

CHAPTER 4

INMATE DISCIPLINE

Authority

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

Source and Effective Date

R.1991 d.276, effective May 7, 1991.
See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Executive Order No. 66(1978) Expiration Date

Chapter 4, Inmate Discipline, expires on May 7, 1996.

Chapter Historical Note

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

The following correctional facilities in Chapter 4 were redesignated, pursuant to N.J.S.A. 30:7-1:

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;

Training School for Juveniles at Jamesburg to the New Jersey Training School for Boys. See: 21 N.J.R. 558(a).

Pursuant to Executive Order No. 66(1978), Chapter 4 was readopted as R.1991 d.276, effective May 7, 1991. See: Source and Effective Date.

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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 and the 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).

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) Subchapter 2 through subchapter 12 shall be applicable to the Division of Adult Institutions, the New Jersey Training School for Boys, the Lloyd McCorkle Training School for Boys and Girls and the Juvenile Medium Security Facility unless otherwise indicated.

(b) Subchapter 13 shall be applicable to the Lloyd McCorkle Training School for Boys and Girls.

(c) This chapter shall apply to State sentenced inmates incarcerated at 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).

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.

"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 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 his/her work or program assignment(s) to which an inmate has been assigned as a result of a violation of a minor prohibited act.

“Handbook on Discipline” means a publication 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.

“Institutional Classification Committee” (I.C.C.) shall mean the body within a correctional facility that is responsible for monitoring an inmate’s progress and assigning him/her to appropriate programs or activities.

“Inter-Institutional Classification Committee” (I.I.C.C.) shall mean the body, composed of representatives from different correctional facilities, that is responsible for determining the correctional facility to which an inmate is assigned and approving requests for transfer from one correctional facility to another.

“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.

“Superintendent” shall mean the chief executive officer of any State correctional facility in the Department of Corrections.

“Special Classification Committee (S.C.C.)” shall mean the body composed of representatives from the Prison Complex, Youth Complex and Division of Juvenile Services which consider the transfer of inmates between complexes.

“Superintendent” means a superintendent or an administrator who serves as the Chief Executive Officer of any State correctional facility within the New Jersey Department of Corrections.

“Vroom Readjustment Unit” shall mean an Administrative Segregation and Protective Custody Unit for male inmates located in the Vroom Building, on the grounds of Trenton Psychiatric Hospital.

“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).

10A:4-1.4 Forms

(a) The following forms related to Inmate Discipline are printed by the Bureau of State Use Industries and each 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 shall be reproduced by each facility from originals that are available by contacting the Standards Development Unit.

1. 251-I Chronic Violator Notice—Vroom Readjustment Center and Edna Mahan Correctional Facility for Women;
2. 251-II Chronic Violator Adjudication Notice;
3. 253-I On-The-Spot Disciplinary Report/Adjudication;
4. 255-I Authorization for Prehearing Detention;
5. 256-I Appeal of Disciplinary Decision;
6. 256-II Disposition of Disciplinary Appeal;
7. 257-I Appeal to Office of Administrative Law.

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

SUBCHAPTER 2. PUBLICATION OF RULES

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

(a) At the time of arrival at a correctional facility, each inmate shall be advised in writing of his/her rights and responsibilities, the acts and activities which are prohibited, the rules which must be followed and the disciplinary process within the facility. This information shall be provided in a booklet as part of the admission-orientation program. (See N.J.A.C. 10A:8, Inmate Orientation and Handbook.) 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) All changes in rules shall be posted in housing units and other areas of the facility and incorporated into the next revision of the Handbook on Discipline.

(c) When a 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.

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.

10A:4-2.2 Review of inmate rules

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

10A:4-2.3 Promulgation of rules

The rules of a facility shall be published and promulgated only upon the approval of the Superintendent.

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 3. INMATE RIGHTS AND RESPONSIBILITIES

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

The following rights and responsibilities are found in the inmate handbook which is provided to each inmate as a part of the admission-orientation program of each facility.

Rights

You have the right to be treated respectfully, impartially and fairly by all personnel.

You have the right to be informed of the rules, procedures and schedules concerning the operation of the facility.

You have the right to freedom of religious affiliation and voluntary religious worship within the facility.

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.

You have the right to correspond and visit with family members, friends and other persons where there is no threat to security or order in keeping with the rules and schedules of the facility.

You have the right to unrestricted and confidential access to the courts by correspondence.

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.

You have the right to participate in the use of law library reference materials to assist you in resolving legal problems.

You have the right to a wide range of reading material for educational purposes and for your own enjoyment.

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.

Responsibilities

You have the responsibility to treat others, both employees and inmates, respectfully, impartially and fairly.

You have the responsibility to know and abide by the rules, procedures and schedules concerning the operation of the institution.

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

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.

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.

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

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

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

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

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 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).

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. 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 of electronic equipment and/or computer(s) and/or related device(s) and peripheral(s)
- *.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 gun, firearm, weapon, sharpened instrument, knife or unauthorized tool
- *.203 possession or introduction of any narcotic paraphernalia, drugs or intoxicants not prescribed for the individual by the medical or dental staff
- *.204 use of any narcotic paraphernalia, drugs or intoxicants not prescribed for the individual 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
- *.251 rioting
- *.252 encouraging others to riot
- *.253 engaging in, or encouraging, a group demonstration
- .254 refusing to work, or to accept a program 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 urine analysis
- .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
- .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 or possessing intoxicants or alcoholic beverages
- *.552 being intoxicated
- .553 smoking where prohibited
- .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 Superintendent
- .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

(b) Only acts cited in (a) above preceded by an asterisk are considered to be of sufficient severity to warrant possible transfer to the Vroom Readjustment Unit. Transfer to the Vroom Readjustment Unit shall be effected only when specifically ordered by the Disciplinary Hearing Officer or Adjustment Committee and subsequently confirmed by the Inter-Institutional Classification Committee.

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.

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).

Cross References

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

Case Notes

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, Adult
Diagnostic and Treatment Center (ADTC) and
Edna Mahan Correctional Facility for Women
(EMCF)**

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

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

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

1. Recommending transfer to a more appropriate correctional facility. (This shall be subject to confirmation by the Inter-Institutional Classification Committee.);
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 or a violation of prohibited act .707 which results in undue expenditure of State funds;
6. Recommending loss of privileges such as contact visits for up to one year. Loss of visit privileges shall be imposed only for visit-related disciplinary infractions;
7. Disposal of an item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.4(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).

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 (*) shall 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 (for transfer to prison complex, confirmation by Central Office Special Classification Committee is required);
9. Loss of commutation time up to 365 days, subject to confirmation by the Superintendent (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); and/or
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.

(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 Superintendent (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); and/or,
10. Suspension of one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days.

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall 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 or a violation of prohibited act .707 which results in undue expenditure of State funds;
4. Recommending transfer to a more appropriate correctional facility (subject to confirmation by the Special Classification Committee or the Reception Classification Committee);
5. Increasing custody status;
6. Recommending loss of privileges such as contact visits for up to one year. Loss of visit privileges shall be imposed only for visit-related disciplinary infractions; and/or
7. Disposal of an item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.4(b)2, 3 and 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).

