

3. Any item, article or material found in the possession of, or under the control of, staff or visitors within the facility or on its grounds which is not authorized for receipt, retention or importation;

4. Any item, article or material which is authorized for receipt, retention or importation by inmates, staff or visitors but which is found in an excessive amount or which has been altered from its original form. An amount shall be considered excessive if it exceeds stated correctional facility limits or exceeds reasonable safety, security, sanitation or space considerations; or

5. Any article which may be harmful or presents a threat to the security and orderly operation of the correctional facility shall be considered contraband. Items of contraband shall include, but shall not be limited to: guns and firearms of any type; ammunition; explosives; knives, tools and other implements not provided in accordance with correctional facility regulations; hazardous or poisonous chemicals and gases; unauthorized drugs and medications; medicines dispensed or approved by the correctional facility but not consumed or utilized in the manner prescribed; intoxicants, including, but not limited to, liquor or alcoholic beverages; and, where prohibited, currency and stamps.

“Deadly force” means force which a custody staff member uses with the purpose of causing, or which the custody staff member knows will create a substantial risk of causing, death or serious bodily harm.

“Housing unit” means a cell, dormitory or other type of sleeping area within a correctional facility.

“Imminent danger” means threatened harmful actions or outcomes that may occur during an encounter absent action by the custody staff member. The period of time involved is dependent on the circumstances and facts evident in each situation and is not the same in all situations. The threatened harm does not have to be instantaneous, for example, imminent danger may be present even if an individual is not at that instant pointing a weapon at the custody staff member, but is carrying a weapon and running for cover.

“Keep separate status” means the intentional assignment of certain inmates to different correctional facilities or different units within a correctional facility so as to maintain a separation between these inmates in order to prevent the possibility of retaliation because of a previous act or occurrence.

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

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

“Pat search” means a thorough search of a fully-clothed inmate, including the clothing and personal property in the inmate’s possession.

“Reasonable belief” means an objective assessment based upon an evaluation of how a reasonable custody staff member with comparable training and experience would react to, or draw inferences from, the facts and circumstances confronted and known by the custody staff member at the scene.

“Roving patrol” means observation of the outer perimeter of a facility by making rounds at intervals on foot or in a vehicle.

“Shift commander” means the custody staff member holding the rank of Lieutenant or higher responsible for the maintenance of security during a tour of duty in a correctional facility.

“Strip search” means a thorough and systematic examination of an unclothed person’s body and orifices, including visual inspection of external genital and anal areas, as well as the person’s clothing and all personal possessions.

“Substantial risk” means any discharge of a firearm that entails some risk of an unintended outcome. A substantial risk exists when a custody staff member disregards a foreseeable likelihood that innocent persons will be endangered. An example of substantial risk is firing a weapon into a confined space (such as a room or vehicle) occupied by innocent persons and exposes those persons to a substantial risk of harm.

“Trigger locking device” or “locking device” means a device that, if installed on a firearm and secured by means of a key or mechanically, electronically or electromechanically operated combination lock, prevents the firearm from being discharged without first deactivating or removing the device by means of a key or mechanically, electronically or electromechanically operated combination lock.

Amended by R.1991 d.250, effective May 20, 1991.

See: 23 N.J.R. 383(a), 23 N.J.R. 1672(b).

Added definition of “keep separate status”.

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

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

Added “Body cavity search”, “Central Communications Unit”, “Central Medical/Transportation Unit”, “Correction officer”, “Contraband”, and “Mechanical restraints”; deleted “Commissioner”, “Department”, and “Superintendent”; and amended “Deadly force”, “Non-deadly force”, “Pat search” and “Strip search”.

Amended by R.2000 d.33, effective January 18, 2000.

See: 31 N.J.R. 3577(a), 32 N.J.R. 303(b).

Deleted “Internal Affairs Unit”.

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In “Contraband”, substituted “sanitation” for “sanitary” following “security” in 4; deleted “Correction officer”; rewrote “Deadly force”, “Pat search”, “Roving patrol”, “Shift supervisor”, and “Strip search”; inserted “Imminent danger”, “Reasonable belief” and “Substantial risk”.

