

LAW AND PUBLIC SAFETY

JUVENILE JUSTICE COMMISSION

Juvenile Discipline

Proposed New Rules: N.J.A.C. 13:101

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable Peter C. Harvey, Attorney General and Chair, Markus Green, Attorney General's Designee.

Authority: N.J.S.A. 52:17B-170e; 52:17B-171; 52:17B-176; 52:17B-178; and 52:17B-182 to 186.

Calendar Reference: See Summary below for explanation of exception to calendar requirements.

Proposal Number: PRN 2004-171.

Submit written comments by July 2, 2004 to:

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The agency proposal follows:

Summary

The Juvenile Justice Commission is the single State agency responsible for operating State services and sanctions for juveniles involved in the juvenile justice system. The Commission was created pursuant to P. L. 1995, c.280, codified at N.J.S.A. 52:17B-169 et seq., and is the agency responsible for implementing the comprehensive juvenile justice reform program defined in that law. The juvenile justice reform legislation transferred to the Commission authority formerly divided among three

separate departments: the Department of Corrections, the Department of Human Services and the Department of Law and Public Safety. That consolidation was designed to, among other things, permit effective response to acts of delinquency by juvenile offenders, maximize efforts to meet the special needs of the juvenile justice population and promote the successful reintegration of juvenile delinquents into the community. See N.J.S.A. 52:17B-169. The Juvenile Justice Commission became operational in June, 1996.

The Commission operates six secure institutions, 15 community residential centers and six day programs at locations throughout the State. The Commission also has a juvenile parole and transitional services component. The Commission employs approximately 1,464 people at its various secure and community residential facilities and houses an average of 1,278 juveniles at those facilities on a daily basis. A behavior management program which includes well defined disciplinary procedures and sanctions for engaging in prohibited conduct is an important tool for maintaining safety and order in these many facilities and for encouraging prosocial behavior among juveniles housed there.

Pursuant to its enabling legislation, see N.J.S.A. 52:17B-177b(3), discipline of incarcerated juvenile offenders in the custody and care of the Commission has been governed by rules promulgated by the Department of Corrections at N.J.A.C. 10A:4. Those rules expired on April 26, 2001 and were thereafter readopted by the Department of Corrections with amendments, effective July 2, 2001.

The Department of Corrections' primary responsibility is for adult offenders. The Commission's creation emphasized the need to focus attention and resources on the

care, custody and special rehabilitative needs of juvenile delinquents which differ from those of adult offenders. By this proposal, the Commission seeks to establish a behavior management system tailored to meet the disciplinary and rehabilitative goals specific to juvenile offenders serving a term of incarceration in a Commission facility (“committed juveniles”). Supervision practices, rehabilitative intervention strategies and sanctions that are appropriate to juvenile offenders distinguish the Juvenile Justice Commission’s proposed rules from Department of Corrections rules for Inmate Discipline at N.J.A.C. 10A:4.

For instance, under the proposed new rules at N.J.A.C. 13:101, disciplinary hearings will no longer be conducted by a single Department of Corrections’ Disciplinary Hearing Officer, but by a Treatment Team of four Commission supervisors housed at certain secure facilities. The Treatment Team at each facility will consist of the Superintendent, the Director of Custody Operations, the facility’s Supervisor of Education and the facility’s Supervisor of Social Services. Each may appoint a designee of supervisory rank to act in his or her place. The advantages of this approach are: (1) discipline is imposed and sanctions are determined with input from experienced juvenile justice professionals in multiple disciplines which will better serve the Commission’s rehabilitative goals for juvenile offenders; and (2) the Treatment Team’s familiarity with the internal workings of the facility and the juveniles housed there will result in sanctions tailored to meet the needs of each juvenile while promoting safety and order in the facility.

The newly proposed rules at N.J.A.C. 13:101 define those behaviors that will result in discipline for juveniles incarcerated in a Commission facility, the sanctions that

may be imposed for violations and procedures, including appeals, that ensure that juveniles receive due process when discipline is sought or imposed. The proposed rules define mechanisms for responding to both minor and more serious disciplinary matters and procedures to insure that the discipline imposed is proportionate to the offending conduct. The proposed rules establish the procedure by which juveniles will be notified of behaviors that constitute violations of Commission rules, and of their rights and responsibilities while residing in a Commission facility. The proposed rules also establish detailed procedures for placing and holding a juvenile in isolation pending a disciplinary hearing or as a disciplinary sanction.

A description of the subchapters follows.

Subchapter 1 sets forth the general provisions, definitions and the scope of the chapter; the chapter applies to all juveniles serving a term of incarceration in a Juvenile Justice Commission facility.

Subchapter 2 establishes the responsibility of the Commission to provide a Handbook on Discipline and a Juvenile Handbook to each juvenile at the time of admission to a Commission facility. These publications describe the Commission's disciplinary rules and procedures, a juvenile's rights and responsibilities while residing in a Commission facility, rules that are specific to the facility to which a juvenile is assigned, and a description of the services available at the facility.

Subchapter 3 establishes the rights and responsibilities of juveniles and requires those rights and responsibilities to be set forth in the handbooks provided to the juvenile at the time of his or her admission into the facility.

Subchapter 4 defines behaviors that will result in discipline and establishes

mechanisms for responding to violations. The violations are organized into categories (groups) based on the nature of the prohibited behavior. For example, the category “Assaultive and Aggressive Behavior” includes, but is not limited to, assault, fighting, assault with a weapon, and throwing bodily fluids. This type of categorization allows for easier recall of the general types of behaviors that are prohibited and ease of reference when identifying in disciplinary reports the specific violation committed. Each violation is clearly defined to ensure juveniles understand which behaviors are prohibited and to ensure that when reporting disciplinary matters the violation identified and recorded accurately reflects the nature of the prohibited behavior. N.J.A.C. 13:101-4.3 requires that violations which constitute crimes as defined at N.J.S.A. 2C:1-1 et seq. be referred to the Prosecutor of the county in which the facility is located.

Subchapter 5 establishes procedures for responding quickly to violations that are considered minor in nature and appropriate sanctions, immediate corrective actions, for such violations. A staff member witnessing a violation is required to submit a written report of the violation to a supervisor along with a sanction recommendation immediately following the alleged violation but in no event later than the end of the shift on which the alleged violation occurred. A copy of this report must be provided to the juvenile. A juvenile may contest the charge or the proposed corrective action via a conference with the supervisor, which must be held before the end of the shift on which the charge was received. This subchapter sets forth the supervisor’s dispositional options which include referring the matter to a Treatment Team for a formal disciplinary hearing when it appears that a more serious sanction may be appropriate.

Subchapter 6 defines procedures for responding to more serious disciplinary

infractions. Hearings will be conducted in all such matters by a Treatment Team, whose composition and authority is set forth at N.J.A.C. 13:101-6.1. The rules provide for a separate Treatment Team to be constituted at each of the following four facilities: New Jersey Training School (NJTS), Juvenile Reception and Assessment Center (JRAC), Juvenile Medium Security Facility (JMSF) and Juvenile Female Secure Care and Intake Facility (JFSCIF). All committed juveniles charged with a violation, other than those handled by immediate corrective action (minor disciplinary matters), shall have a hearing at one of those four facilities. N.J.A.C. 13:101-6.20 sets forth the procedures governing the transfer of juveniles to one of those facilities to receive a disciplinary hearing.

Subchapter 6 also defines procedures governing the conduct of the hearing and related matters. Those procedures provide for the preparation and service of the written charge; a juvenile's right to use immunity; the investigation of the charge; the expeditious scheduling of disciplinary hearings; in absentia hearings; and the conduct of hearings, including the assistance a juvenile may receive in the presentation of his or her case, the opportunity to call witnesses and present evidence, confrontation and cross examination, the evidence required for a finding of guilt, the sanctions that may be imposed, the limitations on those sanctions, suspension of sanctions and the preparation of a written decision. Subchapter 6 also sets forth recordkeeping requirements and procedures for expungement of records.

