

RULE PROPOSALS

INTERESTED PERSONS

The Department of Corrections provides notices of rule proposals in the New Jersey Register (N.J.R.), a semi-monthly official publication of the Office of Administrative Law which contains all State agency rule proposals and adoptions. The following paragraph is quoted from the Proposal section of the New Jersey Register:

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

CORRECTIONS

HUMAN SERVICES

DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES

CORRECTIONS

THE COMMISSIONER

Special Treatment Units

Jointly Proposed Readoption with Amendments: N.J.A.C. 10:36A and 10A:35

Authorized By: Jennifer Velez, Commissioner, Department of Human Services, and Gary M. Lanigan, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1-12, specifically at 30:1-12(b).2, 30:1B-6.e, 30:1B-10, and 30:4-27.24 et seq., specifically, 30:4-27.34.d; and *R. M. v. The Northern Regional Unit*, 367 N.J. Super. 229, 842 A.2d 308 (App. Div. 2004).

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

Proposal Number: PRN 2014-108.

Submit written comments by September 5, 2014, to:

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The joint proposal of the agencies follows:

Summary

In accordance with the statutory mandate at N.J.S.A. 30:4-27.34.d, the Commissioners of the Department of Human Services (DHS) and the Department of Corrections (DOC), in consultation with the Office of the Attorney General, jointly propose to readopt with amendment, identical rules for DHS at N.J.A.C. 10:36A (cited first throughout this notice) and for DOC at N.J.A.C. 10A:35 (cited second and in parentheses throughout this notice). These rules delineate the rights, rules of conduct, and other provisions applicable to persons subject to involuntary civil commitment under the Sexually Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 et seq.

DHS and DOC, jointly, propose to readopt identical Special Treatment Units rules at N.J.A.C. 10:36A (10A:35) with identical amendments. Both chapters are scheduled to expire on June 4, 2014, pursuant to the sunset provisions of N.J.S.A. 52:14B-5.1.b. As the Departments have filed this notice with the Office of Administrative Law prior to that date, the expiration dates are extended by 180 days to December 1, 2014, pursuant to N.J.S.A. 52:14B-5.1.c.(2).

In the Fiscal Year 2010-2011 State Appropriations Act, the former Division of Mental Health merged with the former Division of Addiction Services to create the Division of Mental Health and Addiction Services. N.J.A.C. 10:36A-1.1, 1.2, 1.4, 1.5, 2.4, 2.5, 2.6, 3.2, and 10.2 (10A:35-1.1, 1.2, 1.4, 1.5, 2.4, 2.5, 2.6, 3.2, and 10.2) are proposed to be amended to reflect the name of or the correct acronym for the merged division.

N.J.A.C. 10:36A-4.6 (10A:35-4.6) is proposed to be amended to reference that testing for prohibited substances may be conducted for security “or therapeutic” purposes. It is within the scope of the Special Treatment Unit (STU) staff to search residents for any prohibited substance that may have been brought into the facility while on furlough or for any resident who may have received a prohibited substance from another resident. Consuming alcohol or controlled dangerous substances not prescribed by a physician during the course of treatment at the STU is considered counter-therapeutic and therefore warrants testing residents for the use of such substances during the course of treatment and conditional release. This amendment clarifies that DOC will

test for prohibited substances not just limited to security purposes, but may also include therapeutic purposes.

In 2011, the DOC submitted a Reorganization and Career Enhancement Proposal (Reorganization) to the Civil Service Commission (CSC) to request the replacement of the existing civil service titles of Director of Custody Operations 1 and 2 and Correction Captain with one new civil service title, Correction Major. The new title was created to consolidate comparable functions performed by custody supervisory staff. The CSC unanimously approved the change in the State Classification Plan requested by the DOC at the regular meeting of the CSC on October 5, 2011, in Trenton, New Jersey. In accordance with the CSC approval of the Reorganization, the reference to “Captain” in N.J.A.C. 10:36A-4.1(c) (10A:35-4.1(c)) and to “Director of Custody Operations” in N.J.A.C. 10:36A-4.3(c) (10A:35-4.3(c)), are thus proposed to be deleted and replaced with “Correction Major” to be consistent with existing civil service titles currently utilized in the DOC.

