

LAW AND PUBLIC SAFETY

JUVENILE JUSTICE COMMISSION

Office of Investigations

Proposed Re-adoption with Amendments: N.J.A.C. 13:97  
Proposed Repeal and New Rules: N.J.A.C. 13:97-2 and 3

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(14) and (22), 52:17B-174, 2C:39-6a(9), 47:1A-1, and 2A:4A-60.

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

Proposal Number: PRN 2005-331 .

Comments with respect to this proposal must be received on or before November 18, 2005, and must be submitted in writing. One copy must be directed to following addresses, as indicated:

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The agency proposal follows:

N.J.A.C. 13:97, Office of Investigations, is scheduled to expire on August 7, 2005. The expiration date has been extended to February 3, 2006 pursuant to N.J.S.A. 52:14B-5.1c by the filing of this proposal. The Juvenile Justice Commission (Commission) has reviewed the rules and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The existing chapter is limited to use of force and firearms. These provisions have been reorganized and updated to conform to the Attorney General Guidelines on Use of Force (April 1985, as revised June 2000)..

The Commission is the New Jersey agency exclusively responsible for providing juvenile corrections services. In carrying out its responsibilities, the Commission seeks to maintain a safe and respectful environment for the youth under its supervision. The Office of Investigations is charged with the investigation of internal complaints within the Commission and investigators are sworn peace officers, who from time to time may be called upon to stop a fugitive or make an arrest. Accordingly, investigators are armed, and are subject to the Attorney General Guidelines on Use of Force, which are applicable to all State law enforcement personnel.

The proposed amendments are being promulgated to conform the Office of Investigations' rules to the most recent Attorney General Guidelines on Use of Force (April 1985, as revised June 2000). Except for contextual and other minor changes,

they are substantively identical to rules being proposed by the Commission for its Secure Facilities, under N.J.A.C. 13:95 and Juvenile Parole and Transitional Services, under N.J.A.C. 13:96, published elsewhere in this issue of the New Jersey Register.

A subchapter-by-subchapter description follows.

Subchapter 1 contains general provisions covering purpose, scope, definitions, oath of office form and confidentiality of information. The purpose provisions are reformatted to mirror the substantive provisions in Subchapters 2 and 3. The confidentiality section, N.J.A.C. 13:97-1.4, has been amended to cite to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. Numerous technical amendments are proposed to definitions and other provisions for reasons of context or grammar.

Changes to the definitions appearing in N.J.A.C. 13:97-1.2 have been made for clarification and to reflect reorganizations within the Commission.

The definition of “chief investigator” has been streamlined to eliminate repetitive and unnecessary references to the Commission.

A definition for “facility” has been added to clarify that for the purposes of the rule the term applies to places that house juveniles, but not to Commission administrative and operational offices.

The definition “Director of Operations” has been changed to reflect that the position no longer involves oversight of non-secure facilities and also to clarify that the actual in-house title of the manager serving in the position may be other than Director of Operations. In the recent past, the in-house title of the appropriate manager was “Director of Resident Care” and currently is “Director of Secure Care.”

The definition of “juvenile parolee” has been modified to correctly identify the compact governing interstate cooperation on parole matters as the “Interstate Compact for Juveniles.”

The Commission proposes to repeal existing Subchapter 2, Use of Force While On Duty, and existing Subchapter 3, Use of Personal Firearms and Use of Force While Off Duty. These rules are not in conformance with the most recent Attorney General’s Use of Force Policy, (April 1985, as revised June 2000).. They have been replaced by new Subchapters 3 and 4.

Proposed Subchapters 2 and 3 contain rules governing, respectively, use of force and firearms applicable to Commission investigators. These two subchapters contain substantive provisions that are substantially the same as those in existing Subchapters 2 and 3 with two important differences. Firstly, they are structured so that one subchapter, proposed Subchapter 2, addresses all use of force issues, both for on-duty investigators and for off-duty investigators, while the other, proposed Subchapter 3, addresses all firearms issues, again for both on-duty and off-duty investigators. The Commission believes this is a much clearer presentation than exists in the existing rule, in which one subchapter sets out all on-duty rules for both use of force and firearms and another does the same thing for off-duty investigators.