Amended by R.2004 d.90, effective March 1, 2004.

See: 35 N.J.R. 496(a), 36 N.J.R. 1192(b).

Added "Trigger locking device".

10A:3-1.4 Forms

(a) The following forms related to Security and Control shall be reproduced by each facility from originals that are available by contacting the Administrative Rules Unit:

1. 156-I Oath of Office;
2. 171-I Seizure of Contraband Report
3. 171-II Inmate Receipt, Contraband Seizure
4. 171-III Notice of Decision on Appeal, Contraband Seizure (Non-Disciplinary)
5. 172-I Continuity of Evidence—Urine Specimen;
6. 172-II Continuity of Evidence—On Site Urine Specimen Testing;
7. 173-I Placement In Keep Separate Status
8. 173-II Removal From Keep Separate Status
9. 173-III Transfer of Keep Separate Status Inmate;
10. 285-I Request for Polygraph Examination
11. 285-II Prohibited Substance Testing Request Summary.

(b) The following form related to transportation of inmates is printed by the Bureau of State Use Industries—DEPTCOR and each facility shall purchase a supply of this form by contacting DEPTCOR:

1. 002 Travel Order.

Amended by R.1991 d.250, effective May 20, 1991.

See: 23 N.J.R. 383(a), 23 N.J.R. 1672(b).

Added forms regarding keep separate status.

Amended by R.1993 d.679, effective December 20, 1993.

See: 25 N.J.R. 4702(a), 25 N.J.R. 5929(a).

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).

Added breathalyzer request summary and alcohol influence report.

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

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

Added (b).

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Rewrote (a).

Administrative change.

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

SUBCHAPTER 2. KEEP SEPARATE STATUS

10A:3-2.1 Recommending placement of an inmate in keep separate status

(a) Any staff person may recommend that an inmate be placed in keep separate status.

(b) The staff person recommending that an inmate be placed in keep separate status shall complete the recommendation section of Form 173-I, Placement in Keep Separate Status, and submit Form 173-I to the Administrator indicating the reason(s) for the recommendation.

(c) The Administrator may order an immediate Special Investigations Division investigation and written report to determine whether the information received is accurate and placement of the inmate in keep separate status is warranted.

Administrative change.

See: 32 N.J.R. 303(a).

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (b), substituted "Administrator indicating" for "Superintendent giving" preceding "the reason(s)"; in (c), substituted "Administrator" for "Superintendent" preceding "may order".

10A:3-2.2 Authorization of placement of inmate in keep separate status

(a) The Administrator shall authorize the placement of an inmate in keep separate status in instances when the Administrator determines that such placement is warranted for the maintenance of security and the orderly operation of the correctional facility.

(b) If the Administrator authorizes that an inmate be placed in keep separate status, the completed Form 173-I, along with supporting documents shall be forwarded to:

1. The Senior Classification Officer to be filed in the inmate's classification folder; and
2. The correctional facility housing the other inmate(s) involved in this assignment of keep separate status.

(c) A "Keep Separate" notation should be prominently placed on the outside cover of the inmate's institutional classification folder and in the appropriate files within the computerized inmate information record keeping system.

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a) and (b), substituted "Administrator" for "Superintendent" throughout.

10A:3-2.3 Procedures for tracking transfers of inmates in keep separate status

(a) The Inter-Institutional Classification Committee (I.I.C.C.) or Special Classification Committee (S.C.C.) shall authorize the transfer of an inmate in keep separate status to another correctional facility when such transfer is determined to be warranted and appropriate. Emergency transfer procedures shall be followed in accordance with N.J.A.C. 10A:9-6.5 or 7.5.

(b) Prior to the transfer of any inmate in keep separate status, the Senior Classification Officer shall:

1. Confirm the current location of other correlated keep separate status inmate(s) via the Department of Corrections computerized inmate information record-keeping systems;

2. Complete Form 173-III Transfer of Keep Separate Status Inmate for the inmate who is to be transferred;

3. Advise by telephone and fax a copy of Form 173-III to each correctional facility(s) housing the other correlated keep separate status inmate(s); and

4. Forward, within three days, a hard copy of Form 173-III to each correctional facility(s) housing the other correlated keep separate status inmate(s).