10A:4-5.3 Schedule of sanctions for prohibited acts committed at the New Jersey Training School for Boys, the Juvenile Medium Security Unit and the Lloyd McCorkle Training School for Boys and Girls

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

1. Up to 15 days in Disciplinary Detention;
2. Up to two weeks confinement to room or housing unit;
3. Loss of furlough privileges for up to two months;
4. Loss of one or more correctional facility privileges up to 30 days;
5. Up to 14 hours extra duty, to be performed within a maximum of two weeks;
6. Confiscation;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); and/or,
8. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days.

(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 five days Disciplinary Detention;
2. Up to two weeks confinement to room or boarding unit;
3. Loss of furlough privileges up to two months;
4. Up to 14 hours extra duty, to be performed within a maximum of two weeks;
5. Loss of one or more correctional facility privileges up to 30 days;
6. Confiscation;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); and/or,
8. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days.

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

1. Changing work assignment, housing, program or time goal review;
2. Assigning to a treatment program;
3. Referring to the Special Classification Committee for placement in the Guidance Unit Residential Program;
4. Assessing restitution for damage, alteration or destruction of State property or a violation of prohibited act .707 which results in undue expenditure of State funds;
5. Increasing custody status;
6. Recommending transfer to a more appropriate correctional facility (subject to confirmation by the Classification Committee or the Juvenile Reception Classification Committee); and/or
7. Disposal of an item(s) in accordance with the options set forth in N.J.A.C. 10A:3-6.4(b)2, 3 and 4.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

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).

10A:4-5.4 Limitation on sanctions

(a) All disciplinary charges pending when the inmate begins his/her time in Disciplinary Detention must be adjudicated prior to the completion of his/her Disciplinary Detention time. No inmate may receive more than 15 days in Disciplinary Detention as a result of a single disciplinary charge.

1. If an inmate is found guilty of more than one disciplinary charge arising out of one incident, he/she 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.

2. If an inmate is found guilty of more than one disciplinary charge arising out of separate incidents and occurring before he/she begins serving time in Disciplinary Detention, he/she 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, he/she 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.

SUBCHAPTER 6. CHRONIC VIOLATOR

10A:4-6.1 Scope

The rules in this subchapter apply to all male inmates assigned to adult institutions and female inmates serving prison sentences assigned to the Edna Mahan Correctional Facility for Women.

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

Institutional name change.

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 lockup (30 days), he/she 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.

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

(a) Disciplinary charges lodged against an inmate during the time he or she 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 there are exceptional circumstances.

(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 lockup, 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 his/her mental condition, need for treatment or indication of need for transfer to a psychiatric facility (See N.J.A.C. 10A:11 Inmate Transfers). The psychiatrist or psychologist shall visit the inmate at least once per month during his/her continued confinement to lockup status, and shall file a written report as to the inmate's mental condition and adjustment after each visit.

(e) The inmate shall receive at least 24 hours advance written notice that he/she is under consideration for designation as a chronic violator and that he/she 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) At the discretion of the Disciplinary Hearing Officer, the hearing may be held in front of the inmate's cell, if his/her removal therefrom would constitute a danger to others or to the security and orderly operation of the Unit or correctional facility. The hearing shall be held in accord with N.J.A.C. 10A:4-9 and may be held before the expiration of his/her 30 day term.

(g) If after review of all reports and testimony, the Disciplinary Hearing Officer/Adjustment Committee concludes that the inmate cannot safely be released from lockup at the expiration of the inmate's 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 Institution 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 he or she 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 his/her safe release from lockup status.

(i) During the inmate's confinement as a chronic offender, a social worker and the shift or unit supervisor shall visit him/her daily to monitor his/her 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 person 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.

Amended by R.1990 d.34, effective January 16, 1990.

See: 21 N.J.R. 3240(a), 22 N.J.R. 232(a).

In (a), (b) and (c): deleted references to Vroom Readjustment Unit Director, the Assistant Superintendent in charge of the Administrative Close Supervision Unit at East Jersey State Prison, and the Superintendent of the Edna Mahan Correctional Facility for Women. Replaced references with the "administrator in charge of the Administrative Close Supervision Unit."

10A:4-6.4 Appeal procedure

(a) At the time the inmate is adjudicated a chronic violator, he/she shall be notified of his/her right to appeal the decision of the Disciplinary Hearing Officer to the Assistant Commissioner for Adult Institutions, Department of Corrections. The appeal may be filed at any time during the inmate's continued confinement to lockup, except that appellate review shall not occur more than twice per month.

(b) Prior to rendering a decision on the appeal, the Assistant Commissioner, Division of Adult Institutions, shall confer with the administrator in charge of the Administrative Close Supervision Unit (ACSU) concerning the inmate's conduct. Alternative means for control and treatment shall be explored and utilized, if available and feasible. The inmate shall be notified of the decision of the Assistant Commissioner, Division of Adult Institutions, and the reasons therefor within five working days.

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.

Amended by R.1990 d.34, effective January 16, 1990.

See: 21 N.J.R. 3240(a), 22 N.J.R. 232(a).

In (b): added "Division of Adult Institutions."

Replaced references to "VRU Director, the Assistant Superintendent in charge of ACSU, or the Edna Mahan . . . Superintendent" with "administrator in charge of the Administrative Close Supervision Unit (ACSU)."

SUBCHAPTER 7. ON-THE-SPOT CORRECTION

Public Notice

See: 25 N.J.R. 721(b).

Public Notice

See: 25 N.J.R. 1011(c).

10A:4-7.1 On-the-spot disciplinary report/adjudication

(a) When a violation of a prohibited act that is considered minor has occurred, the staff member witnessing the violation shall prepare Part I of the Form 253-I ON-THE-

SPOT DISCIPLINARY REPORT/ADJUDICATION in triplicate.

1. One copy of the report shall be served upon the inmate; and,
2. Two copies shall be forwarded immediately to the shift supervisor.

10A:4-7.2 Conference

(a) The shift supervisor shall hold a conference within 24 hours of receipt of the disciplinary report. The inmate shall also be afforded the right to appear at the conference with the shift supervisor to review the disciplinary report and to discuss the violation and argue that he/she should not be disciplined or to challenge the proposed sanction.

(b) An inmate may waive the right to attend his/her conference or he/she may forfeit that right if his/her behavior justifies removal from the conference. In either case, the reasons for the inmate's absence shall be documented on Form 253-I.

(c) The shift supervisor shall indicate on part 2 of Form 253-I ON-THE-SPOT DISCIPLINARY REPORT/ADJUDICATION whether the conference was held and enter on the form the other data pertaining to the results of the conference.

(d) At the conclusion of the conference, the inmate shall receive a completed copy of Form 253-I ON-THE-SPOT DISCIPLINARY REPORT/ADJUDICATION. Should the inmate be found guilty, the remaining copy of Form 253-I shall be submitted for placement into the inmate's classification folder. Not guilty determinations shall not be forwarded for inclusion into the inmate's classification folder.

10A:4-7.3 Sanctions

(a) The following are authorized sanctions for ON-THE-SPOT CORRECTIONS:

1. Verbal reprimand;
2. Loss of recreation privileges for a period of no more than five days;
3. Up to four hours of extra work duty;
4. Up to four hours confinement to the room or housing area;
5. Loss of radio or television privileges for a period of no more than five days; and/or
6. Confiscation.

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

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

Added "confiscation" as a sanction for ON-THE-SPOT CORRECTIONS.