Subchapter 7 defines the process by which a juvenile may appeal discipline imposed by a Treatment Team. The subchapter sets forth the time limits for taking an appeal, the procedures for investigating matters on appeal when appropriate, factors to

be considered in evaluating an appeal and dispositional options. Procedures for requesting a stay of sanctions pending appeal, for notifying a juvenile of the results of an appeal and for conducting rehearings are also set forth in this subchapter.

Subchapter 8 establishes the factors that must be considered in deciding whether to place a juvenile in isolation pending a disciplinary hearing or as a sanction. The subchapter defines those areas where a juvenile may be held in isolation and sets forth the conditions which must be maintained in those areas as well as the activities and services which must be provided while a juvenile is held in isolation. There is a cross-reference to N.J.A.C. 13:101-6.17 which establishes strict limitations on the length of time a juvenile may be held in isolation.

The proposal is not subject to the calendar requirements of N.J.S.A. 52:14B-3(4) and N.J.A.C. 1:30-3-3(a) because the agency is providing a 60 day comment period.

Social Impact

N.J.S.A. 52:17B-169 et seq. includes among the goals of the Juvenile Justice Commission, protecting the public, holding juvenile offenders accountable for their delinquent behavior and providing rehabilitation to juvenile offenders. The rules proposed at N.J.A.C.13:101, Juvenile Discipline, will assist the Commission in achieving these goals.

Throughout the day to day operation of a Juvenile Justice Commission facility, staff members are expected to ensure stability, its orderly operation and the safety of the juveniles, staff and the public. This is accomplished by establishing structure, staff interacting with juveniles in a consistent and fair way and correcting prohibited behavior.

Through these tools, behavior is managed. The provision of guidance, direction and sanctions appropriate to an offending juvenile's behavior holds him or her accountable for the behavior, helps the juvenile learn from his or her mistakes and modify his or her behavior, thereby facilitating rehabilitation. The proposed new rules at N.J.A.C. 13:101, Juvenile Discipline, will assist the staff in their work with the juveniles and will help juveniles to modify their behavior.

The proposed new rules at N.J.A.C. 13:101 will also protect juveniles' rights related to consequences for prohibited behavior by notifying them at admission of the rules, potential sanctions, how disciplinary matters are processed and ensure that they receive due process when hearings are conducted in response to allegations of committing violations. The disciplinary process proposed in N.J.A.C.13:101 ensures a fair and equitable process for responding to infractions of facility behavioral expectations.

Economic Impact

The Juvenile Justice Commission does not anticipate any economic impact as a result of the proposed new rules. Any increased administrative costs which may occur, incidental to implementation of these rules, will be absorbed in the Commission's general budget. There will be no economic impact on the current employees of the Juvenile Justice Commission.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are

not being adopted under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Jobs Impact

The proposed new rules will not result in an increase or decrease in the number of jobs in New Jersey.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed new rules will impose no reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules affect employees and juveniles under the supervision of the Juvenile Justice Commission and will have no effect on small businesses. Therefore, a regulatory flexibility analysis is not required.

Smart Growth Impact

The proposed new rules will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

CHAPTER 101
JUVENILE DISCIPLINE

SUBCHAPTER 1. GENERAL PROVISIONS

13:101-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish a disciplinary system and corresponding disciplinary policies that promote prosocial behavior and discourage negative behavior among juveniles in Juvenile Justice Commission facilities, and that provide staff with behavior management tools necessary for maintaining safety and security in the facilities;
2. Establish a comprehensive code of violations that explicitly describes behaviors prohibited in Juvenile Justice Commission facilities, so that proscribed behavior may be known by both juveniles and staff;
3. Establish administrative due process safeguards in the disciplinary process and impartial and fair disciplinary procedures, and by so doing, foster morale among juveniles and staff with regard to the disciplinary process; and
4. Establish a range of authorized sanctions for responding to inappropriate

behavior and rules for imposing such sanctions.

13:101-1.2 Scope

This chapter shall apply to all committed juveniles in Juvenile Justice Commission facilities.

13:101-1.3 Definitions

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

"Bodily fluid" means saliva, blood, urine, feces, seminal fluid or any other fluid produced by the body.

"Bodily injury" means physical pain, illness or any impairment of physical condition.

"Chief Investigator, Office of Investigations" means the Commission staff member who heads the unit responsible for conducting investigations within the Commission at the direction of the Executive Director.

"Commission" means the New Jersey Juvenile Justice Commission.

"Committed juvenile" or "juvenile" means an individual who has been adjudicated delinquent and sentenced to a term of incarceration to be served under the custody of the New Jersey Juvenile Justice Commission. For the purpose of this chapter, "committed juvenile" or "juvenile" shall only refer to those individuals residing in a Juvenile Justice Commission facility.

"Counsel substitute" means an individual, such as a juvenile paralegal, teacher or social worker, who represents and defends a juvenile at a disciplinary hearing which is conducted within a facility under the jurisdiction of the Juvenile Justice Commission.

"Custody status" means the degree of supervision that is assigned to a juvenile in a Commission facility.

"Director of Custody Operations" means the Commission staff member at each secure facility of the New Jersey Juvenile Justice Commission responsible for supervising the custody work force.

"Director of Operations" means the Commission staff member responsible for the overall operation and supervision of all Juvenile Justice Commission facilities which house juveniles.

"Executive Board" means the Executive Board of the New Jersey Juvenile Justice Commission.

"Executive Director" means the Executive Director of the New Jersey Juvenile Justice Commission.

"Extra work duty" means a task in addition to those related to a juvenile's work or program assignment to which a juvenile has been assigned as a sanction for committing a violation.

"Facility" means any facility operated by the New Jersey Juvenile Justice Commission which houses juveniles.

"Gang" means a group of juveniles possessing common characteristics, interests and goals which serve to distinguish these juveniles from other juveniles or groups of

juveniles and which, as a discrete entity, poses a threat to the safety of staff, other juveniles, the community or to the orderly operation of the facility.

"Handbook on Discipline" means a handbook prepared by the New Jersey Juvenile Justice Commission and provided to juveniles which contains a juvenile's rights and responsibilities, the acts and activities which are prohibited and the disciplinary procedures and sanctions imposed.

"Institutional Classification Committee (I.C.C.)" means that group of staff members at each of the following facilities that is responsible for monitoring a juvenile's progress and assigning the juvenile to appropriate programs or activities within the facility: New Jersey Training School (NJTS), Juvenile Reception and Assessment Center (JRAC), Juvenile Medium Security Facility (JMSF) and Juvenile Female Secure Care and Intake Facility (JFSCIF).

"Isolation unit" means an area within each of the following facilities designated for assigning juveniles who are removed from the general population for disciplinary or administrative reasons: NJTS, JRAC, JMSF and JFSCIF.

"JFSCIF" means Juvenile Female Secure Care and Intake Facility.

"JMSF" means Juvenile Medium Security Facility.

"JRAC" means Juvenile Reception and Assessment Center.

"Juvenile Handbook" means a booklet prepared by the New Jersey Juvenile Justice Commission and provided to juveniles which contains a facility's rules, procedures and information about a facility's services and programs.

"LSLA" means Life Skills and Leadership Academy.

"NJTS" means New Jersey Training School.

"Office of Investigations" means the unit responsible for conducting investigations within the Commission at the direction of the Executive Director.

"Sanction" means a prescribed penalty that is imposed for a violation.

"Secure facility" means any New Jersey Juvenile Justice Commission facility which houses juveniles and employs custody personnel (N.J.S.A. 52:17B-174) to provide security.

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

"Shift supervisor" means the juvenile corrections officer of supervisory rank in those facilities employing custody personnel who is responsible for the maintenance of security during a tour of duty.

"Superintendent" means the chief executive officer of any Commission facility

which houses juveniles.

“Treatment Team” means the committee within each of the following facilities that is authorized to hear and adjudicate juvenile violations: NJTS, JRAC, JMSF, JFSCIF.

“Unit manager” means the person designated by the Superintendent of a facility not employing custody personnel to be in charge of the shift in that facility.

“Weapon” means anything readily capable of lethal use or inflicting serious bodily injury.