(c) The original Form 173-III, along with supporting documentation shall be filed in the chronological section of the transferred inmate's classification folder and shall be attached to Form 173-I. A copy of Form 173-III shall be added to the chronological section of each correlated inmate's classification folder, and shall be attached to Form 173-I.

(d) The Computerized Inmate Progress Notes shall be updated with the information recorded on Form 173-III.

New Rule, R.1993 d.679, effective December 20, 1993.
See: 25 N.J.R. 4702(a), 25 N.J.R. 5929(a).
Amended by R.1997 d.41, effective January 21, 1997.
See: 28 N.J.R. 4840(a), 29 N.J.R. 356(a).
Amended by R.2002 d.171, effective June 3, 2002.
See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a), inserted "determined to be" following "transfer is"; in (b), rewrote 1 and inserted "for the inmate" following "Status Inmate" in 2.

10A:3-2.4 Recommending removal from keep separate status

(a) Any staff person may recommend that an inmate be removed from keep separate status.

(b) Any staff person recommending that an inmate be removed from keep separate status shall complete the removal recommendation section of Form 173-II Removal From Keep Separate Status and submit Form 173-II to the Administrator indicating the reason(s) for the recommendation.

(c) The Administrator may order a Special Investigations Division investigation and written report to determine whether the information received is accurate and removal of the inmate from keep separate status is warranted.

Recodified from 10A:3-2.3 by R.1993 d.679, effective December 20, 1993.

See: 25 N.J.R. 4702(a), 25 N.J.R. 5929(a).

Administrative change.

See: 32 N.J.R. 303(a).

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (b), substituted "Administrator indicating" for "Superintendent, giving" preceding "the reason(s)"; in (c), substituted "Administrator" for "Superintendent" preceding "may order".

10A:3-2.5 Authorization for removal from keep separate status

(a) The Administrator may authorize the removal of an inmate from keep separate status when a review of the factors in the inmate's case indicates that the keep separate status is no longer appropriate.

(b) Whenever a decision is made to remove an inmate from keep separate status, the original Form 173-II along with the supporting documents shall be forwarded to the

Senior Classification Officer to be filed in the inmate's classification folder.

(c) A copy of the removal notice Form 173-II shall be sent to the Classification Department of the correctional facility at which the other inmate(s) involved in the keep separate status is housed.

(d) The computerized inmate information recordkeeping systems shall be updated when a decision to remove an inmate from keep separate status has been authorized by the Administrator.

Recodified from 10A:3-2.4 by R.1993 d.679, effective December 20, 1993.

See: 25 N.J.R. 4702(a), 25 N.J.R. 5929(a).

Amended by R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a), substituted "Administrator" for "Superintendent"; added (d).

SUBCHAPTER 3. USE OF FORCE

10A:3-3.1 Custody staff authority

(a) Custody staff are authorized to use appropriate means to enforce correctional facility rules and regulations. Such means include, but are not limited to:

1. "Constructive authority," which means authority that does not involve actual physical contact with the individual, but involves the use of the custody staff member's authority to exert control over the individual. Examples of constructive authority include, but are not limited to, verbal commands, gestures, warnings and unholstering a weapon. Pointing a firearm at an individual is an element of constructive authority to be used only in appropriate situations; and

2. "Physical contact," which means routine or procedural contact with an individual necessary to effectively accomplish a legitimate law enforcement objective. Examples of physical contact include, but are not limited to, holding an individual's arm while escorting the individual, handcuffing an individual, maneuvering or securing an individual for a search, and guiding the individual into a vehicle.

(b) Custody staff members are encouraged to interrupt the flow of events to help ensure that a fellow custody staff member does not resort to employing an inappropriate or excessive use of force.