10A:4-7.4 Imposition of sanction

If the shift supervisor concurs with the disciplinary report and proposed sanction, the proposed sanction shall be imposed within 24 hours of the conference. If no conference is requested, the sanction shall be imposed within 24 hours of the review by the shift supervisor.

10A:4-7.5 Record of sanction

(a) Form 253-I On-The-Spot Disciplinary Report/Adjudication shall be included in the inmate's classification folder only when an inmate has been found guilty of a minor disciplinary infraction. Information regarding a guilty infraction shall not be entered onto the progress notes or be included in the reports presented to the Parole Board.

(b) Should an inmate be found not guilty of a minor disciplinary infraction, Form 253-I shall be completed but shall not be incorporated into the inmate's classification folder. These records may be retained separately from the inmate's classification folder for accounting and statistical purposes only.

10A:4-7.6 Increasing an on-the-spot correction infraction to a major violation

(a) Should the shift supervisor conclude that a more serious sanction may be appropriate, the infraction shall be handled as a major violation and be referred to the Disciplinary Hearing Officer or Adjustment Committee for a disciplinary hearing and disposition.

(b) When upgrading an infraction to a major violation, the report shall be filed on Form 259. DISCIPLINARY REPORT and contain all the required information. Copies of all relevant documents shall then be forwarded to the Disciplinary Hearing Officer or Adjustment Committee Chairperson with a statement of reasons for the referral and any recommendations.

SUBCHAPTER 8. ADJUSTMENT COMMITTEE OR DISCIPLINARY HEARING OFFICER
10A:4-8.1 Adjustment Committee or Disciplinary Hearing Officer

The disciplinary hearing within a correctional facility shall be conducted by either a Disciplinary Hearing Officer designated by the Commissioner or a Committee of three staff members designated by the Superintendent.

10A:4-8.2 Designation of an Adjustment Committee

(a) The Superintendent shall have the authority to designate an Adjustment Committee only at those correctional facilities where the Commissioner has not designated a Disciplinary Hearing Officer to perform such function, or in extraordinary circumstances when a Disciplinary Hearing Officer is not available.

(b) The Superintendent may appoint persons to serve permanently, or may rotate members, or appoint one or more members to serve permanently and rotate other members.

(c) The Superintendent shall designate one of the Committee members to serve as Chairperson. The Chairperson shall be the presiding officer and he/she shall have the responsibility for the proper operation of the Committee.

10A:4-8.3 Composition of the Adjustment Committee

(a) The Adjustment Committee, other than the Capital Sentence Unit, shall be composed of at least three persons which shall include:

1. A supervisory correctional officer of the rank of Captain or above (or a Lieutenant in case of a Captain's absence);
2. A correctional facility supervisor from the medical, administrative, social work, educational or treatment staff; and
3. A civilian line staff member.

(b) The Adjustment Committee of the Capital Sentence Unit (C.S.U.) shall consist of three members of the Unit Management Team. They are:

1. A Lieutenant in charge of the Unit;
2. A social worker; and
3. A psychologist.

(c) A staff member shall not sit as a member of the Adjustment Committee if it is hearing an incident that he/she has reported and/or investigated.

(d) A staff member witnessing an incident under consideration should not sit as a member of the Adjustment Committee unless the incident has been so widely witnessed that virtually every staff member has witnessed it in whole or in part.

10A:4-8.4 Authority of Disciplinary Hearing Officer or Adjustment Committee

(a) The Disciplinary Hearing Officer or Adjustment Committee shall have the authority to summon witnesses, take testimony, receive documentary evidence and shall have access to all correctional facility records which are relevant and necessary to the adjudication of any disciplinary case.

(b) The Disciplinary Hearing Officer or Adjustment Committee shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence which is not necessary for an adequate understanding of the case. The Committee Chairperson or Disciplinary Hearing Officer shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse or repetitiveness and to insure that the hearing does not develop into an adversary proceeding.

10A:4-8.5 Decisions of the Adjustment Committee

Decisions of an Adjustment Committee at those correctional facilities utilizing such a Committee shall be by majority vote with each member having an equal vote and an equal right to participate in the fact-finding, discussions and deliberations of the Committee.

SUBCHAPTER 9. DISCIPLINARY PROCEDURES**Subchapter Historical Note**

Sections 18 through 27 have been recodified in this subchapter effective February 1, 1988, as R.1988 d.61. See: 19 N.J.R. 1717(b), 20 N.J.R. 294(a).

10A:4-9.1 Disciplinary report

(a) When a violation of a prohibited act as identified in N.J.A.C. 10A:4-4, Inmate Prohibited Acts has occurred, the staff member who witnessed it or who has probable cause to believe that a prohibited act has occurred shall prepare Form 259. DISCIPLINARY REPORT and forward it to the appropriate correctional supervisor.

(b) The correctional supervisor may change the report to an On-The-Spot Correction report or forward it to the Disciplinary Hearing Officer or Adjustment Committee for further disposition.

10A:4-9.2 Notification of inmate

The disciplinary report shall be served upon the inmate within 48 hours after the violation unless there are exceptional circumstances. The report shall be delivered by the reporting staff member or the investigating officer. The report shall be signed by the person delivering it and the date and time of delivery shall be noted. The inmate shall have 24 hours to prepare his/her defense.

Case Notes

Deviation from requirement that inmate have 24 hours to prepare defense should be permitted only in extreme circumstances. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Violation of rule requiring that inmate have 24 hours to prepare defense to disciplinary charges was harmless. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

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:4-9.3 Notification of use of immunity

In all cases, the inmate shall be advised of his/her right to use immunity at any investigative interview and at the

disciplinary hearing. This warning shall consist of a statement that any statements made in connection with the disciplinary hearing or any evidence derived directly or indirectly from those statements shall not be used in any subsequent criminal proceeding. The failure to give this warning by the investigating officer shall not be grounds for dismissing the disciplinary report. The Disciplinary Hearing Officer at his/her discretion or the Adjustment Committee at its discretion may grant a postponement if it is determined that such failure has precluded the inmate from adequately preparing his/her defense at the 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 reference to the Adjustment Committee.

10A:4-9.4 Effect of use immunity

(a) An inmate's failure to invoke use immunity and make a statement in his/her defense may be considered by the Disciplinary Hearing Officer or Adjustment Committee together with the other evidence in decision making.

(b) A finding of guilt at a disciplinary hearing, however, shall not be predicated solely upon an inmate's silence.

10A:4-9.5 Investigation

(a) An investigation of the infraction shall be conducted by the correctional facility within 48 hours of the time the disciplinary report is served upon the inmate.

(b) The Superintendent shall appoint a coordinator of investigations who shall be an employee of supervisory level. The Superintendent may also appoint one or more investigating officers who shall ordinarily be employees of supervisory level who have not been involved in the particular incident to be investigated.

(c) The coordinator shall be responsible for all investigations of disciplinary charges. The coordinator may assign individual investigations to an investigating officer who shall be responsible to the coordinator for completing the assignments.

(d) The investigator shall thoroughly investigate the incident. As part of this investigation, the investigator shall verify that the inmate has received the written charge. The investigator shall also read the charge to the inmate, inform the inmate of the inmate's use immunity rights, take the inmate's plea, and ask if the inmate wishes to make a statement concerning the incident or infraction. The investigator shall take the inmate's statement concerning the

incident. The investigator may talk to witnesses and the reporting staff member and summarize their statements as may be necessary. Comments about the inmate's attitude may be included in the investigatory report.