Additionally, the phrase “no less than Captain” has been deleted in N.J.A.C. 10:36A-4.1(c) (10A:35-4.1(c)) when referring to the rank of the unit Search Plan Coordinator. As noted above, the Reorganization provided for the creation of the title of Correction Major which is now the highest ranking custody staff member within the DOC. The existing language could imply that a higher rank exists than that of Correction Major. Such language is no longer necessary and has been deleted accordingly.

These DHS and DOC proposed rules shall apply to residents at secure facilities operated by the DOC for the custody, care, control, and treatment of residents involuntarily civilly committed under the SVPA, as well as to those individuals temporarily involuntarily civilly committed under the Act. These rules are necessary to provide clear guidance to residents, staff, volunteers, and visitors and to ensure the safety of the DOC staff, DHS staff, treatment providers, general public, and residents.

In 1998, the Legislature enacted the New Jersey Sexually Violent Predator Act, P.L.

1998, c. 71 (N.J.S.A. 30:4-27.24 et seq.) to establish a civil procedure for the involuntary commitment of sexually violent predators. Recognizing the nature of the mental conditions, abnormalities, or personality disorders that make a person highly likely to engage in acts of sexual violence and the dangers these predators pose to those around them, the law authorized the civil commitment of such individuals in a secure custodial environment separate from prisoners and persons with mental illness.

DHS, through the Division of Mental Health and Addiction Services (DMHAS), provides, or arranges for the provision of, sex offender treatment services at these facilities. Treatment services in an STU are designed to meet the unique psychiatric, psychological, social, and rehabilitative needs of this sexually violent predator (SVP) population, while also protecting public safety. The goal of treatment services is the attainment of healthy psychological and social functioning of residents in all areas, with the ultimate goal of gradual reintegration into society, contingent upon supervision and support services.

As the Legislature has noted, having a separate facility for the custody, care, control, and treatment of these sexually violent predators presents certain unique concerns directly related to the particular needs, specific characteristics, and distinct treatment protocols associated with these residents. One of the associated concerns is the security and safety of residents, treatment staff, custody staff, and all others in and about

these facilities. Therefore, these rules must reflect consideration of the rights afforded all consumers of mental health services under section 10 of P.L. 1965, c. 59 (N.J.S.A. 30:4-24.2); however, the rules are also shaped by the particular needs, specific characteristics, and distinct treatment protocols associated with the custody, care, control, and treatment of this SVP population.

The Legislature directed that these rules take into consideration the rights afforded to patients receiving treatment in psychiatric facilities pursuant to N.J.S.A. 30:4-24.2, Rights of patients; however, the Legislature also directed that these rules shall specifically address the differing needs and specific characteristics of, and treatment protocols related to, sexually violent predators. In developing the rules, the Commissioners of the Department of Human Services and the Department of Corrections have given due regard to security concerns and safety of the residents, treatment staff, custody staff, and others in and about the facilities. Any variations in rights are necessary to comply with the direction of the Legislature and to address the distinct clinical issues and safety concerns presented by the SVP population.

Following is a summary of the rules proposed for readoption:

Subchapter 1, General Provisions, sets forth rules relative to the authority, purpose, scope, definitions used throughout the chapter, internal management policies and procedures, and the Residents' Guide to the Special Treatment Unit (see N.J.A.C. 10:36A-1.1 through 1.6 (10A:35-1.1 through 1.6)).

Subchapter 2, Rights of Residents, establishes general provisions regarding the rights of residents. N.J.A.C. 10:36A-2.1 (10A:35-2.1) establishes several general provisions regarding the rights of residents to include, subject to the SVPA, that a resident shall not be deprived of a civil right solely by reason of receiving treatment under the provisions of the SVPA except those rights related to providing a safe, secure facility, or any appropriate concern. Provisions relative to a notice of rights being posted in the STU and given to every resident are also included within this section.

N.J.A.C. 10:36A-2.2 (10A:35-2.2) sets forth rights not subject to denial and N.J.A.C. 10:36A-2.3 (10A:35-2.3) sets forth rights that are subject to denial. These provisions follow, or are modified from, the applicable "rights of patients" at N.J.S.A. 30:4-24.2.