13:101-1.4 Forms

(a) The following forms related to juvenile discipline are printed by NJTS. Each facility shall obtain a supply of these forms by contacting the administrative office of the NJTS.

1. Isolation/Separation Form;
2. Immediate Corrective Action Form;
3. Notice of Violation;
4. Disciplinary Review Report;
5. Disciplinary Review Appeal Form; and
6. Refusal to Attend Hearing Notice.

SUBCHAPTER 2. PUBLICATION OF RULES

13:101-2.1 Notification to juveniles about rules and regulations

(a) At the time of reception into the New Jersey Juvenile Justice Commission, each juvenile shall receive a copy of the Handbook on Discipline and thereby be

advised in writing of his or her rights and responsibilities, the acts and activities which are prohibited, the rules which shall be followed and the disciplinary process within the facilities of the Juvenile Justice Commission. Each juvenile shall be required to sign a form acknowledging receipt of the Handbook on Discipline. A refusal by the juvenile to sign shall be noted on the form by the issuing staff member.

(b) At the time of arrival at a facility, each juvenile shall receive a copy of the facility's Juvenile Handbook which contains facility rules, procedures and information about services and programs. The facility's Juvenile Handbook shall be provided as part of the admission and orientation program. Each juvenile shall be required to sign a form acknowledging receipt of the facility's Juvenile Handbook. A refusal by the juvenile to sign shall be noted on the form by the issuing staff member.

(c) All changes in disciplinary rules shall be posted in the living and common areas of the Commission's facilities and incorporated into the next revision of the Handbook on Discipline and when appropriate, in the facility's Juvenile Handbook.

(d) When a facility has a juvenile in the population who does not speak and/or read English, the rules shall be printed and presented verbally in the juvenile's primary language.

(e) For juveniles unable to read, the rules shall be verbally communicated and assistance shall be provided to those juveniles unable to provide written acknowledgment.

13:101-2.2 Review of facility rules

The Superintendent of each facility shall be responsible for maintaining an

ongoing rule review process to ensure that the rules of the facility are current and appropriate. The facility's Juvenile Handbook shall be revised accordingly.

13:101-2.3 Promulgation of rules

(a) The rules of a facility shall be approved by the facility's Superintendent and published in the facility's Juvenile Handbook.

(b) The Commission's disciplinary rules shall be promulgated by the Commission's Executive board and published in the Handbook on Discipline.

SUBCHAPTER 3. JUVENILE RIGHTS AND RESPONSIBILITIES

13:101-3.1 Notification to juveniles of their rights and responsibilities

(a) The following rights are found in the Handbook on Discipline which is provided to each juvenile upon reception into the Commission:

1. You have the right to be treated respectfully, impartially and fairly by all personnel;
2. You have the right to be informed of the rules, procedures and schedules concerning the operation of the facility;
3. You have the right to freedom of religious affiliation and voluntary religious worship within the facility;
4. You have the right to health care which includes medical and dental treatment;
5. You have the right to 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 and toilet articles;

6. You have the right to correspond with and receive visits from family members and other persons where there is no threat to security or order in keeping with the rules and schedules of the facility;
7. You have the right to unrestricted and confidential access to the courts by correspondence;
8. 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;
9. You have the right to participate in the use of law reference materials to assist you in resolving legal problems;
10. You have the right to a wide range of reading material for educational purposes and for your own enjoyment;
11. 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; and
12. You have the right to use the services of the Commission's Ombudsman.

(b) The following responsibilities are found in the Handbook on Discipline which is provided to each juvenile upon reception into the Commission:

1. It is your responsibility to treat others, both employees and juveniles, respectfully, impartially and fairly;

2. It is your responsibility to know and abide by the rules, procedures and schedules concerning the operation of the facility;
3. It is your responsibility to recognize and respect the rights of others to freedom of religious affiliation and voluntary religious worship within the facility;
4. It is your responsibility to follow the laundry and shower schedules, to maintain neat and clean living quarters, to seek medical and dental care as you may need it;
5. It is your responsibility to conduct yourself properly during visits, to refuse to accept or pass contraband, and to comply with Commission rules and State or Federal laws through your correspondence;
6. It is your responsibility to use the law library resources in keeping with the facility procedures and schedule prescribed and to respect the rights of other juveniles in the use of this legal material;
7. It is your responsibility to seek and utilize reading material for your personal benefit, without depriving others of their right to use same;
8. 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; and
9. It is your responsibility to attend compulsory educational programs conducted by the Commission as required by law.

SUBCHAPTER 4. VIOLATIONS

13:101-4.1 Violations

(a) A juvenile who commits one or more of the following numbered violations shall be subject to disciplinary action:

SECTION J1: CAUSING DEATH		
<u>Number</u>	<u>Violation</u>	<u>Description</u>
J101	Causing Death	Intentionally or negligently causing the death of another juvenile, staff member, or other person.
SECTION J2: ASSAULTIVE, AGGRESSIVE, AND RELATED BEHAVIORS		
J201	Assault	Intentionally inflicting bodily injury on another person.
J202	Assault with a Weapon	Inflicting bodily injury on another person with an item clearly identifiable as a weapon, or otherwise readily capable of inflicting serious bodily injury.
J203	Fighting	Engaging in a physical altercation with another person or persons.
J204	Throwing Bodily Fluid	Throwing bodily fluid at any person or otherwise purposely subjecting any person to contact with bodily fluid.
J205	Unauthorized Physical Contact	Unauthorized physical contact with any person, such as but not limited to, physical contact not initiated by a staff member, volunteer, visitor, or other resident.
J206	Threatening Another	Threatening another person with bodily injury or with any offense against his or her person.
J207	Cruelty to Animals	Physically abusing or otherwise subjecting any animal to harmful or injurious behavior.
SECTION J3: SEXUAL ASSAULT, PROHIBITED SEXUAL ACTS, AND RELATED BEHAVIORS		

	J301	Sexual Assault	Sexual intercourse or sexual contact through the use of force or threatened use of force.
	J302	Consensual Sexual Acts	Engaging in any consensual sexual acts with any other person.
	J303	Sexual Proposals or Threats	Making intimidating sexual proposals or sexual threats to another.
	J304	Indecent Exposure	Intentionally exposing oneself to another, or otherwise exposing oneself knowing that he or she is likely to be observed by another.
	J305	Refusing to Register	Refusing to register as a sex offender as prescribed by law.
SECTION J4: ESCAPE			
	J401	Escape	Leaving the grounds of a Commission facility without authorization.
SECTION J5: RIOTING AND GROUP DEMONSTRATIONS			
	J501	Rioting	Participating in a disturbance involving an assembly of three or more persons acting together, which by tumultuous and violent conduct may result in injury to another.
	J502	Encouraging Others to Riot	Engaging in behavior, verbal or otherwise, that directly leads to rioting by others, or that encourages a riot already in progress.
	J503	Group Demonstration	Participating in the unauthorized assembly of three or more persons engaging in a collective action, such as but not limited to, a sit-in, rally, or work stoppage.
SECTION J6: CONTRABAND AND RELATED ACTS			
	J601	Weapons	Possession or introduction of any weapon, or of any item readily capable of serving as a weapon, including, but not limited to, a sharpened instrument, knife, or unauthorized tool.
	J602	Prohibited Equipment	Use or possession of electronic equipment not authorized for use or retention by a juvenile, including, but not limited to, a cellular telephone, two-way radio, or other communication device, or a computer or related equipment.