(e) The inmate may submit to the investigator a written request for inmate witnesses. Written requests will be attached to the record in the case.

(f) The investigator may include comments and conclusions on the inmate's prior record and behavior, the investigator's analysis of any conflicts between witnesses, and the investigator's conclusions of what in fact happened. The inmate shall not receive a copy of the investigation.

(g) The inmate may obtain a copy of inmate witness statements, provided that the Department of Corrections finds that such a disclosure would not compromise correctional facility safety, security, and goals.

Amended by R.1995 d.542, effective October 16, 1995.
See: 27 N.J.R. 2853(a), 27 N.J.R. 3957(a).

Case Notes

Inmate not entitled to inmate witness statements gathered during investigation. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

10A:4-9.6 Requiring further investigation of charges

The Disciplinary Hearing Officer or the Chairperson of the Adjustment Committee may direct a further investigation in any case where he/she is of the opinion that the report is not properly made out or the facts and circumstances are not sufficient to set forth a basic understanding of the incident. The Disciplinary Hearing Officer or Chairperson shall append the supplementary information, in writing, to the original investigation report. The person who supplied the additional information shall sign that section of the report.

10A:4-9.7 Review of postponed cases

Hearings which have been postponed for further investigation shall be reviewed by the Disciplinary Hearing Officer or Adjustment Committee within 48 hours of the postponement if the inmate is in Prehearing Detention or within seven days in all other cases to determine if a further postponement is warranted. Further postponements shall be granted only in exceptional circumstances.

10A:4-9.8 Scheduling hearing

(a) Meetings with the Disciplinary Hearing Officer or the Adjustment Committee shall be convened at such times as are appropriate to carry out the work of the Disciplinary Hearing Officer or Adjustment Committee.

(b) The inmate shall be entitled to a hearing within seven days of the alleged violation, including weekends and holidays, unless such hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Should the seventh day fall on a Saturday, Sunday or holiday, the last day for the hearing shall be the weekday immediately following the weekend or holiday.

(c) Inmates confined in Prehearing Detention shall receive a hearing within three days of their placement in Prehearing Detention, including weekends and holidays, unless there are exceptional circumstances, unavoidable delays or reasonable postponements. Should the third day fall on a Saturday, Sunday or holiday, the hearing shall be held on the weekday immediately following the weekend or holiday.

(d) Inmates confined in Prehearing Detention shall be given priority in scheduling their appearance before the Disciplinary Hearing Officer or Adjustment Committee.

(e) No delays in hearing a case shall be permitted for the purpose of punishment or discipline.

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 hearing

(a) An inmate shall be permitted to be present throughout the 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 his/her presence.

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

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 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/her hearing.

1. The escorting officer shall report the inmate's refusal to appear before the Disciplinary Hearing Officer or Adjustment Committee.

2. The Disciplinary Hearing Officer or Adjustment Committee Chairperson shall make the following notation in the inmate's statement section of the "Adjudication of Disciplinary Charge" form:

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

3. An investigating officer shall return the form to the inmate and shall advise him/her that refusal to appear at the hearing may result in an incomplete understanding by the Disciplinary Hearing Officer or Adjustment Committee of the circumstances surrounding the charges lodged against him/her. If the inmate still refuses to appear at the hearing, he/she shall be requested to sign the "Adjudication" form immediately after the statement noted above in (b)2.

4. In the event the inmate refuses to sign his/her name and still refuses to appear, the form shall be returned to the Disciplinary Hearing Officer or Adjustment Committee Chairperson and the following entry shall be made in the inmate's statement section:

"Inmate refuses to sign _____"
Signature of Investigating Officer

5. The following statement shall be included in the inmate statement section of the Adjudication Form: "No statement taken as the inmate refused to appear at the hearing".

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

(a) When an inmate has been charged with an asterisk offense, he or she shall be afforded the right to request that he or she be represented 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/her own behalf, the inmate may elect to receive the services of a **counsel substitute** or he/she may request that he/she be represented by a staff member.

(c) Where the inmate requests the services of a staff member, the Superintendent or his or her 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".

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 hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal. Repetitive witnesses need not be called. 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 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 his/her 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.

Case Notes

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 presen-

tation 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

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

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 Form.

1. In any case in which the Disciplinary Hearing Officer or Adjustment Committee's decision of guilt is based on evidence which includes confidential information, adjudication shall contain:

i. A concise summary of the facts on which the Disciplinary Hearing Officer or Adjustment Committee concluded that the informant was creditable or his or her information reliable; and

ii. The informant's statement (either in writing or as reported) in language that is factual rather than a conclusion, and based on the informant's personal knowledge of the matters contained in such statement.

2. The Disciplinary Hearing Officer or Adjustment Committee is not permitted to disclose the identity of the informant.

Petitions for Rulemaking.
See: 25 N.J.R. 4517(b), 25 N.J.R. 4675(b), 25 N.J.R. 4796(a), 25 N.J.R. 5365(b), 25 N.J.R. 5706(a), 26 N.J.R. 1162(c).

Law Review and Journal Commentaries

Prisoners—Discipline—Due Process—Polygraphs. P.R. Chenoweth, 136 N.J.L.J. No. 9, 61 (1994).

Case Notes

Action to restore good-time credits remanded to District Court for dismissal as an action seeking federal habeas corpus relief prior to exhaustion of State remedies; "substantial evidence" in disciplinary proceeding held ambiguous, as more frequently taken as a standard of review rather than a burden of proof; exhaustion of State remedies required in light of their ambiguity; (a) disciplinary hearing is substantial evidence of guilt; *Brown v. Fauver*, 819 F.2d 395 (3c 1987).

Inmate, in civil rights action against prison officials, deprived of due process by use of confidential information in increase of his custody status; deprivation not harmless. *Muhammed v. Butler*, 655 F.Supp. 1470 (D.N.J.1987) appeal dismissed 802 F.2d 447.

Disciplinary proceeding violated prisoner's due process rights. *Engel v. New Jersey Dept. of Corrections*, 270 N.J.Super. 176, 636 A.2d 1058 (A.D.1994).

Prisoner should have been allowed to take polygraph test. *Engel v. New Jersey Dept. of Corrections*, 270 N.J.Super. 176, 636 A.2d 1058 (A.D.1994).

Procedural safeguards not used in prison disciplinary proceeding. *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 initial hearing or in presence of newly discovered 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 Alteration 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 and give the inmate the option of a 24 hour postponement to prepare his/her defense against the new charge or adjudicate the new charge 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 suitable for handling as an On-The-Spot Correction, the charge may be referred back to the appropriate Shift Supervisor for handling under N.J.A.C. 10A:4-7, On-The-Spot Correction.

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 shall be individualized in keeping with such factors as the:

1. Offender's past history of correctional facility adjustment;
2. Setting and circumstances for the adverse behavior;
3. Involved inmate's accountability;
4. Underlying reasons for noncompliance with regulations; and
5. Correctional goals set for the inmate.

(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) Whenever an inmate damages or destroys plumbing fixtures, or floods his cell at New Jersey State Prison, he 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.

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 correctional facility's rules or regulations, the Adjustment Committee or Disciplinary Hearing Officer shall enforce the sanction(s) which 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.