More importantly, the existing rules do not reflect progressive use of force requirements set out in the June 2000 revisions to the 1985 Attorney General’s Use of Force Policy and the proposed rule corrects this. The revisions in the Attorney General’s Policy strongly emphasize the importance of using only the minimum force necessary to

a given situation, beginning with “constructive authority,” meaning the exercise of authority that does not involve actual physical contact with an individual.

The Commission believes that control over and elimination of excessive use of force is especially relevant to juvenile corrections and has included within the proposed rule a requirement that an investigator report all situations where excessive force is used by anyone against a juvenile. See proposed N.J.A.C. 13:97-2.1(c). In the same vein, under the proposed rules, deadly force is not permitted to thwart an escape and bringing weapons into Commission facilities is not allowed.

Because the Commission has provided a 60 day comment period on the 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

The rules proposed for readoption with amendments will have a positive social impact. The proposed amendments and new rules take the special needs of juveniles into consideration, while at the same time addressing the safety and security of the community. The amendments and new rules incorporate the Attorney General’s use of force policy (April 1985, as revised June 2000), which was the product of the collective efforts and judgment of the New Jersey Use of Force Advisory Committee. It is the State of New Jersey’s policy that law enforcement officers will use only that force which is objectively reasonable and necessary, and that in using force, the utmost restraint will be used. The amendments and new rules follow these guidelines.

In addition, the rules as proposed also restrict the use of force in certain situations in consideration of the juvenile population. For example, deadly force may

not be used to thwart an escape. The use of chemical sprays is generally prohibited within Commission facilities, due to concerns for asthma among youth. Additional amendments are technical in nature and have no social impact.

By balancing legitimate security and law enforcement concerns with the restraint necessary and appropriate to a juvenile population, the proposed amended rules have a positive social impact.

#### Economic Impact

The proposed readoption with amendments and proposed repeals and new rules will not result in any economic impact because additional funding is not necessary to implement these rules. The cost of meeting and maintaining the requirements established by these rules will be met by the Commission through the budgetary process with monies allocated by the State.

#### Federal Standards Statement

The proposed readoption with amendments and proposed repeals and new rules are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

#### Jobs Impact

The New Jersey Juvenile Justice Commission does not anticipate that the rules proposed for readoption with amendments and proposed repeals and new rules will

result in the generation or loss of jobs.

#### Agriculture Industry Impact

The rules proposed for re adoption with amendments and proposed repeals and new rules will have no impact on the agriculture industry in New Jersey.

#### Regulatory Flexibility Statement

The rules proposed for re adoption with amendments and proposed repeals and new rules do not impose reporting, record-keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. The rules proposed for re adoption with amendments and proposed repeals and new rules impact juveniles committed to the care of the Juvenile Justice Commission and employees of the New Jersey Juvenile Justice Commission and have no effect on small businesses.

#### Smart Growth Impact

The Juvenile Justice Commission does not anticipate that the rules proposed for re adoption and the proposed amendments, repeals and new rules will have any impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:97.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:97-2 and 3.

Full text of the proposed amendments and new rules follows (additions indicated in boldface, thus; deletions indicated in brackets, [thus]:

## CHAPTER 97

### OFFICE OF INVESTIGATIONS

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 13:97-1.1 Purpose and scope

(a) The purpose of this chapter is to establish policies and procedures: [ regarding the use of force by the Office of Investigations' investigators, both on duty and off duty. Policies and procedures regarding the use of force by juvenile corrections officers employed in the Commission's secure facilities and the Life Skills and Leadership Academy are set forth in N.J.A.C. 13:95. Policies and procedures regarding the use of force by Investigators are set forth in N.J.A.C. 13:96.]

1. In connection with the Office of Investigations regarding the use of force by

investigators, both on-duty and off-duty; and

2. Regarding investigators' use of firearms, both on-duty and off-duty.

(b)(No change)

13:97-1.2 Definitions

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

"Central Communications Unit" means the centralized communication center within the New Jersey Department of Corrections **[which]** that coordinates certain functions of the Commission's Office of Investigations on a 24-hour, seven-days-a-week basis.

"Chemical agent" means an aerosol spray **[which]** that may be used to gain control of individuals who resist arrest or for the purpose of self-defense against an attack.

"Chief Investigator," **[Secure facilities]** means the Chief Investigator of the Commission's Office of Investigations **[in the New Jersey Juvenile Justice Commission who heads the office and is]** responsible for conducting investigations **[within the Commission]** at the direction of the Executive Director.

"Deadly force" means force **[which]** that is intended to cause, or is likely to cause, death or serious bodily harm.

"Deputy Executive Director" means the Deputy Executive Director of the **[New Jersey Juvenile Justice]** Commission.

"Director of Operations" means the Commission staff member, by whatever

name or title, charged with oversight and management responsibilities for the overall operation and supervision of the Commission's secure facilities.

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

"Facility" means a facility of the Commission used to house, train or educate juveniles; it does not refer to the central or other administrative or operational offices of the Commission.

"Juvenile parolee" means an adjudicated delinquent who is subject to the jurisdiction of the New Jersey State Parole Board, and who has been released on parole, and/or post-incarceration supervision, or any individual released from another State juvenile secure facility who resides in New Jersey under the terms of the [Juvenile] Interstate Compact[s] for [the Supervision of Parolees and Probationers]Juveniles. For the purposes of this chapter, juvenile parolee includes any individual, regardless of age, who is completing a term of parole or post- incarceration supervision pursuant to an adjudication of delinquency.

"Juvenile probationer" means an individual who has been adjudicated delinquent and sentenced by a judge of the Superior Court of New Jersey to a term of probation with the condition that he or she participate in a [New Jersey Juvenile Justice] Commission community-based residential or day program. For the purpose of this chapter, "juvenile probationer" shall only refer to those individuals enrolled in a [New Jersey Juvenile Justice] Commission program.

“Office of Investigations” means the unit within the Commission responsible for conducting internal investigations [within the Commission at the direction of the Executive Director].

#### 13:97-1.3 Oath of office form

An oath of office form shall be reproduced from originals that are available by contacting the [Juvenile Justice] Commissions' Office of Training.

#### 13:97-1.4 Confidentiality of information

All information contained in the master lists or reports maintained or submitted by employees of the Commission pursuant to the requirements of this chapter shall be confidential and such master lists and reports shall not be subject to public inspection or copying pursuant to the [“Right to Know Law,”] Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

### SUBCHAPTER 2. USE OF FORCE

#### 13:97-2.1 Investigator authority

(a) Investigators are authorized to use appropriate means to enforce Commission rules, regulations and related law enforcement objectives. Such means include, but are not limited to:

1. "Constructive authority," which means authority that does not involve actual physical contact with the individual, but involves the use of the investigator's authority to

exert control over the individual. Examples of constructive authority include, but are not limited to, verbal commands, gestures and warnings; and

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

(b) Investigators are encouraged to interrupt the flow of events to help ensure that a fellow investigator does not resort to employing an inappropriate or excessive use of force.

(c) An investigator is required to report all situations in which inappropriate or excessive force is used by anyone against a juvenile.

#### 13:97-2.2 Use of force

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

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

13:97-2.3 Non-deadly force; when justified

(a) An investigator may use non-deadly force against persons only under the following circumstances:

1. To protect self or others against the use of unlawful force;
2. To protect self or others against death or serious bodily harm;
3. To prevent damage to property;
4. To prevent escape;
5. To prevent or quell a riot or disturbance;
6. To prevent a suicide or attempted suicide;
7. To effect an arrest for any offense or crime under the laws of the State of New

Jersey, subject to the provisions of (c), below;

8. To enforce law enforcement objectives where expressly permitted by Commission regulations or in situations where the highest ranking investigator on the scene believes that an individual's failure to comply constitutes an immediate threat to the personal safety of investigators or others.

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

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

hand confrontation; and

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

(c) The use of non-deadly force to effect an arrest is only justifiable if:

1. An investigator makes known his or her identity and the purpose of the arrest;

2. An investigator reasonably believes that his or her identity and purpose are otherwise known by, or can reasonably be made known to, the person to be

arrested; or

3. When the arrest is made under a warrant and the warrant is valid or reasonably believed by the investigator to be valid.