New Rule, R.2002 d.171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Former N.J.A.C. 10A:3-3.1, Correction officers authorized to carry firearms while on-duty, recodified to N.J.A.C. 10A:3-4.1.

10A:3-3.2 Use of force

(a) In any case that a custody staff member uses force while on-duty, the custody staff member shall only use that force that is objectively reasonable under the totality of the circumstances as known by the custody staff member at the time force is used.

(b) A custody staff member may use the amount of force reasonably necessary to accomplish the law enforcement objective. If the individual resists, the custody staff member may increase the degree of force as necessary to accomplish the law enforcement objective but as soon as the individual submits, the custody staff member shall reduce the degree of force used.

Recodified from 10A:3-3.1 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), substituted reference to use of objectivity reasonable force for reference to use of minimum force possible; and added (b). Former rule recodified to N.J.A.C. 10A:3-3.7.

Recodified from N.J.A.C. 10A:3-3.4 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

Substituted "custody staff member" for "correction officer" throughout. Former N.J.A.C. 10A:3-3.2, Firearms training, qualification and requalification, recodified to N.J.A.C. 10A:3-4.2.

10A:3-3.3 Non-deadly force; when justified

(a) The Department of Corrections justifies the use of non-deadly force against persons only under the following circumstances:

1. To protect self or others against the use of unlawful force;
2. To protect self or others against death or serious bodily harm;
3. To prevent damage to property;
4. To prevent escape;
5. To prevent or quell a riot or disturbance;
6. To prevent a suicide or attempted suicide; or
7. To enforce correctional facility regulations where expressly permitted by Department of Corrections regulations or in situations where a custody staff member with the rank of Sergeant or above believes that the inmate's failure to comply constitutes an immediate threat to correctional facility security or personal safety.

(b) Non-deadly force includes, but is not limited to, the use of the following:

1. "Physical force" which means contact with an individual beyond that which is generally utilized to effect a law enforcement objective. Physical force is employed when necessary to overcome an individual's physical resistance to the exertion of the custody staff member's authority, or to protect persons or property. Examples of physical force include, but are not limited to, wrestling a resisting individual to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation; and

2. "Mechanical force" which means the use of some device or substance, other than a firearm, to overcome an individual's resistance to the exertion of the custody staff member's authority. Examples of mechanical force include, but are not limited to, the use of a baton or other object, canine physical contact with an individual, or use of a chemical or natural agent spray.

Recodified from 10A:3-3.2 and amended by R.1997 d.41, effective January 21, 1997.

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

Substantially amended section. Former rule recodified to N.J.A.C. 10A:3-3.8.

Recodified from N.J.A.C. 10A:3-3.5 and amended by R.2002 d. 171, effective June 3, 2002.

See: 34 N.J.R. 962(a), 34 N.J.R. 1908(a).

In (a)7, substituted "a custody staff member" for "an officer" preceding "with the rank"; rewrote (b). Former N.J.A.C. 10A:3-3.3, On-duty firearm, recodified to N.J.A.C. 10A:3-4.3.

10A:3-3.4 Deadly force; when justified and when restricted

(a) Deadly force may be used against persons, consistent with provisions of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., and upon authorization of the following:

1. The Commissioner;
2. The Deputy Commissioner;
3. The Assistant Commissioner, Division of Operations;
4. The Directors, Division of Operations;
5. The Administrator;
6. The Associate Administrator/Assistant Superintendent;
7. The Director of Custody Operations; or
8. The unit supervisor, Special Operations Group.

(b) Deadly force may be used in the following situations under limitations consistent with the provisions of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq.:

1. When the custody staff member reasonably believes that deadly force is immediately necessary to protect the custody staff member or another person from imminent danger of death or serious bodily harm. However, deadly force is not justifiable if the custody staff member can otherwise secure his or her complete safety or the complete safety of the protected person;
2. When the custody staff member reasonably believes that deadly force is immediately necessary to prevent or stop an individual from committing or continuing a criminal offense which would endanger human life or inflict serious bodily harm upon another person unless the commission or the consummation of the crime is prevented; or