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, Security and Control.

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 intra-complex transfer

(a) When it shall appear that an inmate has committed a disciplinary infraction which requires his/her immediate transfer to the general population of another correctional

facility or unit within the complex or the Prehearing Detention Unit of another correctional facility or unit within the complex, 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) The sending facility shall be responsible for preparing the disciplinary charges, conducting the investigation and delivering this material to the receiving facility.

(d) 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.

(e) Inmates who are transferred from one prison to another prison shall be entitled to a prompt review of the transfer by the Inter-Institutional Classification Committee. (See N.J.A.C. 10A:9, CLASSIFICATION PROCESS.)

(f) Inmates who are transferred from one youth correctional institution to another youth correctional institution shall be entitled to a prompt review of the transfer by the Youth Reception Classification Committee. (See N.J.A.C. 10A:9, CLASSIFICATION PROCESS.)

(g) Juvenile residents who are transferred from one juvenile facility to another shall be reviewed by the Juvenile Inter-Institution Classification Committee at its next scheduled meeting. (See N.J.A.C. 10A:9, CLASSIFICATION PROCESS.)

(h) No transfer as described in this subchapter shall be effected unless the Superintendent and either the Assistant Commissioner or Deputy Director (or the Deputy Commissioner if both the Assistant Commissioner and the Deputy 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.

10A:4-9.22 Emergency inter-complex transfer

(a) When it shall appear that an inmate from the Youth Correctional Institution Complex has committed a disciplinary infraction which requires his 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) The sending facility shall be responsible for preparing the disciplinary charges, for conducting the investigation and for delivering the material to the receiving facility.

(d) 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.

(e) Inmates who are transferred from the Youth Correctional Complex to the Prison Complex shall be entitled to a prompt review of the transfer. (See N.J.A.C. 10A:9, CLASSIFICATION PROCESS.)

(f) No transfer as described in this section shall be effected unless the Superintendent and either the Assistant Commissioner or Deputy Director (or the Deputy Commissioner if both the Assistant Commissioner and the Deputy Director are unavailable) shall have determined that there are emergency conditions in the sending correctional facility justifying the transfer.

(g) Transfers of juveniles from the Division of Juvenile Services to the Youth Correctional Institution Complex in the Division of Adult Institutions can only be effected by an approved rule exemption signed by the Superintendent, Assistant Commissioner and Commissioner. (See N.J.A.C. 10A:1-2, General Provisions.)

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

Changed term "variance" to "rule exemption".

10A:4-9.23 Transfer from satellite units

(a) When a minimum security inmate at a satellite unit commits a serious disciplinary infraction requiring transfer for reasons of security to the main correctional facility, he/she shall be provided with a disciplinary hearing at the main facility.

(b) The satellite unit shall be responsible for preparing the disciplinary charges.

(c) The investigation shall be conducted by either the main correctional facility or the satellite unit.

10A:4-9.24 Disciplinary decision

(a) After the hearing has been completed, a written statement of the fact-findings shall be given to the inmate by the Disciplinary Hearing Officer or Adjustment Committee Chairperson. This statement shall include evidence relied upon, the decision and the reason for the disciplinary action taken, unless doing so would, in the discretionary opinion of the Disciplinary Hearing Officer or Adjustment Committee Chairperson, jeopardize correctional facility security. The written statement shall also indicate the reason for refusing to call a witness or to disclose items of evidence whether it be for irrelevance, lack of necessity or other special circumstances presented in individual cases. When an inmate has been denied the opportunity for confrontation and cross-examination, the reason for such denial shall be entered in the record and made available to the inmate.

(b) A copy of the disciplinary decision shall be kept in the Disciplinary Hearing Officer's/Adjustment Committee's records and in the inmate's classification folder unless it has been decided that the inmate has been found not guilty of the charge(s), in which case, the records of the charge(s) shall be expunged from the inmate's classification folder.

(c) If the inmate is adjudicated guilty, the decision shall be entered on the inmate's progress notes and included in reports submitted to the State Parole Board.

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

Added new (c).

10A:4-9.25 Discipline record card (Form 254-I)

For the purpose of assisting the Disciplinary Hearing Officer or Adjustment Committee in determining the appropriate sanction to impose, each correctional facility shall have available at the hearing a Discipline Record Card (Form 254-I) for each inmate. This card shall accompany the inmate should he/she be transferred to another correctional facility.

10A:4-9.26 Expungement

(a) If an inmate shall be adjudicated not guilty on a disciplinary charge, the results of the hearing shall not be entered onto the inmate's progress sheet. In addition, all references to the disciplinary charges (including any entry onto the progress sheet, the disciplinary report, the investigation report and the adjudication sheet) shall be removed from the inmate's classification folder. Copies of the disciplinary report, investigation and adjudication sheet shall be maintained by the correctional facility and the Disciplinary Hearing Officer or Adjustment Committee in the event of judicial review and for statistical and accounting purposes only. These records shall be maintained separately from the inmate's classification folder.

(b) In the event that a finding of guilt is rescinded on appeal and no further disciplinary action is taken, the inmate's records shall be expunged in accordance with the above procedure. Copies of the appeal and the disposition on appeal shall be forwarded to the Disciplinary Hearing Officer or Adjustment Committee for their records.

(c) The provisions of this subchapter shall be applicable to disciplinary reports prepared on or after September 1, 1980.

10A:4-9.27 Reopening a disciplinary hearing

(a) A finding of not guilty shall represent the final disposition of a disciplinary charge. Except when new information is discovered, an inmate may not be recharged with an offense for which he/she has been found not guilty.

(b) New information shall be defined to include only information which was not available at the time of the initial hearing and which could not reasonably have been ascertained in the course of the correctional facility's investigation.

(c) Information which was overlooked as the result of a careless or incomplete investigation shall not be considered new information within the meaning of this subchapter.

10A:4-9.28 Records of disciplinary reports

(a) A result sheet shall be prepared and submitted to the Superintendent or his/her designee no less than weekly containing the following information:

1. The names of the inmates who received disciplinary actions;
2. Inmate numbers;
3. Housing location;
4. Nature of violations;
5. Staff members' names who wrote reports;
6. Disposition of charges; and,
7. Staff members' names who adjudicated the cases.

(b) The result sheet shall be kept on file for two years.

SUBCHAPTER 10. DETENTION PROGRAM

10A:4-10.1 Confinement in Prehearing Detention

(a) An inmate may be placed in Prehearing Detention in those instances where it appears necessary to remove or isolate him/her from the general population until an investigation into his/her alleged misconduct can be completed and a disciplinary hearing can be held pursuant to N.J.A.C. 10A:4-9, Disciplinary Procedures. Confinement in Prehearing Detention shall be deemed necessary only where it appears that, if the inmate remained in his/her existing housing unit, he/she would constitute a threat to other inmates, staff member, himself/herself or to the orderly operations of the correctional facility.

(b) Confinement in Prehearing Detention may consist of placement in the Detention Unit or confinement to his/her room or housing unit.

