

4. The Office of Auditing will report any evidence of an inappropriate purchase or disbursement consisting of an amount of money equaling \$100.00 or more to the Attorney General.

5. The Office of Auditing will report any evidence that a case manager was aware of an inappropriate purchase or disbursement consisting of an amount of money equaling \$100.00 or more and failed to document that fact or notify the case manager's supervisor to the Attorney General.

SUBCHAPTER 4. HABILITATION

10:44B-4.1 Service plan

(a)-(e) (No change.)

(f) An agency or organization that causes a written, individualized habilitation plan to be developed for an individual with a developmental disability residing in a community care residence shall not include the Social Security number of the individual with a developmental disability on the plan.

(g) An agency or organization that violates the provisions of (f) above shall be subject to a penalty of \$250.00 for the first offense and \$500.00 for each subsequent offense. The penalty shall be sued for and collected in a summary proceeding by the Commissioner pursuant to the Penalty Enforcement Law of 1999, P.L. 1999, c. 274 (N.J.S.A. 2A:58-10 et seq.).

CORRECTIONS

(a)

THE COMMISSIONER

Use of Body Imaging Scanning Equipment

Adopted Amendments: N.J.A.C. 10A:1-2.2, 10A:3-5.5, and 10A:31-1.3 and 8.8

Adopted New Rule: N.J.A.C. 10A:31-8.3

Proposed: October 3, 2016, at 48 N.J.R. 2026(a).

Adopted: February 21, 2017, by Gary M. Lanigan, Commissioner, Department of Corrections.

Filed: February 22, 2017, as R.2017 d.047, **without change**.

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 30:4-123.47C, 30:4-151, 2A:154-3 and 4, 2C:1-1 et seq., 2C:58-15, 10:5-3, 52:17B-169, and 52:27EE-26; and P.L. 2015, c. 213.

Effective Date: March 20, 2017.

Expiration Date: November 9, 2022, N.J.A.C. 10A:1; February 9, 2022, N.J.A.C. 10A:3; and January 21, 2018, N.J.A.C. 10A:31.

Summary of Public Comment and Agency Response:

Comments were received in a timely manner from Leslie Nelson, Edna Mahan Correctional Facility for Women.

COMMENT: The commenter objects to the amendments at N.J.A.C. 10A:3-5.5, stating the use of scanners may:

1. Emit radiation causing adverse health effects;
2. Violate Fourth Amendment prohibitions against unreasonable search and seizure and violate medical privacy laws as scanners will expose implants, prosthetic devices, and artificial joints; and
3. Run afoul of Prison Rape Elimination Act of 2003 (PREA) rules as there is no guarantee the officer operating the equipment will be of the same gender.

RESPONSE: The amendments are made as a result of, and in compliance with, the laws emanating from legislative action on P.L. 2015, c. 213, which required that the Commissioner adopt rules effectuating the purpose of the act. The seven points included in new N.J.A.C. 10A:3-5.5(c) cited by the commenter are derivatives of the State law that set forth when and why body imaging scanning equipment may be used. The comments submitted address concerns related to the potential adverse effects or impacts related to the use of scanning equipment not when and why this equipment may be used. Rules

pertaining to the use of scanning/testing devices have been included at N.J.A.C. 10A:3-5.5(a) and (b) for many years and are not the subject of this rulemaking, and, further, new subsection (c) does not add any new scanning requirements. Therefore, the comments submitted are outside the scope of this rulemaking.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and new rule are not subject to any Federal standards. P.L. 2015, c. 213, applies to the State and county correctional facilities and the use of body imaging scanning equipment.

Full text of the adoption follows:

CHAPTER 1

ADMINISTRATION, ORGANIZATION, AND MANAGEMENT

SUBCHAPTER 2. GENERAL PROVISIONS

10A:1-2.2 Definitions

The following words and terms, when used in N.J.A.C. 10A:1 through 10A:30, shall have the following meanings unless the context clearly indicates otherwise:

...

"Body imaging scanning equipment" means equipment that utilizes a low-dose conventional x-ray transmission to produce an anatomical image of the inmate capable of identifying external and internal contraband.

...

CHAPTER 3

SECURITY AND CONTROL

SUBCHAPTER 5. SEARCHES OF INMATES AND FACILITIES

10A:3-5.5 Use of scanning/testing devices

(a) Searches of inmates, areas, and objects by the use of scanning/testing devices may be done routinely and randomly, where necessary for security purposes. This may be, but is not limited to, a walk-through device or a handheld device that is passed over the fully clothed body of the inmate. A scanning/testing device may also be utilized in conjunction with a strip search or body cavity search.

(b) (No change.)

(c) Body imaging scanning equipment may be utilized for the purpose of searching inmates. The use of body imaging scanning equipment shall be limited to searches conducted in any of the following circumstances:

1. When an inmate enters or leaves the correctional facility;
2. Any time before or after an inmate is placed in close custody, prehearing restrictive housing, administrative segregation, protective custody, psychological observation, or suicide watch;
3. Any time before or after an inmate has a contact visit in which the inmate and a visitor are permitted physical contact with each other;
4. After an inmate has been in any area where the inmate has had access to dangerous or valuable items;
5. During a mass search of an inmate housing unit or inmate work area;
6. When a custody staff member with a rank of sergeant or above determines that there exists a reasonable suspicion that an inmate is carrying or concealing contraband on the inmate's person, or in the inmate's anal or vaginal cavity; or
7. When a custody staff member with a rank of sergeant or above determines that the search is reasonably necessary for safety and security.

(d) Notwithstanding the provisions of any other law to the contrary, the body image scanning equipment may be operated by an employee of a correctional facility or other law enforcement officer.