	J603	Prohibited Substances and Paraphernalia	Possessing, using, introducing, or making any prohibited substance, including controlled dangerous substances, alcohol, medications not prescribed for the juvenile by authorized medical or dental staff, tobacco products, similar intoxicants, or related paraphernalia, such as that used to deliver or make any prohibited substance.
	J604	Misuse of Medication	Using medication provided to the juvenile by authorized staff in a manner inconsistent with specific instructions for use.
	J605	Distribution of Prohibited Substances	Distribution or sale of any prohibited substance, including controlled dangerous substances, alcohol, prescription medications, tobacco products, similar intoxicants, or related paraphernalia, such as that used to deliver or make any prohibited substance.
	J606	Interference with Substance Testing	Failure to comply with an order to submit a specimen for prohibited substance testing or tampering with said specimen.
	J607	Unauthorized Currency	Possession of money or currency not specifically authorized for retention by juvenile.
	J608	Possessing Unauthorized Items	Possession of anything not authorized for retention or receipt by a juvenile or not issued to the juvenile through approved facility procedures.
SECTION J7: CONDUCT WHICH DISRUPTS THE SECURITY OR ORDER OF A FACILITY			
	J701	Extortion or Blackmail	Demanding or receiving favors, money, or anything of value from another in return for protection against others, to avoid bodily harm, or under threat of informing.
	J702	Bribery	Giving or offering any official or staff member a bribe.
	J703	Hostage Taking	Detaining another individual(s) against his or her will or under threat of violence with the purpose of forcing demands to be met.
	J704	Setting A Fire	Intentionally setting a fire.

	J705	Fire Equipment	Tampering with any fire equipment, such as but not limited to, fire alarms, fire extinguishers, or sprinklers.
	J706	Property Damage	Damaging or altering government property or property belonging to another person.
	J707	Stealing	Unauthorized taking of property belonging to the government or to another individual with the intent to deprive the rightful owner of said property.
	J708	Adulterating Food or Drink	Contaminating any food or drink with any substance foreign to the food or drink.
	J709	Refusing to Obey An Order	Refusing to follow any order issued by a staff member.
	J710	Violating Conditions of a Community Program	Violating the written and agreed conditions required for participation in a community residential program.
	J711	Refusing Medical Testing	Refusing to submit to any mandatory medical testing, including DNA testing.
	J712	Absence or Lateness	Unexcused absence or lateness from work, school, or from any assignment.
	J713	Feigning Illness	Pretending to be sick or injured.
	J714	Abusive or Obscene Language	Using abusive or obscene language to any staff member or official visitor to the Commission, or otherwise creating a hostile environment through the use of such language.
	J715	Lying	Lying or providing a false statement to a staff member.
	J716	Counterfeiting or Forgery	Counterfeiting, forging, or unauthorized reproduction or use of any classification document, court document, psychiatric, psychological, or medical report, money, or any other official document.
	J717	Obtaining Personal Information	Obtaining or seeking to obtain unauthorized personal information regarding a victim, victim's family, staff member, or staff member's family.

	J718	Unauthorized Area	Being in an unauthorized area.
	J719	Misuse of Machinery	Using any equipment or machinery that is not specifically authorized, or contrary to the posted instructions or safety standards (refers to equipment not identified under J602).
	J720	Interfering with Count	Interfering with or failing to stand count.
	J721	Gambling	Gambling or possession of gambling paraphernalia.
	J722	Tattooing	Tattooing or self-mutilation.
	J723	Misuse of Mail or Phone	Unauthorized use of the mail or telephone.
	J724	Using Mail for Unlawful Purposes	Perpetrating frauds, deceptions, or con games through the mail, or otherwise using the mail to further an illegal activity or enterprise.
	J725	Refusing a Search	Refusal to submit to an authorized search.
	J726	Violation of Written Rule or Regulation	Failure to comply with any written or otherwise explicitly stated rule or regulation of any Commission facility.
	J727	Unsanitary Behavior	Engaging in behavior that is potentially hazardous to the health or hygiene of any person or persons.
	J728	Contact with Public	Engaging in unauthorized communication with the public.
	J729	Security Equipment	Tampering with or blocking any locking device, or possessing unauthorized security equipment, such as a key, key card, or other device that provides security access or clearance.
	J730	Unauthorized Clothing	Possessing any clothing not specifically authorized for retention by the juvenile.

	J731	Disrupting Security and Order of Facility	Engaging in conduct that disrupts or threatens the security, safety, or orderly operation of any Commission facility, and that is not otherwise defined herein as a distinct rule violation.
SECTION J8: GANG RELATED ACTIVITY			
	J801	Gang Activity	Participating in any activity or behavior that promotes the interests of a gang, or that is otherwise clearly gang-related.
	J802	Gang Paraphernalia	Possession or exhibition of anything related to or signifying a gang, such as but not limited to gang-related literature, symbols, or signs.
SECTION J9: ACTIONS IN FURTHERANCE OF A VIOLATION			
	J901	Attempting, Aiding, Planning, Preparing	Attempting to commit, assisting another to commit, planning or conspiring to commit, or engaging in an act in preparation to commit, any violation. Any such action in furtherance of a violation shall be considered the same as committing the violation itself.

13:101-4.2 Mechanisms for responding to violations

(a) When a juvenile is alleged to have committed a violation, the staff member witnessing the violation shall determine the initial mechanism for handling the violation based on the severity of the incident. All alleged violations shall be handled via a full disciplinary proceeding in accordance with N.J.A.C. 13:101-6 except those judged to be minor in nature, which shall be handled via immediate corrective action in accordance with N.J.A.C. 13:101-5.

(b) Pursuant to the provisions of N.J.A.C. 13:101-5 and 6, the determination made by the staff member pursuant to (a) above shall be subject to review and change by the appropriate supervisor and/or Treatment Team.

13:101-4.3 Reports to the prosecutor on violations

All violations 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 facility is located. The referral shall be made by the Chief Investigator of the Commission's Office of Investigations with the approval of the Executive Director.

SUBCHAPTER 5. IMMEDIATE CORRECTIVE ACTION PROCEDURES

13:101-5.1 Immediate corrective action report

(a) When a violation as set forth at N.J.A.C. 13:101-4.1 that is considered minor in nature has occurred, the staff member witnessing the violation shall prepare an Immediate Corrective Action Form in triplicate, describing the violation and proposed corrective action. The form shall be completed immediately following the violation or as soon thereafter as practicable, but not later than the end of the shift on which the violation occurred. The form shall be distributed as follows:

1. One copy of the form shall be served on the juvenile; and
2. Two copies shall be forwarded immediately to the shift supervisor or unit manager, as appropriate.

13:101-5.2 Immediate corrective action conference

(a) The juvenile shall be afforded the right to challenge the violation and/or the

proposed corrective action via an immediate corrective action conference held by the shift supervisor or unit manager. If the juvenile requests a conference, the shift supervisor or unit manager shall hold the conference prior to the expiration of the shift during which the Immediate Corrective Action Form was received.

(b) A juvenile may waive the conference or may forfeit the right to attend if the juvenile's behavior justifies his or her removal from the conference. A waiver or removal shall be documented on the Immediate Corrective Action Form. In either case, the shift supervisor or unit manager shall review the form and appropriateness of the proposed sanction.

(c) Following the conference or review, the shift supervisor or unit manager shall:

1. Affirm the juvenile's guilt and concur with the proposed corrective action or change the proposed sanction to another authorized corrective action (N.J.A.C. 13:101-5.3);
2. Conclude that a more serious sanction is necessary and refer the matter to the Treatment Team in accordance with N.J.A.C. 13:101-5.6; or
3. Determine that there is no cause for action and dismiss the charge.

(d) The shift supervisor or unit manager shall enter the results of the conference or review on the Immediate Corrective Action Form.

(e) At the conclusion of the conference or review, the juvenile shall receive a completed copy of the Immediate Corrective Action Form. If the juvenile is found guilty, the remaining copy of the form shall be submitted to the Superintendent who shall determine where the form shall be maintained. If the charge is dismissed, the remaining copy of the form shall be destroyed.

(f) Immediate corrective action is minor in nature and the right afforded to the juvenile to appear at the conference shall be the final appeal of such discipline.