(c) Factors which may be considered in determining whether confinement in prehearing Detention is warranted include:

1. The inmate has been charged with an assault upon another person and, in the opinion of the correctional staff, there is a substantial possibility that he/she may assault another inmate or staff member;

2. The inmate has been charged with threatening another person and, in the opinion of the correctional staff, there is a substantial possibility that he/she will act on his/her threat;

3. The inmate has been charged with being under the influence of drugs or intoxicants and, in the opinion of the correctional staff, his/her behavioral controls appear to be impaired;

4. The inmate has been charged with inciting others to engage in an assault upon another person, causing serious destruction of property or participating in a group demonstration or work stoppage and, in the opinion of the correctional staff, there is a substantial possibility he/she will continue such incitement;

5. The inmate has been charged with arson or serious destruction of property and, in the opinion of the correctional staff, there is a substantial likelihood that he/she may engage in additional arson or destruction of property. (Whenever the destruction to property consists of flooding the cell or damaging plumbing fixtures, the inmate may be placed in Prehearing Detention in a "DRY" cell—New Jersey State Prison only);

6. The inmate has received a disciplinary charge and, in the opinion of the correctional staff, there is a substantial possibility that he/she will attempt to harm, threaten or intimidate potential witnesses or that he/she will attempt to organize or encourage others to harm, threaten or intimidate potential witnesses;

7. The inmate has been charged with participating in an unauthorized gathering or group demonstration and he/she refuses to abandon his/her participation; and

8. The inmate has been charged with escape or attempted escape and evidence has been produced which indicates that the inmate presents a serious escape risk if permitted to remain in general population.

(d) If an inmate is confined in Prehearing Detention as a result of any of the factors in (c) above, such confinement must be authorized, in writing, by the shift supervisor. Form 255-I Authorization for Prehearing Detention, should be utilized when placing an inmate in Prehearing Detention. A separate form must be completed for each inmate and, wherever possible, the form should be completed prior to placing the inmate in Prehearing Detention. When an emergency exists which precludes completion of the form prior to placement, the form must be completed immediately following placement. After all appropriate parties have signed the form, it should be placed in the inmate's folder. Additional copies of the completed form may be kept on file, for record keeping purposes, in areas designated by the Superintendent and the Director of Custody Operations.

(e) Where possible, a Superintendent, Assistant Superintendent or Director of Custody should review and approve

or disapprove a request to place an inmate in Prehearing Detention.

(f) Any time spent in Prehearing Detention shall be credited against any subsequent sentence imposed.

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

Provisions previously mandated are now suggested thereby providing more flexibility.

Case Notes

Prison inmate was properly placed in detention while awaiting hearing on drug-trafficking charges. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

10A:4-10.2 Placement in Disciplinary Detention

(a) Inmates shall be placed in Disciplinary Detention by the Adjustment Committee or Disciplinary Hearing Officer for a period not to exceed 15 days.

(b) If it shall be determined that the inmate has committed a new major violation during the period of Disciplinary Detention, this time may be extended. In response to the commission of this new infraction, the Adjustment Committee or Disciplinary Hearing Officer shall provide the inmate with a due process hearing pursuant to N.J.A.C. 10A:4-9, Disciplinary Procedures prior to extending the 15 day period of Disciplinary Detention. The period of Disciplinary Detention shall not extend beyond 30 days, except as provided in N.J.A.C. 10A:4-6, Chronic Violator—Vroom Readjustment Unit and Female Inmates at the Edna Mahan Correctional Facility For Women.

(c) In the event of further infractions in the Unit or correctional facility, the Adjustment Committee or Disciplinary Hearing Officer shall consider alternative programs for regulating the inmate's behavior within acceptable limits.

(d) The inmate shall be entitled to appear before the Adjustment Committee or Disciplinary Hearing Officer unless the inmate refuses to appear or his/her presence would pose a threat to the security of the correctional facility. Under no circumstances shall force be used to compel the attendance of the inmate at the hearing. A refusal to appear shall be entered upon the Adjudication of Disciplinary Charge form by the Disciplinary Hearing Officer or Adjustment Committee Chairperson.

(e) The time an inmate spends in Disciplinary Detention shall be proportionate to the offense committed, taking into consideration the inmate's prior conduct, his/her specific program needs and other relevant factors.

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

10A:4-10.3 Separate facilities

(a) Facilities utilized to separate inmates from the general population shall be physically separate so that materials allowed inmates in one section cannot be passed to inmates in Disciplinary Detention.

(b) An inmate may be confined to his/her room or housing unit to serve his/her Disciplinary Detention under appropriate circumstances (for example, overcrowding, riots, fires, etc.). All requirements of the Detention Program shall apply when the inmate serves his/her Disciplinary Detention separate from the general population or when his/her Disciplinary Detention is served in his/her room or housing area.

Case Notes

Disciplinary rules do not give rise to creation of a "liberty interest" requiring a prisoner to become part of the general prison population; no violation of due process involved in the solitary confinement of a prisoner as a result of prison overcrowding (citing former N.J.A.C. 10:34-1.7, 10:35-6, 49, and 69.1 through 70.6). *Gibson v. Lynch*, 652 F.2d 348 (3rd Cir.1981) certiorari denied 103 S.Ct. 3123, 462 U.S. 1137, 77 L.Ed.2d 1375 (1983).

10A:4-10.4 Ventilation, heating, lighting and sanitation in Detention Program

(a) Ventilation and reasonable temperature shall be maintained on a 24 hour basis. Light of sufficient intensity shall be maintained to allow visual observation of inmates at all times. When admitted, inmates shall not be placed in cells that lack cleanliness or have malfunctioning sanitary fixtures or lights. Daily inspections shall be made to insure the cells are kept secure, clean and sanitary.

(b) Toilets that are flush controlled from outside the cells shall be flushed as often as necessary to maintain good sanitary conditions.

(c) Inmates confined to "DRY" cells shall be permitted to shower at least once every three days. Drinking water shall be available upon request.

10A:4-10.5 Visual observation

Inmates in Disciplinary Detention shall be observed regularly and frequently by custodial staff. There shall be no physical obstruction to visual observation of inmates at any time. Full or partial curtains shall not be permitted over the cell door.

10A:4-10.6 Personal items

(a) All inmates shall be admitted to Disciplinary Detention dressed in normal correctional clothing after a thorough search for contraband except that:

1. No belts shall be permitted; and
2. Shoestrings may be removed or shoes may be replaced with cloth or paper slippers at the discretion of the Superintendent.

(b) Each inmate shall be provided with the following items for use in the cell to the same extent as such items are provided for inmates in the general population:

1. Clothing required for use in the cell;
2. Bedding and mattresses;
3. Personal hygiene supplies (including soap, deodorant, toothbrush and toothpaste or powder, towel and toilet paper);
4. Utensils and supplies for adequately cleaning the cell;
5. Eyeglasses;
6. Writing materials; and
7. Legal materials.

10A:4-10.7 Withdrawal of personal items or special activities

(a) Whenever in the judgment of the supervisor of the Unit there shall be imminent danger that an inmate will destroy any item or will do injury to himself/herself, to another person or to property with any item, the supervisor may direct that the inmate be deprived of the item, if practicable. In such case, however, every effort shall be made to supply a substitute for the item or to permit the inmate to use the item under the supervision of an officer.

(b) Whenever an inmate shall be deprived of any usually authorized item or activity, a written report shall be immediately forwarded to the Superintendent or his/her designee, identifying the inmate, the item or activity of which he/she has been deprived and the reason thereof.

(c) Whenever the circumstances are such that all the inmate's clothing is removed, the Superintendent or his/her designee shall be contacted immediately for approval of this action. The written report outlined in N.J.A.C. 10A:4-10.7(b) shall be sent to the Superintendent or his/her designee.