N.J.A.C. 10:36A-2.3 (10A:35-2.3) delineates the rights of residents which may be curtailed, suspended, or denied in accordance with internal management procedures and the procedures set forth at N.J.A.C. 10:36A-2.4 (10A:35-2.4) when DHS staff determines that such restrictions are consistent with the resident's therapeutic goals or when DOC staff determines that such restrictions are necessary for safety concerns. Some of these rights are drawn from the "rights of patients" at N.J.S.A. 30:4-24.2.e and some of these rights are a modification thereof.

N.J.A.C. 10:36A-2.4, 2.5, and 2.6 (10A:35-2.4, 2.5, and 2.6) set forth the procedures that must be followed by DHS treatment and DOC staff when a resident's right is denied.

N.J.A.C. 10:36A-2.4 (10A:35-2.4) establishes that the denial of any right listed in N.J.A.C. 10:36A-2.3 (10A:35-2.3) is effective upon approval of the DMHAS Clinical Director or designee and/or the DOC Facility Administrator or designee for no longer than 30 days, unless extended under the procedures set forth in N.J.A.C. 10:36A-2.5 (10A:35-2.5). Additionally, the rules set forth that the DMHAS Clinical Director or

designee and/or the DOC Facility Administrator or designee shall document the reason for the denial and shall provide the reason to the resident.

N.J.A.C. 10:36A-2.5 (10A:35-2.5) states that the DMHAS Clinical Director or designee may continue the denial for an additional 30 days and, where appropriate, may consult with the DOC Administrator or designee on this issue. Provisions also require a written statement indicating the detailed reasons for the continuation of the denial of the right(s) from the DMHAS Clinical Director or the DOC Administrator (or their designees) and the filing of same.

N.J.A.C. 10:36A-2.6 (10A:35-2.6) establishes that when the DMHAS Clinical Director or the DOC Administrator or their designees believe that the denial of rights is necessary to avoid harm to the resident, other residents, staff, general public, property, or to ensure the safe, secure, and orderly operation of the facility, they may impose an emergency denial of the rights listed at N.J.A.C. 10:36A-2.3 (10A:35-2.3), effective immediately, for a period not to exceed 72 hours. Provisions require that written notice of the denial, including the reason for the denial, shall be provided to the resident and placed in the resident's files. Additionally, a review process and filing of the written notice of the review is established for each emergency denial.

Subchapter 3, Personal Property, establishes rules for permissible and non-permissible property. Personal property rules are necessary to ensure that residents are informed of the provisions associated with retaining personal property, the handling of property that is not authorized for retention or possession, and the resident's opportunity to appeal the classification of any item as non-permissible.

N.J.A.C. 10:36A-3.1 (10A:35-3.1) sets forth permissible and non-permissible property provisions that include the responsibility associated with personal property, the development of a written list of permissible personal property items, and the removal of non-permissible or counter-therapeutic items.

N.J.A.C. 10:36A-3.2 (10A:35-3.2) establishes that property not authorized for retention or possession shall be confiscated when a resident arrives at STU reception. Additionally, the confiscation process, receipt for property confiscated, resident appeal process, decision-making authority, and the disposition of the property is set forth.

Subchapter 4, Searches of Residents and Special Treatment Units by DOC Custody Staff, is set forth. The Departments of Human Services and Corrections are aware that the types of searches proposed herein constitute searches under the Fourth Amendment to the United States Constitution. However, given the diminished privacy expectations of residents in, or entering an STU, that is operationally under the jurisdiction of the Department of Corrections, in addition to the intent of both the Departments of Human Services and Corrections to maintain safe and secure and orderly operating environments, the Department of Corrections is authorized to require persons, without individualized suspicion of wrongdoing, to submit to certain searches set forth in the rules proposed for readoption. Rules regarding the search of residents, facilities, premises, and objects are necessary for the purpose of furthering therapeutic goals and for controlling and deterring the introduction and concealment of contraband that has the potential to compromise the safety, stability, and security of the unit.

N.J.A.C. 10:36A-4.1 (10A:35-4.1) requires the development and implementation of a comprehensive written search plan that governs untargeted routine and random searches of residents and units. Provisions include the review and approval of the search

plan, the requirement for a Search Plan Coordinator, and related authority, duties, and reports.

N.J.A.C. 10:36A-4.2 (10A:35-4.2) establishes regulations that require an internal management procedure for searches of residents and facilities, and how such searches shall be conducted. It sets forth provisions for searches of facilities to include all residential, work, therapy, training, visit, and other areas to which residents have access.