13:101-5.3 Authorized immediate corrective actions

(a) The following are authorized immediate corrective actions:

1. Withdrawing a privilege or an individual or group activity, for example, recreation, television or radio privileges, for no more than five days; meals and snacks provided by the facility are not permitted to be used as a sanction;
2. Requiring a juvenile to pay for repair of damaged property; to repair the damage, or to complete a work task;
3. Staff directed separation; staff directed separation should be a brief separation in a quiet place. When a juvenile requires separation, the following guidelines shall be used.
 - i. The juvenile(s) shall be within staff's sight or sound at all times;
 - ii. Juveniles shall never be placed in an unlocked room for separation in a secure facility;
 - iii. Juveniles shall never be placed in a locked room for separation in a non-secure facility;
 - iv. Staff shall visually make contact every 30 minutes unless the circumstances require more frequent contact
 - v. Separation shall not exceed 60 minutes;
 - vi. Upon completion of a separation period, the juvenile shall discuss

the situation with a staff member; and

- vii. Each separation shall be documented on a Isolation/Separation Form to include time in and out; reason for separation; time and observation at each 30-minute check; and a brief summary by the processing staff at the conclusion of the separation period.

4. Room restriction (secure care only);

- i. Room restriction is the restriction of a juvenile to a locked room;
- ii. Room restriction shall not exceed four hours;
- iii. Staff shall visually make contact every 30 minutes with a juvenile on room restriction unless the circumstances require more frequent contact. Juveniles shall be within sight or sound at all times;
- iv. Juveniles who receive room restrictions shall discuss their behavior and the results of their behavior with a staff member prior to rejoining the general population; and
- v. Room restrictions shall be entered in the housing unit log book.

5. Facility restriction;

- vi. Facility restriction is the restriction of the juvenile to the confines of the facility's building or grounds;
- vii. Facility restriction shall not exceed 48 hours without approval of the Superintendent;
- viii. Juveniles who receive facility restrictions shall discuss their behavior and the results of their behavior with a staff member prior to rejoining the general population; and

- ix. Facility restrictions shall be entered in the facility or housing unit log book;
- 6. Verbal reprimand; and
- 7. Up to four hours of extra work duty.

13:101-5.4 Imposition of immediate corrective action

If the shift supervisor or unit manager affirms the juvenile's guilt, the approved sanction shall be imposed within 24 hours of the conference.

13:101-5.5 Record of immediate corrective action

(a) The Immediate Corrective Action Form shall be retained separately from the juvenile's classification folder and in accordance with the internal management procedures of the facility.

(b) Information regarding immediate corrective actions shall not be entered onto progress notes or be included in the reports presented to the New Jersey State Parole Board.

13:101-5.6 Referral to the Treatment Team

(a) Should the shift supervisor or unit manager conclude that a more serious sanction may be appropriate, the matter shall be referred to a Treatment Team for a disciplinary hearing and disposition.

(b) A Notice of Violation shall be filed containing all the required information including a statement of reasons for the referral and any recommendations. The Notice

and copies of all relevant documents shall be forwarded to the Treatment Team tracking coordinator.

SUBCHAPTER 6. DISCIPLINARY PROCEEDINGS

13:101-6.1 Composition, authority and decisions of the Treatment Team

(a) All disciplinary hearings shall be conducted by a Treatment Team at one of the following facilities: NJTS, JRAC, JMSFor JFSCIF. The facility's Treatment Team shall consist of the following four staff members:

1. The facility Superintendent or his or her designee who shall be of supervisory rank and who shall serve as chairperson;
2. The facility's Director of Custody Operations or his or her designee of the rank of Captain or above; or a Lieutenant in case of a Captain's absence, designated by the Superintendent;
3. The facility's Supervisor of Social Services or his or her designee who shall be of supervisory rank; and
4. The facility's Supervisor of Education or his or her designee who shall be of supervisory rank.

(b) A staff member shall not sit as a member of the Treatment Team if the Team is hearing an incident that the staff member has reported and/or investigated.

(c) A staff member witnessing an incident under consideration shall not sit as a member of the Treatment Team unless the incident has been so widely witnessed that virtually every staff member has witnessed it in whole or in part.

(d) The Treatment Team shall have the authority to summon witnesses, take testimony, receive documentary evidence and shall have access to all facility records which are relevant and necessary to the adjudication of any disciplinary case.

(e) The Treatment Team 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 Team Chairperson 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.

(f) Decisions of a Treatment Team 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 Team. In the event of a tie, the Chairperson shall cast an additional tie breaking vote.

(g) The Superintendent shall designate a tracking coordinator who shall be responsible for all administrative tasks of the Treatment Team. The tracking coordinator shall not be a member of the Treatment Team.

13:101-6.2 Disciplinary report

(a) Except for those matters handled by immediate corrective action (N.J.A.C. 13:101-5), when a violation as identified in N.J.A.C. 13:101-4.1 has occurred, the staff member who witnessed it or who has probable cause to believe that a violation has occurred shall prepare a Notice of Violation and forward it to the appropriate supervisor.

(b) The supervisor may handle the matter as an immediate corrective action or forward it to the Treatment Team for further disposition.

(c) The Notice of Violation shall be served upon the juvenile within 48 hours after the violation unless there are exceptional circumstances. The notice shall be delivered by the reporting staff member or the investigating staff member. The notice shall be signed by the person delivering it and the date and time of delivery shall be noted. The juvenile shall have at least 24 hours to prepare his or her defense.

13:101-6.3 Use immunity

(a) In all cases, the juvenile shall be advised of his or 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 or delinquency proceeding. The failure to give this warning by the investigating staff member shall not be grounds for dismissing the disciplinary report. The Treatment Team at its discretion may grant a postponement if it is determined that such failure has precluded the juvenile from adequately preparing his or her defense at the hearing.

(b) A juvenile's failure to invoke use immunity and make a statement in his or her defense may be considered by the Treatment Team together with the other evidence in decision making.

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

13:101-6.4 Investigation

(a) An investigation of the violation shall be conducted by the facility at which the hearing will be held within 48 hours of the time the Notice of Violation is served upon the juvenile.

(b) The Superintendent shall appoint a custody staff member of supervisory level who shall conduct investigations of all violations.

(c) Whenever a juvenile is under special observation status, the investigator shall advise the facility's Superintendent who shall refer the juvenile for a psychiatric and/or psychological evaluation. In all other cases, the investigator may request that the facility's Superintendent refer the juvenile for a psychiatric and/or psychological evaluation. The Superintendent shall determine the need to obtain a psychological and/or psychiatric evaluation based upon the nature of the violation and all other relevant information.

1. In those cases where a psychological and/or psychiatric evaluation is necessary, the Superintendent shall forward a written request for evaluation to the facility's lead psychologist.
2. Upon completion and receipt of the evaluation report, the Treatment Team shall consider the information provided in the evaluation report along with any other information gathered during the investigation. (d) The investigator shall thoroughly investigate the incident. As part of this investigation, the investigator shall verify that the juvenile has received the Notice of Violation. The investigator shall also read the charge to the

juvenile, inform the juvenile of the juvenile's use immunity rights, take the juvenile's plea, and ask if the juvenile wishes to make a statement concerning the incident. The investigator shall take the juvenile'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 juvenile's attitude may be included in the investigatory report.

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

(f) The investigator may include comments and conclusions on the juvenile'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 juvenile shall not receive a copy of the investigation.

(g) The juvenile may obtain a copy of juvenile witness statements, provided that the Commission finds that such a disclosure would not compromise facility safety and security.

13:101-6.5 Requiring further investigation of charges

The Treatment Team may direct a further investigation in any case where it 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 Treatment Team 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.

13:101-6.6 Scheduling disciplinary hearings

(a) Meetings with a Treatment Team shall be convened at such times as are appropriate to carry out the work of the Treatment Team.

(b) The juvenile shall be entitled to a hearing within five days of the alleged violation, including weekends and holidays, unless the hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Should the fifth 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) Juveniles confined in prehearing isolation shall receive a hearing within three days of their placement in prehearing isolation, 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) Juveniles confined in prehearing isolation shall be given priority in scheduling their appearance before the Treatment Team.

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

13:101-6.7 Review of postponed cases

Hearings which have been postponed for further investigation shall be reviewed by the Treatment Team within 48 hours of the postponement if the juvenile is in

prehearing isolation 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.

13:101-6.8 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 Treatment Team 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. Prejudice to the juvenile in preparing his or her defense; and
4. The seriousness of the alleged infraction.