(d) Arrangements shall be made for a physician or other appropriate staff to visit the inmate as soon as possible after the withdrawal of personal item(s) or activities.

(e) In all cases, the item or activity shall be restored to the inmate as soon as restoration appears to be consistent with safety.

(f) No inmate shall ever, under any circumstances, be deprived of any of these items or activities for the purposes of punishment or discipline.

10A:4-10.8 Medical and psychiatric services

(a) Inmates in Disciplinary Detention shall receive a daily visit by a member of the medical staff which can be a nurse,

paramedic, doctor or other authorized health care personnel.

(b) Medical and psychiatric emergencies shall be attended to immediately. Requests for medical attention for inmates in nonemergency situations shall be responded to by the physician, or a medical person designated by him/her within 24 hours.

(c) Whenever it shall appear that an inmate is suffering from an emotional or psychiatric disturbance, arrangements shall be made for a psychiatric or psychological evaluation.

10A:4-10.9 Emergency evacuation

Each correctional facility shall develop a written evacuation plan in case of fire or other emergencies.

10A:4-10.10 Visits by social work and correctional supervisory staff

(a) A member of the correctional facility social work staff shall visit the inmates in Disciplinary Detention daily to determine any emergencies or unusual needs of the inmates.

(b) Inmates shall receive at least daily visits from the senior correctional supervisor in charge of the Disciplinary Detention area.

10A:4-10.11 Chaplain services

(a) Inmates confined in Disciplinary Detention shall not be denied pastoral services. The correctional facility chaplain or an outside religious leader approved by the chaplain and Superintendent to conduct religious activities shall visit this area in response to an inmate's written request to provide religious counseling or other pastoral services.

(b) The inmate handbook shall state that inmates in Close Custody Units may request a visit by the chaplain or other approved religious group leader.

10A:4-10.12 Food

(a) Disciplinary Detention or Prehearing Detention inmates shall be served the normal correctional facility meals on the menu of the day or such special diet as shall be prescribed.

(b) Disposable utensils shall be used when necessary.

10A:4-10.13 Correspondence, visits and telephone calls

(a) Inmates in Disciplinary Detention shall have the same correspondence opportunities that are available to inmates in the general population (see N.J.A.C. 10A:18, MAIL, VISITS AND TELEPHONE).

(b) Inmates in Disciplinary Detention shall not be provided with visit or telephone opportunities while in Disciplinary Detention with the exception of legal telephone calls.

1. The Superintendent or his/her designee may authorize a special visit or telephone call for an inmate when there are compelling reasons to do so.

2. Every effort shall be made to notify expected social visitors of the restriction on ordinary visiting procedures prior to the next regularly scheduled visiting period. If ample time for correspondence shall exist, the burden of this notification shall be placed on the inmate.

10A:4-10.14 Grooming, showering and shaving

Barbering and hair care services shall be provided in the Disciplinary Detention area, as needed. Each inmate shall be given the opportunity to shave and shower not less than two times a week, unless permitting these activities would present an undue security hazard. Correctional facilities capable of providing for more frequent shaving and showering shall do so not less than three times per week.

10A:4-10.15 Reading material

Inmates in Disciplinary Detention shall be permitted to retain in their possession an amount of reading material that is consistent with the maintenance of security and the orderly operation of the Unit. Reading material not permitted in Disciplinary Detention is outlined in N.J.A.C. 10A:18, MAIL, VISITS AND TELEPHONE.

10A:4-10.16 Recreation

Where conditions permit, correctional facilities shall provide recreation outside the cells at least five hours per week.

10A:4-10.17 Records in Disciplinary Detention

(a) The following information on inmates confined in Disciplinary Detention status shall be available in the Unit for the use of the custodial staff:

1. Inmate's name;
2. Number;
3. Housing location;
4. Unit;
5. Cell or room assignment;
6. Date admitted;
7. Disciplinary charge leading to Disciplinary Detention;
8. Expiration date of Disciplinary Detention; and
9. Special medical or psychiatric problems.

(b) Visits by medical, psychiatric, social work or correctional supervisory staff and all unusual behavior shall be noted in the Unit log book together with the time and date.

10A:4-10.18 Correctional facility procedures

(a) Each correctional facility shall develop written procedures and post orders consistent with this subchapter.

(b) The written procedures and post orders for the Detention Program shall be submitted to the Office of the Deputy Commissioner for review and approval on or before January 31 of each year.

SUBCHAPTER 11. APPEALS OF DISCIPLINARY DECISIONS

10A:4-11.1 Time limit to file an appeal

(a) The inmate shall be advised in writing by the Disciplinary Hearing Officer or Adjustment Committee of the opportunity to appeal to the Superintendent or his/her designee at the time he/she is provided with the disciplinary decision.

1. Inmates within the main correctional facilities of the Division of Adult Institutions shall have 48 hours from receipt of the disciplinary decision to make such appeal.

2. Inmates in the New Jersey Training School for Boys and the Juvenile Medium Security Unit shall have 72 hours in which to appeal.

3. Inmates in satellite units of the prison complex or youth complex shall have 48 hours to present the appeal form to a designated individual at the unit who shall deliver it to the Superintendent.

(b) In all cases, the Superintendent or his/her designee may, for good cause shown, accept appeals submitted after the prescribed deadline.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

Case Notes

Inmate's federal court claim that disciplinary proceedings violated his constitutional rights was barred under doctrine of claim preclusion. *Rodziewicz v. Beyer*, D.N.J.1992, 809 F.Supp. 1164.

10A:4-11.2 Processing appeal

(a) The inmate shall use the Appeal of Disciplinary Decision Form 256-I.

(b) Upon submission of the appeal, the person accepting the appeal form shall sign, date and note the time on the original and carbon copies in the inmate's presence. The carbon copy shall be given to the inmate.

(c) The appeal form shall be brought to the Superintendent's office during the same shift on which it is received from the inmate.

(d) All appeals shall be considered by the Superintendent of the correctional facility in which the charge was received.

(e) If the inmate has been transferred before the appeal is heard, the appeal form shall be delivered to the Superintendent of the correctional facility from which the charges were issued within 48 hours of its receipt from the inmate.

(f) Inmates unable to complete an appeal form may request assistance in preparing the form from a fellow inmate. Where the appeal has been completed by an inmate other than the inmate who received the charge, the name of the preparer should appear on the form.

Case Notes

Due process requires only that disciplinary proceedings and administrative appeals viewed as whole not lead to constitutionally tainted result. *Hyson v. Neubert*, D.N.J.1993, 820 F.Supp. 184.

10A:4-11.3 Suspension of sanctions pending appeal

(a) Inmates who wish to have their sanctions suspended pending a decision on their appeal, must make a request to the Superintendent or his/her designee for this consideration. If this request is not made, then no action shall be taken to suspend any sanctions received in the disciplinary hearing.

(b) If requested, a disciplinary sanction shall not be suspended pending appeal unless the inmate establishes by clear and convincing evidence that his/her release from Disciplinary Detention will not jeopardize correctional facility security and order, that witnesses or victims will not be intimidated and that he/she will not engage in any action which could otherwise interfere with the administration of justice.

(c) In those cases where the Superintendent grants the inmate's request for release from Disciplinary Detention pending appeal, the release shall not preclude the correctional facility from denying outside privileges; e.g., furloughs for the inmate even though other disciplinary sanctions are suspended pending the outcome of the appeal.

10A:4-11.4 Investigation of appeal

(a) The Superintendent of his/her designee shall order an independent investigation of the charge and proceedings of the hearing in those instances in which the inmate's appeal and information furnished after the initial disciplinary hearing appear to warrant such action.

(b) The Superintendent shall have the option to request a total or partial reinvestigation of the charge or proceedings of the hearing. The reinvestigation may be conducted by any person or unit designated by the Superintendent; pro-

vided, however, that the individual shall have had no contact with the issuance of the first investigation of the charge.

(c) The reinvestigation may include any of the components of the original investigation such as reinterviewing witnesses, inmates and officers, reevaluating reports and reexamining evidence.

(d) If on the basis of new evidence, the Superintendent finds serious issues of credibility, he/she may also request a polygraph examination as part of the reinvestigation. Such requests shall be in accordance with N.J.A.C. 10A:3, SECURITY AND CONTROL.

(e) In reviewing an appeal the following factors shall be considered:

1. Compliance with the subchapters on inmate discipline which prescribe procedural safeguards;
2. Whether the decision of the Disciplinary Hearing Officer or Adjustment Committee was based upon substantial evidence;
3. Whether the sanction imposed was proportionate to the offense in view of the inmate's recent disciplinary history and present custody status; and/or,
4. Whether extenuating circumstances were considered.

Law Review and Journal Commentaries

Prisoners—Discipline—Due Process—Polygraphs. P.R. Chenoweth, 136 N.J.L.J. No. 9, 61 (1994).

Case Notes

Prisoner should have been allowed to take polygraph test. *Engel v. New Jersey Dept. of Corrections*, 270 N.J.Super. 176, 636 A.2d 1058 (A.D.1994).

10A:4-11.5 Disposition of appeal

(a) At the conclusion of the Superintendent's review of an appeal, one of the following actions shall be taken:

1. The Superintendent or his/her designee shall rescind the decision of the Disciplinary Hearing Officer or Adjustment Committee if the review and/or investigation indicates that the evidence fails to demonstrate that any violation was committed, or he/she determines that there was such a failure to adhere to proper procedures at the initial hearing that the inmate had been irreparably prejudiced and would be unable to present a defense at a rehearing. No further disciplinary action shall be taken. The copies of the infraction and all notations concerning the infraction shall be promptly expunged from the inmate's records.

2. The Superintendent or his/her designee shall rescind the original decision and order a new hearing if the review and/or investigation indicates that procedural safeguards prescribed for inmate disciplinary hearings were

not followed, or if new evidence not available at the original hearing is revealed. If a new hearing is ordered, there shall be no increase in the severity of the sanctions unless new evidence warrants such action.

3. The Superintendent or his/her designee shall downgrade the sanctions if the review and/or investigation indicates that the sanction is disproportionate to the offense in accordance with factors enumerated in N.J.A.C. 10A:4-9, Disciplinary Procedures.

4. The Superintendent or his/her designee shall order a new hearing if the review and/or investigation indicates that the evidence does not support the findings of the Adjustment Committee or Disciplinary Hearing Officer but would support some form of disciplinary action for a lesser included offense than that with which the inmate was charged.

5. The Superintendent or his/her designee, in all other cases, shall uphold the decision of the Adjustment Committee or Disciplinary Hearing Officer and make no change in the penalty.

(b) In no event shall there be an increase in severity of sanctions issued by the Adjustment Committee or Disciplinary Hearing Officer solely as a result of the review of the appeal.

Case Notes

Inmate's federal court claim that disciplinary proceedings violated his constitutional rights was barred under doctrine of claim preclusion. *Rodziewicz v. Beyer*, D.N.J.1992, 809 F.Supp. 1164.

10A:4-11.6 Policy regarding rehearings

(a) If a rehearing is required, the inmate shall be accorded all procedural rights applicable to a disciplinary hearing.

(b) The hearing body may be the same as that which heard the original charge unless the composition of that body was the procedural defect requiring the rehearing or unless there is a substantial likelihood of prejudice.

1. In the absence of exceptional circumstances, a rehearing shall be scheduled no more than 14 days from the date of the original hearing.

2. When a disciplinary sanction has not been suspended pending the outcome of the appeal, a rehearing shall be scheduled within 24 hours of the Superintendent's decision to have the matter reheard, excluding weekends and holidays, in the absence of exceptional circumstances.

(c) Rehearings may be appealed and the Superintendent may exercise the same options as provided for in N.J.A.C. 10A:4-11.5.

10A:4-11.7 Notification of inmate on appeal results

(a) In all cases, the inmate shall be notified in writing of the results of the review of his/her appeal and the reasons therefor.

1. If an inmate is being held in Disciplinary Detention which resulted from disciplinary action, the written decision on the appeal shall be given to the inmate within 72 hours of receipt of the appeal, excluding weekends and holidays.

2. In all other cases, or if the sanctions have been suspended, the Superintendent or his/her designee shall respond in writing to the inmate within seven working days of receipt of the appeal. Form 245-II, Disposition of Disciplinary Appeal shall be used for this purpose.

(b) Copies of the decision shall also be distributed to the Adjustment Committee or the Disciplinary Hearing Officer and the inmate's file. Other copies may be distributed as determined to be necessary by the Superintendent.

(c) Only for reasons of significant importance may a Superintendent or his/her designee extend the time limit to act on an appeal. In such case, the inmate shall be notified in writing within the prescribed time period that action on his/her appeal has been extended. Where possible, the reason for the extension shall be explained in general terms to the inmate.

10A:4-11.8 Expungement

Expungement of a disciplinary charge when an inmate has been found not guilty, shall be done in accordance with N.J.A.C. 10A:4-9, Disciplinary Procedures.

10A:4-11.9 (Reserved)

Repealed by R.1988 d.543, effective November 21, 1988. See: 20 N.J.R. 496(b), 20 N.J.R. 2928(a).

This section was "Appeal to the Office of Administrative Law".

SUBCHAPTER 12. (RESERVED)

Historical Note

This subchapter "Appeal to Office of Administrative Law (OAL)" became effective July 21, 1986 as R.1986 d.283. See: 18 N.J.R. 27(a), 18 N.J.R. 1465(a). The subchapter was repealed because of the expiration of N.J.S.A. 52:14F-8(a). The repeal became effective November 21, 1988 as R.1988 d.543. See: 20 N.J.R. 496(b), 20 N.J.R. 2928(a).

SUBCHAPTER 13. (RESERVED)

Historical Note

All provisions of this Subchapter 13, Resident Discipline Program for the Training School for Boys at Skillman became effective July 21, 1986 as R.1986 d.283. See: 18 N.J.R. 27(a), 18 N.J.R. 1465(a). This subchapter was repealed because the Department of Corrections adopted new rules in Subchapter 4, Inmate Discipline, in the July 21, 1986 register. Subchapter 13 was adopted as part of those rules. The Training School for Boys at Skillman will now implement the disciplinary process. Since the disciplinary process will no longer be applicable at Skillman, the rules have been repealed effective June 6, 1988 as R.1988 d.239. See: 20 N.J.R. 496(a), 20 N.J.R. 1224(a).