N.J.A.C. 10:36A-4.3 (10A:35-4.3) provides for the inspection of security devices in order to detect any tampering or defect, including the manner in which such inspections shall be conducted and the handling of written inspection results.

N.J.A.C. 10:36A-4.4 (10A:35-4.4) sets forth provisions for the use of scanning/testing devices when searching residents, areas, and objects for security or therapeutic purposes. Provisions for male or female scanning/testing device operators are established.

N.J.A.C. 10:36A-4.5 (10A:35-4.5) sets forth provisions for conducting searches of residents, their possessions, and all STU areas, objects, and properties by canine teams that are specially trained to discover and indicate to handlers the presence of various substances and/or materials.

N.J.A.C. 10:36A-4.6 (10A:35-4.6) authorizes prohibited substance testing for security purposes and to control the introduction of contraband or to detect the presence of any substance not authorized for possession or use by a resident.

As the Departments have provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Pursuant to N.J.S.A. 30:4-27.24 et seq., the rules proposed for readoption with amendments are identical and are jointly proposed by the Department of Human Services and the Department of Corrections to continue to implement the provisions of the SVPA. The rules jointly proposed for readoption with amendments at N.J.A.C. 10:36A and 10A:35 represent the intention of the Department of Human Services and the Department of Corrections to comply with State law.

These rules establish the authority, purpose, scope, and definitions relative to the operation of facilities dedicated to the treatment of persons committed or temporarily committed pursuant to the SVPA. The rules proposed for readoption with amendments provide clear guidance to residents and staff by delineating the rights, rules of conduct, and other provisions applicable to involuntarily civilly committed sexually violent predators. The provisions allow for the restriction of rights when such restrictions are deemed consistent with therapeutic goals or necessary to help remove risks of harm and ensure the safety of staff, treatment providers, general public, and residents. Some individuals who are personally affected by these rules proposed for readoption with amendments may object to these provisions.

Rules regarding personal property proposed at N.J.A.C. 10:36A-3 (10A:35-3) are necessary to ensure that residents are informed of the provisions associated with retaining personal property and handling property that is not authorized for retention. Additionally, a provision establishes an opportunity for the resident to appeal the classification of any item deemed non-permissible.

In the day-to-day management of an STU, the ability to search residents and units is necessary to control contraband and the concealment thereof. Rules that are proposed for readoption relative to search and contraband are intended to clearly identify the related processes, policies, and procedures. Although there may be affected individuals who personally object to these rules regarding searches and contraband, the provisions are necessary to help ensure the safe, secure, and orderly operation of the units.

Both the Department of Human Services and the Department of Corrections anticipate that the rules proposed for readoption with amendments will continue to have a positive impact on both staff and residents.

The general public will benefit from these rules proposed for readoption with amendments because they provide for the safe, secure, and therapeutic treatment of the sexually violent predators.

Economic Impact

The Departments of Human Services and Corrections have developed a staffing and operational analysis based on sexually violent predator units requiring custody staff positions and DHS and DOC civilian staff positions. Due to uncertainty as to the number of future commitments, the actual future staffing and operational costs are unknown and additional DHS and DOC staff would need to be hired as additional commitments occur. However, the cost of meeting and maintaining the requirements of the rules proposed for readoption with amendments are met by both the Departments of Human Services and Corrections through the established budget process with funds allocated by the State.

Federal Standards Statement

The rules proposed for readoption with amendment are promulgated under the authority of the rulemaking requirements of the Departments of Human Services and Corrections as established at N.J.S.A. 30:1B-6 and 30:1B-10, respectively. The rules are not subject to any Federal statutes, requirements, or standards; therefore, a Federal standards analysis is not required.

Jobs Impact

As set forth in the Economic Impact statement, STUs require custody staff positions and civilian staff positions as established by a staffing analysis developed by the Departments of Human Services and Corrections. Additionally, any future increase in the STU resident population has the potential to respectively increase any existing staffing levels. However, the Departments of Human Services and Corrections do not anticipate that the rules proposed for readoption with amendments will result in the loss of any jobs.