13:101-6.9 Right of juvenile to appear at disciplinary hearing

(a) A juvenile shall be permitted to be present throughout the disciplinary hearing except during the necessary deliberations of the Treatment Team and except in instances where facility security would be jeopardized by the juvenile's presence.

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

13:101-6.10 In absentia hearings

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

(b) The following procedural process shall apply at all disciplinary hearings conducted in absentia which will enable the Treatment Team to ensure that the juvenile has been given every opportunity to be present for his or her disciplinary hearing:

1. The escorting staff member shall report the juvenile's refusal to appear before the Treatment Team.
2. A staff member shall deliver to the juvenile who refuses to appear a Refusal to Attend Hearing Notice that includes the following statement: "I voluntarily refuse to appear at this hearing. I understand that the hearing will be held in my absence."
3. The staff member shall advise the juvenile that refusal to appear at the disciplinary hearing may result in an incomplete understanding by the Treatment Team of the circumstances surrounding the charges lodged against the juvenile. If the juvenile still refuses to appear at the disciplinary hearing, the juvenile shall be requested to sign Refusal to Attend Hearing Notice immediately after the statement noted above in (b)2 above.
4. In the event the juvenile refuses to sign his or her name where designated on the Refusal to Attend Hearing Notice and still refuses to appear, the notice shall be returned to the Treatment Team Chairperson and the following statement on the notice shall be acknowledged by the signature of the investigating staff member:

"Juvenile refuses to sign _____."

Signature of Staff Member, Date

5. The Treatment Team shall ensure that the following statement shall be

included in the juvenile statement section of the Disciplinary Review Report: "No statement taken as the juvenile refused to appear at the hearing."

13:101-6.11 Aid in presentation of juvenile's case

(a) When a juvenile has been charged with a violation, the juvenile shall be afforded the right to request representation by a counsel substitute.

(b) When the Treatment Team determines that a juvenile cannot adequately collect and present the evidence in his or her own behalf, the juvenile may elect to receive the services of a counsel substitute or the juvenile may request representation by a staff member.

(c) Where the juvenile 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 and/or the staff member shall be permitted reasonable time to speak to the juvenile and shall be given at least 24 hours to prepare the juvenile's defense.

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

13:101-6.12 Opportunity to call witnesses and present evidence

(a) Juveniles 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

facility safety. The Treatment Team shall review the evidence offered as reasonably available and necessary for proper understanding of the circumstances surrounding the charge. The Treatment Team has the discretion to keep the hearing within reasonable limits and to refuse to call repetitive witnesses and witnesses who may create a risk of reprisal. For purposes of this subsection, "repetitive witnesses" are witnesses who provide the same account as a previous witness(es). "Repetitive witnesses" are not intended to refer to the calling of a witness(es) who previously provided written documentary evidence. Unavailable witnesses may be asked to submit written statements. If the Treatment Team shall refuse to call one or more witnesses, the reasons for each such refusal shall be separately specified on the Disciplinary Review Report.

(b) Witnesses requested by the juvenile who are called may be questioned by members of the Treatment Team and the juvenile, the staff member or counsel substitute. Juveniles or their representatives may request that certain questions be directed by the Treatment Team members to any witness. The Treatment Team may take testimony in a manner or form which is determined to be necessary to protect facility safety. Such manner or form shall include, but shall not be limited to, the consideration of confidential reports.

13:101-6.13 Confrontation and cross examination

(a) The opportunity for confrontation and cross examination, if requested, shall be provided to the juvenile in such instances where the Treatment Team deems it necessary for an adequate presentation of the evidence, particularly when serious

issues of credibility are involved.

(b) The Treatment Team may refuse confrontation and cross examination when said would be unduly hazardous to facility safety.

13:101-6.14 Evidence required for a finding of guilt

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

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

1. In any case in which the Treatment Team's decision of guilt is based on evidence which includes confidential information, the report shall contain:
 - i. A concise summary of the facts on which the Treatment Team concluded that the informant was credible 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 Treatment Team shall not disclose the identity of the informant.

13:101-6.15 Modification of charge during disciplinary hearing

(a) Whenever it becomes apparent at a disciplinary hearing that an incorrect violation is cited in the Notice of Violation but that the juvenile may have committed

another violation, the Treatment Team shall modify the charge and give the juvenile the option of a 24-hour postponement to prepare his or her defense against the new charge or to adjudicate the new charge at that time.

(b) After reviewing the charge and all available information, the Treatment Team may conclude that the infraction is of a minor nature and handle it as an immediate corrective action.

13:101-6.16 Disciplinary sanctions

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

1. Juvenile's history of adjustment in the Commission;
2. Setting and circumstances of the prohibited behavior;
3. Involved juvenile's account;
4. Rehabilitative goals set for the juvenile; and
5. The juvenile's history of or the presence of special needs.

(b) A finding of guilt for any violation, other than a violation handled by immediate corrective action, shall render the offender subject to one or more of the following sanctions:

1. Any sanction prescribed for an immediate corrective action (see N.J.A.C. 13:101-5.3);
2. Up to 15 days disciplinary isolation;
3. Loss of telephone, radio, television, and contact visit privileges for up to 30 days;
4. Loss of one or more additional facility privileges up to 15 days;
5. Confiscation;

6. Up to 14 hours extra work duty, to be performed within a maximum of two weeks;
7. Restitution for damage, alteration or destruction of State property or the property of another person which results in undue expenditure of State funds; or
8. Referral to the Mental Health Services for appropriate care and/or treatment.

(c) In addition to the sanctions in (b) above, administrative action may be taken by the Institutional Classification Committee upon a recommendation by the Treatment Team. Such action may include, but not be limited to, the following:

1. Recommending transfer to a more appropriate facility or unit;
2. Increasing custody status;
3. Changing work or housing assignments; and/or
4. Assigning to a treatment program.

13:101-6.17 Limitation on sanctions

(a) A juvenile may receive up to 15 days in disciplinary isolation as a sanction for each violation charged, whether arising out of a single or separate incidents. However, no juvenile may spend more than 15 consecutive days in disciplinary isolation.

(b) All disciplinary charges pending when a juvenile begins serving time in disciplinary isolation must be adjudicated prior to the completion of the juvenile's time in disciplinary isolation.

(c) When time in disciplinary isolation is imposed as a sanction for any pending

disciplinary charge, service of that time shall run concurrently with the existing service and, if necessary, retroactively to a date that ensures that the aggregate service does not exceed 15 days.

(d) When time in disciplinary isolation is imposed as a sanction for any disciplinary charge received and adjudicated during the juvenile's time in disciplinary isolation, service of that time shall also run concurrently with the existing service and, if necessary, retroactively to a date that ensures that the aggregate service does not exceed 15 days.

13:101-6.18 Suspending sanctions

(a) The Treatment Team may, in its discretion, suspend a sanction(s) for 30 days when such action is warranted by the particular circumstances of the case.

(b) When a sanction(s) is suspended and the juvenile's behavior conforms to the required code of behavior throughout the period of suspension, the juvenile shall be relieved of the sanction(s).

(c) If the juvenile commits further violations of the facility's rules or regulations during the period of the suspension, the Treatment Team shall enforce the sanction(s) which was suspended and impose an additional sanction(s) for the new violation(s).

13:101-6.19 Guidance

The Treatment Team shall give guidance to the juvenile with respect to the reason for the rules and policies of the facility. The elements of the juvenile's behavior or attitude that are deemed to be unsatisfactory shall be pointed out.

13:101-6.20 Transfers

(a) A juvenile in a non-secure facility or the Commission's Life Skills and Leadership Academy charged with a violation, other than one handled by immediate corrective action, shall be transferred to one of the following facilities for adjudication of his or her disciplinary charges: NJTS, JRAC, JMSF or JFSCIF.

(b) In those instances in (a) above, and in all others involving the transfer of a juvenile to another facility as a result of a disciplinary charge, the Notice of Violation shall be served and the disciplinary hearing shall be granted after the transfer.

(c) The sending facility shall be responsible for preparing the disciplinary charges and forwarding them to the facility receiving the juvenile.

(d) The receiving facility shall be responsible for conducting the investigation of the charges.