#### 13:97-2.4 Deadly force; when justified and when restricted

(a) Deadly force includes, but is not limited to, the use of firearms and other lethal weapons.

(b) Deadly force may be used as described herein under limitations consistent with the provisions of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., and with any applicable guidelines issued by the Attorney General under the following circumstances:

1. When the investigator reasonably believes that deadly force is immediately

necessary to protect the investigator or another person from imminent danger of death or serious bodily harm.

i. Deadly force is not justifiable if the investigator can otherwise secure his or her complete safety or the complete safety of the protected person.

2. Under no circumstances shall prevention of an escape of a juvenile constitute independent grounds justifying use of deadly force.

(c) Where feasible, before using a firearm, the investigator shall attempt to identify himself or herself as an investigator and state his or her intent to shoot. An investigator shall not discharge a firearm as a signal for help or as a warning shot.

(d) The investigator shall not discharge a firearm if there is a substantial risk of injury to innocent persons.

(e) An investigator shall not engage in any vehicle pursuit. An investigator shall not fire his or her firearm from a moving vehicle or at the driver or occupant of a moving vehicle or engage in any vehicle contact action, such as ramming, unless the investigator reasonably believes that:

1. There exists an imminent danger of death or serious bodily harm to the investigator or another person; and

2. No other means are available at that time to avert or eliminate the danger.

(f) An investigator shall not fire a weapon solely to disable a moving vehicle.

(g) Whenever feasible, the investigator shall contact central communications to request assistance before engaging in any use of force that reasonably could result in

serious bodily harm.

(h) An investigator is under no obligation to retreat or desist when resistance is encountered or threatened. However, an investigator shall not resort to the use of deadly force if the investigator reasonably believes that an alternative to the use of deadly force will avert or eliminate an imminent danger of death or serious bodily harm, and achieve the law enforcement objective at no increased risk to the investigator or another person.

(i) An investigator shall not use deadly force to subdue persons whose actions are only destructive to property.

(j) Deadly force shall not be used against persons whose conduct is injurious only to themselves.

(k) The discharge of any projectile from a firearm is considered to be deadly force, including less lethal means such as, but not limited to, bean bag ammunition or rubber bullets. For that reason, these and similar less lethal means of deadly force can only be used when an investigator reasonably believes such action is immediately necessary to protect the investigator or another person from imminent danger of death or serious bodily harm.

#### 13:97-2.5 Use of force while off-duty

(a) Although N.J.S.A. 52:17B-174(d) authorizes investigators to exercise law enforcement powers, investigators are not required to exercise those powers or to carry firearms during off-duty hours.

(b) Investigators, while off-duty, should not become involved with routine law enforcement duties that are under the jurisdiction of local law enforcement agencies. When an investigator observes what he or she believes to be a violation of the law, he or she should take note of the vehicle description, license plate numbers, identifying characteristics of persons involved and other relevant information, and report such information to the local law enforcement agency having jurisdiction and to the Director of Investigations. Investigators should avoid stopping or detaining vehicles or persons.

(c) The utmost discretion shall be exercised by the investigator to determine when and under what conditions to use force. Whenever he or she believes that possible criminal action is taking place and that a reasonable alternative to use of force exists, the investigator must take the action which is calculated to be least dangerous or harmful to persons or property.

(d) An investigator shall be deemed to have acted within the scope of his or her employment or in the law enforcement interest of the State of New Jersey if he or she exercises police powers in accordance with the provisions of this subchapter and orders promulgated in connection therewith.

#### 13:97-2.6 Reports

(a) An investigator shall immediately contact the Director of Investigations or designee and shall complete an I301 Use of Force Report when he or she participated in, or witnessed, any incident in which:

1. A firearm was discharged outside of the firing range;

2. Physical force, mechanical force or deadly force is used;
3. An individual alleges that serious bodily harm has been inflicted; or
4. Such a report is required by the Director of Investigations.

(b) The I301 Use of Force Report shall contain the following information:

1. A description of the events leading up to the use of force;
2. A description of the incident;
3. The type of force used;
4. The reason(s) for employing force;
5. A list of all participants and witnesses to the incident;
6. A description of the injuries suffered, if any, and medical treatment given; and
7. Other relevant facts or comments about the incident or conduct of the

investigators and others.

(c) The Director of Investigations shall forward all reports to the Executive Director or designee.

#### 13:97-2.7 Use of mechanical restraints

(a) Mechanical restraints may be used in the following instances:

1. When transporting an individual from one place to another;
2. When the individual's history, disciplinary record, behavior or present emotional state indicates a likelihood that bodily injury to any person, damage to property or escape by the juvenile may occur; or
3. To prevent an individual from attempting suicide, self-inflicted injury, or injury

to others.

(b) Mechanical restraints shall not be used as punishment or in any way that causes undue physical discomfort, inflicts physical pain or restricts the blood circulation or breathing of the juvenile.

(c) Mechanical restraints shall be removed promptly when the reason for their initial use has ceased to exist or has sufficiently abated.

(d) An individual in restraints shall be under continuous observation by an investigator.

#### 13:97-2.8 Use of chemical or natural agents; storage

(a) Chemical or natural agents shall not be used within a Commission facility, except when appropriate to avoid having to use deadly force.

(b) Whenever chemical or natural agents are used other than in a Commission facility as a means of control, investigators shall comply with the reporting procedures set forth in N.J.A.C. 13:97-2.6.

(c) An investigator is not permitted to carry or use chemical or natural agents unless he or she has received appropriate training and semi-annual retraining in chemical or natural agent use and effects.

(d) After each instance of use, individuals who have been exposed to chemical or natural agents shall be referred to the medical staff for any necessary examination and treatment.

(e) Chemical or natural agents shall be safely stored, legibly labeled to show the

chemical or natural name and expiration date, and properly inventoried to ensure security and an adequate unexpired supply.

(f) No chemical or natural agent shall be used by an investigator except for those expressly approved and issued by the Commission.

#### 13:97-2.9 Training

(a) Training in proper methods and techniques of using force and in the legal aspect of using force shall be provided as part of the Police Training Commission's approved Basic Course for Investigators or equivalent .

(b) Investigators shall receive semi-annual training in proper methods and techniques of using force and in the lawful and appropriate use of force. In addition to semi-annual training, retraining may be repeated as needed.

#### 13:97-2.10 Penalties for violation

(a) Office of Investigations staff action that does not conform to the provisions of this subchapter and internal management procedures implemented in connection with this subchapter may result in the following:

1. Disciplinary action pursuant to N.J.A.C. 4A:2;
2. Personal, civil or criminal liability;
3. Denial of indemnification; and/or
4. Refusal by the Office of the Attorney General to represent the custody staff officer.

(b) Decisions regarding (a)3 and 4 above shall be made by the Attorney General after an investigation of the facts of the case.

13:97-2.11 Office of Investigations internal management procedures

(a) The Office of Investigations shall prepare and maintain written management procedures to govern the use of force and storage of chemical agents, consistent with this subchapter.

(b) All such written management procedures developed in accordance with this subchapter shall be submitted to the Executive Director or designee for approval before implementation.

SUBCHAPTER 3. USE OF FIREARMS WHILE ON-DUTY AND USE OF PERSONAL FIREARMS WHILE OFF-DUTY

13:97-3.1 Investigators authorized to carry firearms while on-duty

(a) Prior to being permitted to carry a firearm on-duty, investigators shall:

1. Have taken and successfully completed the Police Training Commission (PTC) approved Basic Course for Investigators as set forth in N.J.S.A. 52:17B-66 et seq or an approved equivalent;

2. Have taken and successfully completed the firearms training course at the Commission's Office of Training; and

3. Have been sworn as peace members by taking the oath of office.

13:97-3.2 On-duty firearms training, qualification and requalification

(a) As required by N.J.S.A. 2C:39-1 et seq., all investigators shall be initially trained and shall qualify in the use and handling of approved on-duty firearms.

(b) Investigators shall requalify in accordance with the New Jersey Attorney General's Semi-Annual Qualification and Requalification Standards for New Jersey Law Enforcement.

(c) Only those investigators who achieve and maintain the required level of proficiency during range qualification and requalification shall be authorized to possess firearms while on-duty.

(d) Once an investigator has qualified on his or her Commission approved firearm, the investigator shall receive the official State of New Jersey, Firearms Unit Weapons Card. Investigators shall be required to carry the weapons card, the official badge and photo identification card of the Commission while on-duty.

(e) The Director of Investigations or designee shall be responsible for preparing and maintaining a current list of each investigator authorized to carry a firearm, from a Commission-wide master list provided for that purpose by the Commission's Office of Training.

1. The master list shall be maintained by the Director of Investigations or designee to indicate the investigator's firearm qualification date (new or expired), and the investigator's issued firearm, model name and number, and serial number of the firearm.

13:97-3.3 On-duty firearm

(a) The authorized on-duty firearm shall be the responsibility of the investigator at all times.

1. Only shoulder and waist holsters shall be used for on-duty firearms. A holster must hold the firearm firmly when inverted and have no internal clips.

2. The waist holster is the only holster approved for use while qualifying with the on-duty firearm.

3. Personnel who elect to use a shoulder holster for on-duty use shall demonstrate proficiency in the use of that holster during firearms requalification but need not qualify while using the holster.

(b) The investigator shall not draw or exhibit his or her firearm except for one of the following circumstances:

1. For maintenance of the firearm;

2. To secure the firearm;

3. When commanded by the firearms staff during training exercises, range practice, qualification or requalification with the firearm, or by a supervisor for purposes of inspection;

4. When circumstances create a reasonable belief that it may be necessary to use the firearm in the performance of the investigator's duties; or

5. When circumstances create a reasonable belief that display of a firearm as an element of constructive authority will help establish or maintain control in a potentially

dangerous situation in an effort to discourage resistance and ensure personal safety.

(c) An investigator, if required to carry a firearm while on-duty, shall carry his or her on-duty firearm, together with Commission approved chemical or natural agent spray, on his or her person at all times unless otherwise instructed by a superior. The firearm shall:

1. Remain in the holster while in a rest room; and

2. Not be left in a motor vehicle except when necessary, such as when an investigator must remove his or her on-duty firearm and another authorized staff member is unavailable to take custody of the firearm. When necessary, a firearm may be stored in a Commission approved vehicle lock box.

(d) The investigator entering any facility of the Commission shall either temporarily transfer custody of his or her firearm to an authorized staff member, store his or her firearm at the main secure facility or at a Commission authorized weapons storage unit or secrete it in a Commission approved vehicle lock box.

1. Investigators are prohibited from carrying a firearm into any Commission facility beyond any posted weapons prohibited area, and into any area routinely dedicated for use by juveniles, including, but not limited to, areas for sleeping, living, eating, recreation, training, and education.

(e) When an authorized firearm or ammunition is believed to have been lost or stolen, or is otherwise missing, the investigator shall immediately report this fact to the local law enforcement authorities and to the Director of Operations.

(f) When a State of New Jersey, Firearms Unit Weapons Card, official photo

identification card or badge of the Commission believed to have been lost or stolen, or is otherwise missing, the investigator shall notify the local law enforcement authorities and the Director of Investigations or designee as soon as possible.

(g) Pursuant to N.J.S.A. 2C:58-15, an investigator who knows or reasonably should know that a minor or unauthorized adult is likely to gain access to a loaded firearm at a premises under the investigator's control shall:

1. Store the firearm in a securely locked box or container; and
2. Secure the firearm with a Commission approved trigger locking device.

#### 13:97-3.4 Personnel authorized to carry firearms while off-duty

(a) Firearms may be carried off-duty by investigators who:

1. Have taken and successfully completed the Police Training Commission (PTC) approved Basic Course for investigators as set forth in N.J.S.A. 52:17B-66 et seq;
2. Have qualified in the use and handling of approved off-duty firearms at the firearms training course of the Commission's Office of Training; and
3. Have been sworn as a peace member by taking the oath of office.

#### 13:97-3.5 Authorized off-duty firearms, ammunition, holsters and security

(a) Eligible investigators who are trained and meet qualification specifications shall be permitted to possess and carry one authorized firearm for off-duty use.

(b) A firearm intended for use as an off-duty weapon must have been obtained and registered pursuant to state and local laws of the state in which the investigator

lives. Investigators may not loan or improperly transfer personal firearms.

(c) Trigger locking devices that are approved by the Commission shall be used, in accordance with this section and the operating instructions and standards provided by the manufacturers of the trigger locking devices.

(d) Only off-duty firearm makes and models approved and authorized by the Commission may be carried while off-duty.

(e) Ammunition for the off-duty firearm(s) shall be approved and authorized by the Commission.

(f) Only shoulder, waist and ankle holsters shall be used for off-duty use. A holster must hold the firearm firmly when inverted and have no internal clips. An off-duty firearm shall be carried in the approved holster on the body. No purse holsters or holstered firearms in purses are approved.

(g) The waist holster is the only holster approved for use while qualifying with the off-duty firearm.

(h) Personnel who elect to use a shoulder or ankle holster for off-duty use shall demonstrate proficiency in the use of that holster during firearms requalification but need not qualify while using the holster.

(i) The investigator shall be responsible for assuming the cost of the off-duty firearm, ammunition, holsters and for maintaining his or her firearm in a safe, secure and serviceable condition.

(j) Pursuant to N.J.S.A. 2C:58-15, an investigator who knows or reasonably should know that a minor or unauthorized adult is likely to gain access to a loaded

firearm at a premises under the investigator's control shall:

1. Store the off-duty firearm in a securely locked box or container; and
2. Secure the off-duty firearm with a Commission approved trigger locking device.

#### 13:97-3.6 Off-duty firearm

(a) The authorized off-duty firearm shall be the responsibility of the investigator at all times.

(b) The investigator shall not draw or exhibit his or her off-duty firearm except for one of the following circumstances:

1. For maintenance of the firearm;
2. To secure the firearm;
3. When commanded by the firearms staff during training exercises, range practice, qualification, or re-qualification with the firearm; or
4. When circumstances create a reasonable belief that it may be necessary to use the firearm.

#### 13:97-3.7 Firearm instructors

(a) Only those persons who have successfully completed a Police Training Commission (PTC) approved firearms instruction course and are PTC certified as Firearm Instructors shall instruct in the Firearms Training Program at the Commission's Office of Training.

(b) All firearms training instructors engaged by the Commission for semi-annual and re-qualification firearms training shall satisfy at least one of the following requirements:

1. Be certified by the PTC;
2. Possess training equivalent to the PTC approval firearms instructor course and are able to demonstrate a knowledge of and skill with a firearm; or
3. Have successfully completed some other recognized firearms instructor course as determined by the Executive Director.

#### 13:97-3.8 Off-duty firearms training, qualification and requalification

(a) All personnel authorized by the Commission to carry firearms off-duty must be initially trained and shall qualify in the use and handling of approved off-duty firearms.

(b) Investigators who carry off-duty firearms shall requalify semi-annually on a range approved by the Commission.

(c) Only those investigators who achieve and maintain the required level of proficiency during range qualification and requalification shall be authorized to carry firearms while off-duty.

(d) Once an individual has qualified on his or her approved personal off-duty firearm, he or she shall receive the official State of New Jersey, Firearms Unit Weapons Card. The off-duty firearm he or she carries must be identified on the off-duty weapons card. Authorized personnel shall be required to carry their off-duty weapons card, the official badge and photo identification card of the Commission at all times while carrying

their off-duty firearm.

(e) The Director of Investigations or designee shall be responsible for preparing and maintaining a current master list of each investigator authorized to carry an off-duty firearm, from a Commission-wide master list provided for that purpose by the Commission's Office of Training.

1. The master list shall indicate the investigator's firearms qualification date (new or expired), model name and number, and serial number of the authorized off-duty firearm.

2. Each time the investigator registers a firearm, the Director of Investigations, or designee, is responsible for comparing the firearms qualification date, firearm model name and number, and firearm serial number contained on the master list against the State of New Jersey, Firearms Unit Weapons Card accompanying the personal firearm.

(f) Should a personal firearm become unusable, stolen or unserviceable and the investigator selects a personal off-duty firearm different from the one originally qualified for use, he or she must requalify on the different firearm before it can be used. This qualification may be completed prior to the next semi-annual qualification period.

(g) Should the investigator wish to change his or her authorized personal off-duty firearm as a matter of preference, the investigator shall notify the Commission's Office of Training to arrange for qualification in the use and handling of his or her authorized personal off-duty firearm.

13:97-3.9 Storage of off-duty firearms while on Commission property

(a) An investigator entering a Commission facility's grounds while armed with an off-duty firearm must proceed directly to the weapons collection station of the facility. The off-duty firearm shall be turned in fully loaded, in its holster, with the State of New Jersey, Firearms Unit Weapons Card with any extra loaded magazines or speedloaders.

(b) The investigator must present his or her official photo identification card of the Commission when checking the firearm and authorized ammunition out of the weapons collection station.

(c) Investigators are prohibited from storing off-duty weapons or ammunition in their personal vehicles while on Commission property.

(d) Investigators reporting to a secure facility satellite unit must store their firearms at the main secure facility or an approved authorized weapons storage unit.

(e) Under no circumstances may any Commission employee carry a personally owned firearm into a weapons prohibited area of any Commission facility, or into any area routinely dedicated for use by juveniles, including but not limited to, areas for sleeping, living, eating, recreation, training, and education. Personally owned firearms shall not be carried or used while on-duty except when authorized by the Director of Investigations. In those instances, only firearms approved by the Commission may be used by qualified investigators.

#### 13:97-3.10 Unauthorized use of personal weapons while off-duty

(a) An investigator shall not be authorized to carry an off-duty firearm in the

following instances:

1. Where N.J.S.A. 2C:39-7 (Persons Convicted of Certain Crimes) is applicable;

2. When an investigator has been suspended from duty for any violation by the Director of Investigations or a higher official of the Commission;

3. When there are pending charges or ongoing investigations of alleged incidents involving the misuse of a firearm;

4. When otherwise prohibited by law or regulation; or

5. Any other situation where the Director of Investigations or designee may exercise their authority to withdraw off-duty firearms privileges, subject to the review of the Deputy Executive Director, or Executive Director.

(b) In any of the instances in (a) above, the State of New Jersey, Firearms Unit Weapons Card shall be turned in to the Director of Investigations, or designee.

13:97-3.11 Possession of firearms within a casino or casino simulcasting facility

Pursuant to N.J.A.C. 19:45-1.13, an investigator shall not possess or be permitted to possess a firearm within a casino or casino simulcasting facility.

13:97-3.12 Reporting incidents

(a) When an investigator believes, or has reason to believe, that an authorized off –duty firearm or ammunition is lost, stolen, or is otherwise missing, the investigator shall immediately report this fact to the local law enforcement authorities and to the Director of Investigations.

(b) As soon as practicable, when a State of New Jersey, Firearms Unit Weapons Card, official photo identification card or badge of the Commission is believed to have been lost or stolen, or is otherwise missing, the investigator shall notify the local law enforcement authorities and Director of Investigations or designee.

(c) Except as outlined in N.J.A.C. 13:97-3.6(b)1 through 3, the investigator shall immediately and without exception report to the local law enforcement authorities and to Director of Investigations or designee the occurrence of any of the following:

1. Any incident where the investigator displayed, drew or fired his or her off- duty firearm; or

2. Any incident or injury which occurred from the use of the investigator's firearm.

(d) The next working day after any incident as described in this section, the investigator shall report in writing to Director of Investigations or designee the incident and identifying particulars of the incident. The Director of Investigations or designee shall then forward the report for review to the Executive Director or designee.

(e) The investigator shall, within three days, report to the Director of Investigations or designee in writing whenever a registered authorized off-duty firearm has been sold or is no longer in use.

#### 13:97-3.13 Penalties for violation

(a) Investigator actions which do not conform to the provisions of this subchapter and any post orders or internal management procedures implemented in connection with this subchapter may result in the following:

1. Disciplinary action pursuant to N.J.A.C. 4A:2;

2. Personal, civil or criminal liability;

3. Denial of indemnification; and/or

4. Refusal by the Office of the Attorney General to represent the investigator.

(b) Decisions regarding (a)3 and 4 above will be made by the Attorney General

after reviewing the facts of the case.

13:97-3.14 Post orders and procedures

(a) The Office of Investigations shall prepare and maintain written management procedures consistent with this subchapter.

(b) All written management procedures developed in accordance with this subchapter shall be submitted to the Executive Director or designee for approval before implementation.