Agriculture Industry Impact

The Departments of Human Services and Corrections do not anticipate that the rules proposed for readoption with amendments will have any impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for

readoption with amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules affect residents who have been involuntarily civilly committed to the STU as sexually violent predators. The New Jersey Department of Corrections and the Department of Human Services are governmental entities responsible for the enforcement of the rules.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to providing for the safe, secure, and therapeutic treatment of the sexually violent predators.

Smart Growth Development Impact Analysis

The Departments of Human Services and Corrections anticipate that the rules proposed for readoption with amendments will have no impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the Jersey State Development and Redevelopment Plan because the rules pertain to providing for the safe, secure, and therapeutic treatment of the sexually violent predators.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:36A (10A:35).

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10:36A-1.1 (10A:35-1.1) Authority

- (a) (No change.)
- (b) The Division of Mental Health **and Addiction** Services [(DMHS)] **(DMHAS)** in the Department of Human Services shall provide or arrange for sex offender treatment of persons committed pursuant to the SVPA.
- (c)-(d) (No change.)

10:36A-1.2 (10A:35-1.2) Purpose

(a) The rules in this chapter are jointly promulgated by the Department of Human Services and the Department of Corrections to implement N.J.S.A. 30:4-27.24 et seq., to establish provisions for:

1. The custody, care, control, and treatment of involuntarily civilly committed sexually violent predators who are housed in a secure facility operated by the Department of Corrections, with custodial care provided or arranged for by the DOC and sex offender treatment services provided by, or arranged for by the [DMHS] **DMHAS** in the Department of Human Services;
- 2.-9. (No change.)

10:36A-1.4 (10A:35-1.4) Definitions

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

...

“Clinical staff” means employees of the Department of Human Services, Division of Mental Health **and Addiction** Services, assigned to the Special Treatment Unit, who are members of treatment teams or who work in rehabilitation services or discipline-specific supervisory positions including, but not limited to, psychiatry, psychology, and social work.

...

“Division of Mental Health **and Addiction** Services [(DMHS)] (**DMHAS**)” means the Division in the Department of Human Services responsible for providing or arranging for treatment of persons committed pursuant to the SVPA.

...

“[(DMHS)] **DMHAS** Clinical Director” means the administrator employed by the Department of Human Services, Division of Mental Health **and Addiction** Services, who has oversight responsibilities for [(DHS/DMHS)] **DHS/DMHAS** staff.

...

“Internal management procedures and policies” means procedures and policies issued and maintained by the [(DMHS)] **DMHAS** Clinical Director or designee for implementation of the facility sex offender treatment program and the procedures and policies that are issued and maintained by the DOC Administrator or designee to provide specific operating procedures for the secure facility.

...

“Resident” means a person who has been temporarily involuntarily civilly committed or involuntarily civilly committed pursuant to N.J.S.A. 30:4-27.24 et seq. to a secure facility operated by the Department of Corrections with custodial care provided or arranged for by the Department of Corrections, and sex offender treatment services provided by, or arranged for by the [(DMHS)] **DMHAS** in the Department of Human Services.

...

“Special Treatment Unit (STU),” “facility” or “unit” means a secure facility for involuntarily civilly committed residents, operated by the Department of Corrections, with custodial care provided or arranged for by the Department of Corrections, and sex offender treatment services provided by, or arranged for by the [(DMHS)] **DMHAS** in the Department of Human Services.

...

10:36A-1.5 (10A:35-1.5) Special Treatment Unit internal management policies and procedures

The [(DMHS)] **DMHAS** Clinical Director and the DOC Administrator, or their designees, shall develop and maintain written policies and procedures for the operation of the program and facility, consistent with this chapter.

SUBCHAPTER 2. RIGHTS OF RESIDENTS

10:36A-2.4 (10A:35-2.4) Denial of a resident right

- (a) The denial of a right established at N.J.A.C. 10:36A-2.3 (10A:35-2.3) shall be effective upon the approval of the [DMHS] **DMHAS** Clinical Director or designee and/or the DOC Administrator or designee for a period not to exceed 30 calendar days, unless extended pursuant to N.J.A.C. 10:36A-2.5 (10A:35-2.5).
- (b) The reason for the denial of the right shall be documented by the [DMHS] **DMHAS** Clinical Director or designee and/or by the DOC Administrator or designee. The reason shall be provided to the resident, and entered in the resident's files maintained by the Departments of Human Services and Corrections as soon as practicable, within 72 hours after the denial is implemented.

10:36A-2.5 (10A:35-2.5) Continuation of the denial of a resident right

- (a) The denial of any right may be continued for additional 30 calendar day periods when reviewed and approved by the [DMHS] **DMHAS** Clinical Director or designee. The DOC Administrator or designee may be consulted as deemed appropriate by the Clinical Director or designee.
- (b) A written statement indicating the detailed reason(s) for the continuation of the denial of the right(s) shall be provided to the resident by the [DMHS] **DMHAS** Clinical Director or DOC Administrator or their designees, and entered in the resident's files maintained by the Departments of Human Services and Corrections as soon as practicable.

10:36A-2.6 (10A:35-2.6) Emergency denial of a resident right

- (a) Resident rights established at N.J.A.C. 10:36A-2.3 (10A:35-2.3) may be denied in an emergency situation for a period not to exceed 72 hours in any instance in which the [DMHS] **DMHAS** Clinical Director or DOC Administrator or their designees believe it is imperative to deny any right to avoid physical harm to the resident, other residents, staff, general public, property, or to ensure the safe, secure, and orderly operation of the facility.
- (b) (No change.)
- (c) The [DMHS] **DMHAS** Clinical Director and DOC Administrator or their designees shall review each emergency denial of a right within 24 hours of the decision and shall place a written notice of the review in the resident's files maintained by the Departments of Human Services and Corrections within 24 hours of the review, excluding weekends and holidays.

SUBCHAPTER 3. PERSONAL PROPERTY

10:36A-3.2 (10A:35-3.2) Handling of personal property confiscated within a Special Treatment Unit

- (a) (No change.)
- (b) The staff member making the confiscation shall give the resident an itemized, signed, and dated receipt for the property confiscated, and shall notify the resident that such items are not permitted, and that the resident has three business days, from the date of the confiscation, to appeal the classification of any or all items as non-permissible by

submitting a grievance to the individual designated to process grievances, with the DOC Administrator or [DMHS] **DMHAS** Clinical Director or their designees having final decision-making authority.

1.-2. (No change.)

3. If the resident fails to indicate the desired disposition, the property shall be disposed of at the option of the DOC Administrator or [DMHS] **DMHAS** Clinical Director.

SUBCHAPTER 4. SEARCHES OF RESIDENTS AND SPECIAL TREATMENT UNITS BY DOC CUSTODY STAFF

10:36A-4.1 (10A-35:4.1) Search plan

(a)–(b) (No change.)

(c) The facility shall appoint a custody staff member[, of a rank no less than Captain,] **of the rank of Correction Major** as unit Search Plan Coordinator.

(d) (No change.)

10:36A-4.3 (10A-35:4.3) Inspection of security devices

(a)–(b) (No change.)

(c) Inspection of security devices shall be conducted continuously and systematically but scheduled to avoid an observable or predictable routine. The results of all inspections shall be submitted in writing to the shift commander for review by [the Director of Custody Operations] **a Correction Major**.

10:36A-4.6 (10A:35-4.6) Prohibited substance testing

To control the introduction of contraband or to detect the presence of any substance not authorized for possession or use by the resident, testing for prohibited substances may be conducted for security **or therapeutic** purposes.

SUBCHAPTER 10. RESIDENT WELFARE FUNDS

10:36A-10.2 (10A:35-10.2) Accountability for and expenditure of resident welfare funds

(a) (No change.)

(b) The DOC Administrator and [DMHS] **DMHAS** Clinical Director, in consultation with the Interagency Oversight Board, shall be jointly responsible for the control and authorization of all expenditures of resident welfare funds.

(c)–(e) (No change.)

(f) Individuals, corporations, and charitable foundations that wish to donate gifts to the resident welfare account shall submit a notice containing information relative to the gift to the Interagency Oversight Board. Such gifts shall be spent as designated by the donor when such designation is consistent with the provisions set forth in (c) and (d) above. When gifts are undesignated, such gifts shall be spent as designated by the DOC Administrator and the [DMHS] **DMHAS** Clinical Director in consultation with the Interagency Oversight Board. The monies from these gifts shall be identified separately in the resident welfare fund, so that expenditures can be directly related to the source of funds.

(g) (No change.)