(e) The Treatment Team assigned to the receiving facility shall conduct the hearing.

(f) 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.

(g) Except as set forth in (a), above, no juvenile in a Commission secure facility shall be transferred to a more secure facility as a result of a disciplinary charge unless the Superintendent and the Director of Operations have determined that there are conditions justifying the transfer.

13:101-6.21 Disciplinary decision

(a) After the hearing has been completed, written fact-findings shall be given to the juvenile by the Treatment Team Chairperson. This statement shall include evidence relied upon, the decision and the reason for the disciplinary action taken, unless doing so would, in the discretion of the Treatment Team, jeopardize 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 a juvenile 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 juvenile.

(b) A copy of the disciplinary decision shall be kept in the Treatment Team's records and in the juvenile's classification folder unless the juvenile has been adjudicated not guilty of the charge(s), in which case, the records of the charge(s) shall be expunged from the juvenile's classification folder.

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

13:101-6.22 Discipline record card

For the purpose of assisting the Treatment Team in determining the appropriate sanction to impose, each facility shall have available at the hearing a Disciplinary Record Card for each juvenile. This card shall accompany the juvenile should he or she be transferred to another Commission facility.

13:101-6.23 Expungement

(a) If a juvenile is adjudicated not guilty on a disciplinary charge, the results of the hearing shall not be entered onto the juvenile'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 juvenile's classification folder. Copies of the disciplinary report, investigation and adjudication sheet shall be maintained by the facility and the Treatment Team in the event of judicial review and for statistical and accounting purposes only. These records shall be maintained separately from the juvenile's classification folder.

(b) In the event that a finding of guilt is rescinded on appeal and no further disciplinary action is taken, the juvenile'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 Treatment Team for their records.

13:101-6.24 Records of disciplinary reports

(a) A disciplinary report result sheet containing the following information regarding juveniles who received disciplinary actions shall be prepared by the Treatment Team Tracking Coordinator no less than weekly and submitted to the Superintendent or his or her designee:

1. The names of the juveniles;
2. The juvenile numbers;
3. The juvenile housing locations;
4. The violations of the juveniles;

5. The names of staff members who wrote the reports;
6. The disposition of the charges; and
7. The names of staff members who adjudicated the cases.

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

SUBCHAPTER 7. APPEALS OF DISCIPLINARY DECISIONS

13:101-7.1 Time limit to file an appeal

(a) The juvenile shall be advised in writing by the Treatment Team of the opportunity to appeal to the Superintendent or his or her designee, who shall be an Assistant Superintendent, at the time the juvenile is provided with the disciplinary decision. Juveniles shall have 48 hours from receipt of the disciplinary decision to make such appeal.

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

13:101-7.2 Processing appeal

(a) The juvenile shall use the Disciplinary Review Appeal Form to request an appeal of a disciplinary decision. The juvenile shall submit the completed form to any staff member.

(b) Upon submission of the Disciplinary Review Appeal Form, the person accepting the appeal form shall sign, date and note the time on the original and copies in the juvenile's presence. A copy of the form shall be given to the juvenile.

(c) The Disciplinary Review Appeal Form shall be brought to the office of the Superintendent within 24 hours of receipt from the juvenile.

(d) All appeals shall be considered by the Superintendent or his or her designee of the facility at which the charge was adjudicated.

(e) If the juvenile is transferred before the appeal is received, the Disciplinary Review Appeal Form shall be delivered to the Superintendent of the facility at which the charge was adjudicated within 48 hours of its receipt from the juvenile.

(f) In the event that the Superintendent or his or her designee was a member of the Treatment Team whose decision is being appealed, the Superintendent shall designate a staff member of supervisory rank to decide the appeal who:

1. Was not a member of the Treatment Team;
2. Did not report or investigate the incident; and
3. Did not witness the incident under consideration, unless the incident was so widely witnessed that virtually every staff member of supervisory rank has witnessed it in whole or in part.

(g) Juveniles unable to complete the Disciplinary Review Appeal Form may request assistance from another juvenile in preparing the form. When the form has been completed by a juvenile other than the juvenile who received the charge, the name of the preparer shall appear on the form.

13:101-7.3 Stay of sanctions pending appeal

(a) Juveniles who wish to have their sanctions stayed pending a decision on their appeal, must make a request to the Superintendent or his or her designee for this

consideration. If this request is not made, no action shall be taken to stay any sanctions received in the disciplinary hearing.

(b) A sanction of disciplinary isolation shall not be stayed pending appeal unless the juvenile establishes by clear and convincing evidence that the juvenile's release from disciplinary isolation will not jeopardize facility security and order, that witnesses or victims will not be intimidated and that the juvenile will not engage in any action which could otherwise interfere with the administration of justice.

13:101-7.4 Investigation of appeal

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

(b) The Superintendent or his or her designee 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 or his or her designee, provided, 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 re-interviewing witnesses, juveniles and custody staff, reevaluating reports and reexamining evidence.

(d) On the basis of new evidence, the Superintendent or his or her designee may also request a polygraph examination as part of the reinvestigation. A juvenile under

the age of 18 who consents to take a polygraph examination shall take the examination only with the express written consent of his or her parent or guardian, or if there is an appropriately executed court order. All other factors relating to administering polygraph examinations to juveniles shall be handled in the same manner as to an adult inmate (See N.J.A.C. 10A:3-7). Pursuant to N.J.S.A. 2C:40A-1, no employee may be forced to consent to a polygraph examination as a prerequisite to employment or as a condition of retaining employment.

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

1. Compliance with the subchapters on juvenile discipline which prescribe procedural safeguards (see N.J.A.C. 13:101-6);
2. Whether the decision of the Treatment Team was based upon substantial evidence;
3. Whether the sanction imposed was proportionate to the offense in view of the juvenile's recent disciplinary history and present custody status;
4. Whether the juvenile has a history or presence of mental illness; and
5. Whether extenuating circumstances were considered.

13:101-7.5 Disposition of appeal

(a) At the conclusion of the review of an appeal, the Superintendent or his or her designee shall take one of the following actions:

1. Rescind the decision of the Treatment Team if the review and/or investigation indicates that the evidence fails to demonstrate that any violation was committed, or the Superintendent determines that there was

such a failure to adhere to proper procedures at the initial hearing that the juvenile 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 juvenile's records;

2. Rescind the original decision and order a new hearing if the review and/or investigation indicates that procedural safeguards prescribed for juvenile 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. 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. 13:101-6.16(a);
4. Order a new hearing if the review and/or investigation indicates that the evidence does not support the findings of the Treatment Team but would support some form of disciplinary action for a lesser offense than that with which the juvenile was charged; or
5. Uphold the decision of the Treatment Team and make no change in the penalty.

(b) In no event shall there be an increase in severity of sanctions issued by the Treatment Team solely as a result of the review of the appeal.

13:101-7.6 Notification to juvenile of appeal results

(a) In all cases, the juvenile shall be notified in writing of the results of the review of the appeal and the reasons therefor. The Disciplinary Review Appeal Form shall be used for this purpose.

1. If a juvenile is being held in disciplinary isolation which resulted from disciplinary action, the written decision on the appeal shall be given to the juvenile within 24 hours of receipt of the appeal, excluding weekends and holidays.
2. In all other cases, or if the sanctions have been stayed, the Superintendent or his or her designee shall respond in writing to the juvenile within two business days of receipt of the appeal.

(b) Copies of the decision shall also be distributed to the Treatment Team and the juvenile's file. Other copies may be distributed as determined to be necessary by the Superintendent or his or her designee.

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

13:101-7.7 Appeals resulting in rehearings

(a) If a rehearing is required, the juvenile 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 calendar days from the date of the original hearing.
2. When a disciplinary sanction has not been stayed pending the outcome of the appeal, a rehearing shall be scheduled within 24 hours of the decision of the Superintendent 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. 13:101-7.5.

SUBCHAPTER 8. PROCEDURES FOR THE USE OF ISOLATION

13:101-8.1 Facilities at which juveniles may be held in isolation

Juveniles may be held in prehearing or disciplinary isolation only in accordance with the procedures set forth in this subchapter and only at the following facilities: NJTS, JRAC, JMSF and JFSCIF.

