prison disciplinary hearing. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Failure to inform inmate of constitutional rights did not prejudice inmate. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

#### 10A:4-9.17 Disciplinary sanctions

(a) The disciplinary action may be individualized by considering such factors as the:

1. Offender's past history of correctional facility adjustment;
2. Setting and circumstances of the prohibited behavior;
3. Involved inmate's account;
4. Correctional goals set for the inmate; and
5. The inmate's history of, or the presence of, mental illness.

(b) The sanction shall be one or more of those enumerated in N.J.A.C. 10A:4-5, Schedule of Sanctions for Prohibited Acts.

(c) In accordance with N.J.A.C. 10A:9-3.14, inmates shall be reviewed and scored on the Reclassification Instrument upon a finding of guilt to a prohibited act(s) when:

1. A sanction imposed by the Disciplinary Hearing Officer includes a referral to the I.C.C., except if Administrative Segregation is part of the imposed sanction;
2. A minimum custody status inmate is found guilty of a prohibited act in the highest or high level of the Severity of Offense—Disciplinary Infractions Scale (see N.J.A.C. 10A:9-2.11); or
3. Referred by the Administrator.

(d) Whenever an inmate damages or destroys plumbing fixtures, or floods his or her cell at New Jersey State Prison, the inmate may be placed in Prehearing Detention or Disciplinary Detention in a "DRY" cell to serve the sanction imposed.

Administrative Correction, effective January 27, 1989.  
See: 21 N.J.R. 558(a).

Institutional name change.  
Amended by R.1998 d.526, effective November 2, 1998.  
See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

In (a), substituted "may" for "shall" following "disciplinary action" in the introductory sentence.

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).

In (a), substituted "by considering" for "in keeping with" in the introductory paragraph, and added 6.

Amended by R.2001 d.425, effective November 19, 2001.  
See: 33 N.J.R. 2390(a), 33 N.J.R. 3947(a).

Added a new (c) and (d), and recodified former (c) as (e).  
Amended by R.2002 d.351, effective November 4, 2002.  
See: 34 N.J.R. 2186(a), 34 N.J.R. 3781(a).

Deleted former (d); recodified former (e) as new (d).  
Amended by R.2006 d.398, effective November 20, 2006.  
See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (d), inserted "or her" and substituted "the inmate" for "he".

#### 10A:4-9.18 Suspending sanctions

(a) The Adjustment Committee or Disciplinary Hearing Officer may suspend a sanction(s) imposed upon an inmate for a violation of a prohibited act when, in their opinion, such action is warranted by the particular circumstances of the case.

(b) When a sanction(s) is suspended, the inmate's behavior shall be watched closely for a period of time to see if his or her intentions to conform to the required code of behavior are sincere.

(c) If the inmate whose sanction(s) has been suspended commits further violations of the rules or regulations of the correctional facility, the Adjustment Committee or Disciplinary Hearing Officer shall enforce the sanction(s) that was

suspended and impose an additional sanction(s) for the new violation(s).

New Rule, R.1988 d.61, effective February 1, 1988.

See: 19 N.J.R. 1717(b), 20 N.J.R. 294(a).

Old section 18 recodified to section 19.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (c), deleted "correctional facility's" preceding "rules", inserted "of the correctional facility" and substituted "that" for "which".

#### 10A:4-9.19 Confiscation of contraband items

All items determined to be contraband found in the inmate's possession shall be confiscated and disposed of in accordance with N.J.A.C. 10A:3-6, Contraband and Disposition of Contraband.

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

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

Substituted 10A:3-6 for 10A:3.

#### 10A:4-9.20 Guidance and referrals

The Adjustment Committee or Disciplinary Hearing Officer shall give guidance to the inmate with respect to the reason for the rules and policies of the correctional facility. The elements of the inmate's behavior or attitude that are deemed to be unsatisfactory shall be pointed out.

#### 10A:4-9.21 Emergency transfer to another correctional facility or unit

(a) When it shall appear that an inmate has committed a disciplinary infraction that requires the inmate's immediate transfer to the general population of another correctional facility or unit, or the Prehearing Detention Unit of another correctional facility or unit, the notice and disciplinary hearing shall be granted after the transfer.

(b) The Disciplinary Hearing Officer or Adjustment Committee assigned to the correctional facility to which the inmate has been transferred shall conduct the hearing.

(c) Staff at the sending correctional facility shall be responsible for preparing the disciplinary charges, conducting the investigation and delivering this material to the receiving correctional facility.

(d) The transfer of inmates in keep separate status shall be conducted in accordance with N.J.A.C. 10A:3-2.

(e) All due process safeguards shall be provided as soon after the transfer as practicable and shall be in compliance with this subchapter except that written statements of unavailable witnesses shall be liberally accepted instead of live testimony.

(f) No transfer as described in this subchapter shall be effected unless the Administrator and either the Assistant Commissioner or Director, Division of Operations (or the Commissioner or designee if both the Assistant Commissioner and the Director are unavailable) shall have determined

that there are emergency conditions in the sending correctional facility justifying the transfer.

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

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

Editorial changes only.

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

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

Inserted provision for transfer in keep-separate status.

Administrative correction.

See: 29 N.J.R. 777(a).

Rewrote (e).

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

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

In (g), substituted "Commissioner or designee" for "Chief of Staff" preceding "if both the".

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

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

Deleted (f); recodified (g) as (f).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Section was "Emergency intra-complex transfer". In (a), substituted "that" for "which" and deleted "within the complex" following "unit" two times; in (c), substituted "Staff at the" for "The"; and in (d), substituted "keep separate" for "keep-separate".

#### 10A:4-9.22 Emergency inter-complex transfer

(a) When it shall appear that an inmate from the Youth Complex has committed a disciplinary infraction which requires the inmate's immediate transfer to the Prison Complex, the notice and disciplinary hearing shall be granted after the transfer.

(b) The disciplinary hearing shall be conducted by the Disciplinary Hearing Officer or Adjustment Committee assigned to the correctional facility to which the inmate has been transferred.

(c) Staff at the sending correctional facility shall be responsible for preparing the disciplinary charges, for conducting the investigation and for delivering the material to the receiving correctional facility.

(d) The transfer of inmates in keep separate status shall be conducted in accordance with N.J.A.C. 10A:3-2.

(e) All due process safeguards shall be provided as soon after the transfer as practicable and shall be in compliance with this subchapter except that written statements of unavailable witnesses shall be liberally accepted instead of live testimony.

(f) Emergency transfers from the Youth Complex to the Prison Complex shall be reviewed by the Institutional Classification Committee and are subject to confirmation by the Special Classification Committee. (See N.J.A.C. 10A:9, Classification Process.)

(g) No transfer as described in this section shall be effected unless the Administrator and either the Assistant Commissioner or Director, Division of Operations, (or the Commissioner or designee if both the Assistant Commissioner and the Director are unavailable) shall have determined that there are