(e) Prior to operating body imaging scanning equipment, an employee or officer shall successfully complete a training course approved by the Police Training Commission pursuant to P.L. 1961, c. 56 (N.J.S.A. 52:17B-66 et seq.).

(f) Body imaging scanning equipment shall be operated in compliance with all manufacturer standards, guidelines, instructions, recommendations, and safety precautions for inmates and equipment operators.

CHAPTER 31
ADULT COUNTY CORRECTIONAL FACILITIES

SUBCHAPTER 1. GENERAL PROVISIONS

10A:31-1.3 Definitions

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

...

“Body imaging scanning equipment” means equipment that utilizes a low-dose conventional x-ray transmission to produce an anatomical image of the inmate capable of identifying external and internal contraband.

...

SUBCHAPTER 8. SECURITY AND CONTROL

Recodify existing 10A:31-8.2 and 8.3 as 10A:31-8.1 and 8.2 (No change in text.)

10A:31-8.3 Use of body imaging scanning equipment

(a) Body imaging scanning equipment may be utilized for the purpose of searching arrestees, detainees, and inmates. The use of body imaging scanning equipment pursuant to this section shall be limited to searches conducted in any of the following circumstances:

1. When an inmate enters or leaves the correctional facility;
2. Any time before or after an inmate is placed in close custody, prehearing restrictive housing, administrative segregation, protective custody, psychological observation, or suicide watch;
3. Any time before or after an inmate has a contact visit in which the inmate and a visitor are permitted physical contact with each other;
4. After an inmate has been in any area where the inmate has had access to dangerous or valuable items;
5. During a mass search of an inmate housing unit or inmate work area;
6. When a custody staff member with a rank of sergeant or above determines that there exists a reasonable suspicion that an inmate is carrying or concealing contraband on the inmate’s person, or in the inmate’s anal or vaginal cavity; or
7. When a custody staff member with a rank of sergeant or above determines that the search is reasonably necessary for safety and security.

(b) Notwithstanding the provisions of any other law to the contrary, the body image scanning equipment may be operated by an employee of the county correctional facility or other law enforcement officer.

(c) Prior to operating body imaging scanning equipment, an employee or officer shall successfully complete a training course approved by the Police Training Commission pursuant to P.L. 1961, c. 56 (N.J.S.A. 52:17B-66 et seq.).

(d) Body imaging scanning equipment shall be operated in compliance with all manufacturer standards, guidelines, instructions, recommendations, and safety precautions for inmates and equipment operators.

(e) County correctional facilities that utilize body imaging scanning equipment shall submit all training materials to the Police Training Commission for approval and certification.

1. Body imaging scanning equipment training materials shall be updated no less than every three years unless substantial changes are required to the training materials to incorporate manufacturer updates, enhancements, recommended operating changes, and/or safety precautions.

2. Should manufacturer changes be recommended, the body imaging scanning equipment operator training materials shall be updated as needed and submitted to the Police Training Commission for approval and recertification.

3. Copies of all Police Training Commission approvals and certifications shall be submitted to the Department of Corrections upon receipt and at least every three years, or upon receipt of recertification, and made assessable during all Department of Corrections inspections of county facilities.

10A:31-8.8 Search of facilities

(a) (No change.)

(b) Procedures to be utilized in conducting searches shall be as set forth by each facility’s plan governing searches required by N.J.A.C. 10A:31-8.1. Such procedures may provide that an inmate may be excluded from entry into an area being searched to facilitate the safe and effective performance of the search.

(c)-(g) (No change.)

OTHER AGENCIES

(a)

NEW JERSEY TURNPIKE AUTHORITY

**Towing Rates on the Turnpike and the Parkway;
Road Services Rates on the Roadway**

Adopted Amendments: N.J.A.C. 19:9-3.1 and 3.2

Proposed: October 17, 2016, at 48 N.J.R. 2126(a).

Adopted: February 22, 2017, by the New Jersey Turnpike Authority, Joseph W. Mrozek, Executive Director.

Filed: February 24, 2017, as R.2017 d.048, **with non-substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 27:23-5.s.

Effective Date: March 20, 2017.

Expiration Date: April 27, 2017.

Summary of Public Comment and Agency Response:

The official comment period ended on February 9, 2017, and only one comment was received.

COMMENT: Christopher Stark, Vice President of the Insurance Council of New Jersey, commented that, while it was prudent and necessary to provide an increase to the towing fee schedule, especially since these fees have not been increased since 2004, the Insurance Council was not in favor of the cap on mileage charges for alternate destination tows of Class 1 vehicles as those proposed charges are higher than the standard mileage charges for towing a Class 1 vehicle to the tower’s garage facility. In addition, the Insurance Council requested that a definition of “winching fee” and “winching” be included in the regulations.

RESPONSE: The Authority appreciates the Insurance Council’s support for the increased towing rates, which have not been increased for over 12 years. With respect to the objection regarding the alternate destination tow rates, the Authority believes the mileage charges are appropriate based on current industry and regional standards, and does not believe these rates as proposed would create a barrier to consumer choice. Alternate destination tows were previously unregulated, and the Authority’s decision to cap the mileage rates for such tows will be a significant benefit to patrons. Regarding the commenter’s suggested definitions of “winching” and “winching fee,” as the Authority has not proposed any changes to these services, the request is beyond the scope of this rulemaking. However, the Authority will review the suggested definitions to determine whether they would be appropriate to include as part of a future rulemaking, which the Authority is currently undertaking.

Federal Standards Statement

The adopted amendments do not contain any standards or requirements that exceed the standards or requirements imposed by Federal law because no Federal standards or requirements apply to the amended regulations.