13:101-8.2 Confinement in prehearing isolation

(a) A juvenile may be placed in prehearing isolation in those instances where it appears necessary to remove or isolate the juvenile from the general population until an investigation into the juvenile's alleged misconduct can be completed and a disciplinary

hearing can be held pursuant to N.J.A.C. 13:101-6, Disciplinary Procedures.

Confinement in prehearing isolation shall be deemed necessary only where it appears that, if the juvenile remained in the general population, the juvenile would constitute a threat to other juveniles, staff members, the juvenile or to the orderly operation of the facility.

(b) Confinement in prehearing isolation may consist of placement in the facility's Isolation Unit or confinement to the juvenile's room.

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

1. The juvenile has been charged with an assault upon another person and, in the opinion of the staff, there is a substantial possibility that the juvenile may assault another juvenile or staff member;
2. The juvenile has been charged with threatening another person and, in the opinion of the staff, there is a substantial possibility that the juvenile will act on his or her threat;
3. The juvenile has been charged with being under the influence of drugs or intoxicants and, in the opinion of the staff, the juvenile's behavioral controls appear to be impaired;
4. The juvenile 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 staff, there is a substantial possibility the juvenile will continue such incitement;

5. The juvenile has been charged with arson or serious destruction of property and, in the opinion of the staff, there is a substantial likelihood that the juvenile may engage in additional arson or destruction of property;
6. The juvenile has received a disciplinary charge and, in the opinion of the staff, there is a substantial possibility that the juvenile will attempt to harm, threaten or intimidate potential witnesses or will attempt to organize or encourage others to harm, threaten or intimidate potential witnesses;
7. The juvenile has been charged with participating in an unauthorized gathering or group demonstration and the juvenile refuses to abandon his or her participation; and
8. The juvenile has been charged with escape or attempted escape and evidence has been produced which indicates that the juvenile presents a serious escape risk if permitted to remain in the general population.

(d) Confinement in prehearing isolation shall be authorized, in writing, by the shift supervisor and approved by the Superintendent, Assistant Superintendent or Director of Custody Operations. An Isolation/Separation Form shall be utilized when placing a juvenile in prehearing isolation. A separate Isolation/Separation Form must be completed for each juvenile and, whenever possible, the form should be completed prior to placing the juvenile in prehearing isolation. When an emergency exists which precludes completion of the Isolation/Separation Form prior to placement, the form shall be completed immediately following placement. After all appropriate parties have signed the form, it shall be placed in the juvenile's folder. Additional copies of the completed form may be kept on file, for recordkeeping purposes, in areas designated

by the Superintendent and the Director of Custody Operations.

(e) Any time spent in prehearing isolation shall be credited against any subsequent sentence imposed.

13:101-8.3 Placement in disciplinary isolation

(a) Pursuant to the provisions of N.J.A.C. 13:101-6, a juvenile may be placed in disciplinary isolation by a Treatment Team as a sanction for committing a violation.

Placement of a juvenile in disciplinary isolation shall be subject to the limitations set forth at N.J.A.C. 13:101-6.17

(b) Confinement in disciplinary isolation may consist of placement in the facility's isolation unit or confinement to the juvenile's room.

13:101-8.4 Ventilation, heating, lighting and sanitation in isolation

(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 juveniles at all times. When admitted, juveniles shall not be placed in rooms that lack cleanliness or have malfunctioning sanitary fixtures or lights. Daily inspections shall be made to insure the rooms are kept secure, clean and sanitary.

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

(c) Juveniles confined to "dry" rooms shall be permitted to shower at least once every two days. Drinking water shall be available upon request.

13:101-8.5 Visual observation

Juveniles held in isolation shall be observed regularly and frequently by custodial staff. There shall be no physical obstruction to visual observation of juveniles at any time. Full or partial curtains shall not be permitted over the room door.

13:101-8.6 Personal items

(a) All juveniles shall be admitted to isolation dressed in standard clothing after a thorough search for contraband except that belts and shoestrings shall not be permitted.

(b) Each juvenile shall be provided with the following items for use in the room to the same extent as such items are provided for juveniles in the general population:

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

13:101-8.7 Withdrawal of personal items or special activities

(a) Whenever in the judgment of the supervisor of the unit where the juvenile is

being held in isolation there is imminent danger that a juvenile will destroy any item or will injure himself or herself, another person, or damage property with any item, the supervisor may direct that the juvenile be deprived of the item, if practicable. In such a case, however, every effort shall be made to supply a substitute for the item or to permit the juvenile to use the item under supervision of a custody staff member.

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

(c) Whenever the circumstances are such that all the juvenile's clothing is removed, the Superintendent or his or her designee shall be contacted immediately for approval of this action.

(d) Arrangements shall be made for a physician or other appropriate staff to visit the juvenile 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 juvenile as soon as restoration appears to be consistent with safety.

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

13:101-8.8 Medical and psychiatric services

(a) Juveniles in isolation shall receive a daily visit by a member of the health care 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 juveniles in non-emergency situations shall be responded to by the physician, or a health care staff member designated by the physician, within 24 hours.

(c) Whenever it appears that a juvenile is suffering from an emotional or psychiatric disturbance, health care staff shall immediately provide appropriate intervention services and shall make arrangements for a psychiatric or psychological evaluation. Documentation of the evaluation findings shall be forwarded to the Superintendent or his or her designee by the health care staff member who conducted the evaluation prior to completion of the shift of the health care staff member on the day the evaluation is conducted. A copy of the findings of the evaluation shall be placed in the juvenile's medical record.

13:101-8.9 Visits by social services and supervisory custody staff

(a) A member of the facility's social services staff shall visit juveniles in isolation daily to determine any emergencies or unusual needs of the juveniles.

(b) Juveniles shall receive at least daily visits from the custody staff supervisor in charge of the unit where the juvenile is being held in isolation.

13:101-8.10 Chaplain services

Juveniles confined in isolation shall not be denied pastoral services. The facility chaplain or an outside religious leader approved by the chaplain and Superintendent to conduct religious activities shall visit this area in response to a juvenile's written request

to provide religious counseling or other pastoral services.

13:101-8.11 Food

(a) Juveniles confined in isolation shall be served the normal facility meals on the menu of the day or such special diet as shall be prescribed.

(b) Disposable utensils shall be used.

13:101-8.12 Correspondence, visits and telephone calls

(a) Juveniles confined in isolation shall have the same opportunities to send and receive written correspondence that are available to juveniles in the general population.

(b) Juveniles confined in isolation shall not be provided with visit or telephone opportunities while in isolation with the exception of legal telephone calls.

1. The Superintendent or his or her designee may authorize a special visit or telephone call for a juvenile when there are compelling reasons to do so.
2. Every effort shall be made to notify expected social visitors of the isolation restriction on ordinary visiting procedures prior to the next regularly scheduled visiting period. If ample time for correspondence exists, the burden of this notification shall be placed on the juvenile.

13:101-8.13 Grooming, showering and shaving

Barbering and hair care services shall be provided to juveniles confined in isolation, as needed. Each juvenile shall be given the opportunity to shave and shower not less than three times a week, unless permitting these activities would present an

undue security hazard. Facilities capable of providing for more frequent shaving and showering shall do so not less than four times per week.

13:101-8.14 Recreation

When conditions permit, facilities shall provide recreation outside of the rooms at least five hours per week.

13:101-8.15 Isolation records

(a) The following information regarding juveniles confined in isolation shall be available for the use of the custody staff:

1. The juvenile's name;
2. The juvenile's number;
3. The housing location;
4. The unit;
5. The room assignment;
6. The date admitted;
7. The disciplinary charge leading to isolation;
8. The expiration date of isolation; and
9. Special medical or psychiatric problems.

(b) Visits by medical, psychiatric, social services or custody supervisory staff and all unusual behavior shall be noted in the unit log book together with the time and date of occurrence.

Peter C. Harvey
Attorney General
Chair, Juvenile Justice Commission
Executive Board

By: Markus Green
Attorney General's Designee

Date: