

LAW AND PUBLIC SAFETY
JUVENILE JUSTICE COMMISSION

Transfer of Adjudicated Delinquents to the New Jersey Department of Corrections

Proposed Readoption with Amendments: N.J.A.C. 13:91

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable David Samson, Attorney General and Chair, Lori E. Grifa, Attorney General's Designee and Devon Brown, Commissioner, Department of Corrections.

Authority: N.J.S.A. 52:17B-170, 52:17B-171, 52:17B-175 and 28 C.F.R. Part 31.

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

Proposal Number: PRN 2002 - 328.

Submit written comments by November 15, 2002 to:

Howard L. Beyer, Executive Director
New Jersey Juvenile Justice Commission
P.O. Box 107
Trenton, New Jersey 08625-0107

The agency proposal follows:

Summary

The Juvenile Justice Commission and the Department of Corrections are jointly proposing to readopt the rules at N.J.A.C. 13:91 with amendments. These rules provide the procedure utilized to transfer certain adjudicated delinquents from the Juvenile Justice Commission to the New Jersey Department of Corrections. The rules at N.J.A.C. 13:91 were first adopted on an emergency basis and became effective on May 29, 1997. Concurrently, the provisions of those emergency rules were proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted new rules became effective on August 18, 1997 (see 29 N.J.R. 2711(a) and 3733(b)),

and are scheduled to expire on February 14, 2003 pursuant to N.J.S.A. 52:14B-5.1c. The Juvenile Justice Commission and the Department of Corrections have reviewed these rules and determined them to be necessary, reasonable, understandable and proper for the purpose for which they were originally promulgated. The Commission and the Department further determined that technical and grammatical amendments as more fully described below, are appropriate at this time.

The Commission is responsible for the custody and care of a varied population of juvenile offenders whose ages range from 12 to 25 years. Pursuant to N.J.S.A. 52:17B-175, the rules proposed for re-adoption set forth the procedures for allowing the Commission to transfer the custody and care of any person 18 years of age or older incarcerated in a juvenile facility to an adult facility operated by the New Jersey Department of Corrections if: that person's continued presence in the juvenile facility threatens the safety of the public, facility staff or other juvenile offenders; threatens the ability of the Commission to operate the juvenile facility in a safe and orderly manner; the person's maturity level and criminal sophistication make that person inappropriate for the Commission's programs; or that person's presence impedes the effective delivery of programs, sanctions and services developed to meet the special needs of the juvenile aged offenders in the custody, care and control of the Commission. The rules proposed for re-adoption are necessary to ensure that disruptive offenders 18 years of age or older may be transferred to the New Jersey Department of Corrections.

The Commission utilizes the transfer rules in only the most difficult cases. In the nearly five years since the original adoption of the rules at N.J.A.C. 13:91, 398 juveniles over the age of

18 have been transferred from the Commission to the Department of Corrections. During this period the number of transferred adjudicated delinquents has declined each year.

The rules proposed for readoption are consistent with Federal regulations (28 C.F.R. Part 31) adopted pursuant to the provisions of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974. In order to receive formula grants from the Federal government in accordance with the JJDP Act, the State must operate correctional facilities in a manner consistent with the provisions of the Act. The Federal regulations (28 C.F.R. Part 31) promulgated pursuant to the JJDP Act, which require states to maintain sight and sound separation between adjudicated delinquents and convicted adult offenders when operating correctional facilities, were amended in December 1996 to provide that adjudicated delinquents who have reached the age of full criminal responsibility established by state law may be transferred to an adult facility without sight and sound restrictions provided the transfer is authorized by state law. The rules proposed for readoption at N.J.A.C. 13:91 satisfy the provisions of the Federal regulations (28 C.F.R. Part 31) in that they are promulgated pursuant to the authority of N.J.S.A. 52:17B-175(e) which authorizes the transfer of adjudicated delinquents to adult facilities once they reach the age of 16 among other criteria. Because the age of full criminal responsibility in New Jersey is 18 years of age, the rules proposed for readoption apply to adjudicated delinquents 18 years of age or older, rather than those juveniles 16 years of age or older, to satisfy the requirements in 28 C.F.R. Part 31.

In accordance with N.J.S.A. 52:17B-175, the Commission with the consent of the New Jersey Department of Corrections, is proposing to readopt the rules at N.J.A.C. 13:91 in order to continue to permit the transfer of persons 18 years of age or older to the New Jersey Department of Corrections based on criteria established in these rules. The rules proposed for readoption

provide the criteria upon which 18-year old offenders may be considered for transfer, the process by which transfers are recommended and authorized, the procedures for transfer, and the confidentiality of information and records concerning transfers.

The amendments being proposed to the rules in chapter 91 are described as follows:

At N.J.A.C. 13:91-1.3 the definition of “Deputy Executive Director” is being added to the list of definitions for the chapter. The proposed amendments to the rules in Chapter 91 permit delegation of authority to the Deputy Executive Director by the Executive Director in the matter of transfers of adjudicated delinquents. In addition, the definition of “juvenile facility” is being revised to include the facilities created since the Commission was originally established in 1995.

N.J.A.C. 13:91-2.3(d), (e) and (f) are being amended at the request of the Department of Corrections. These rules set forth that the Commissioner of Corrections shall review and approve or disapprove the request of the Executive Director of the Commission to transfer an adjudicated delinquent 18 years of age or older from the secure care of the Commission to the secure care of the Department of Corrections, and that no transfer shall be permitted without the express approval of the Commissioner of Corrections. The Commissioner of Corrections has determined that the authority to approve or disapprove requests for the transfer of an adjudicated delinquent from the Commission to the Department may be delegated. Therefore, the words “or his or her designee” have been added after each reference to “Commissioner” in the rules at N.J.A.C. 13:91-2.3(d), (e) and (f). However, subsection (c) at N.J.A.C.13:91-2.3 is not being amended to ensure the continued integrity in the handling of the documents from the Commission directly to the Commissioner of Corrections.

The Commission is amending subsections (g), (h) and (i) at N.J.A.C. 13:91-2.2 and to include the words “or, if designated, the Deputy Executive Director” following the words

“Executive Director” in order to allow the Executive Director to delegate the authority to approve or disapprove the transfer of adjudicated delinquents to the Deputy Executive Director. The regulations continue to provide for direct notification to the Executive Director in the event that the Commissioner of the Department of Corrections disapproves a Commission request to transfer an adjudicated delinquent.

N.J.A.C. 13:91-2.4(a) is being amended with the approval of the Department of Corrections to delete the text “by the Executive Director and the Commissioner” because N.J.A.C 13:91-2.3 clearly sets forth the approval and disapproval process. Deletion of the above text clarifies the intent of the rule which is to arrange for the transfer of the adjudicated delinquent.

The proposal is not subject to the rulemaking calendar requirements of N.J.S.A. 52:14B-3(4) and N.J.A.C. 1:30-3 because the agencies are providing a 60-day comment period, pursuant to N.J.A.C. 1:13-3.3(a)5.

Social Impact

The rules proposed for re-adoption have allowed the Commission to focus on the rehabilitative efforts of offenders in its facilities and to better protect the public, facility staff and other juvenile offenders. In the day to day management of a juvenile facility operated by the Commission, the ability to transfer a juvenile 18 years of age or older, under the circumstances set forth herein is essential to operate the facility in a stable, safe and orderly manner. The rules proposed for re-adoption set forth the criteria and procedures necessary for transferring such persons from the custody and care of the Commission to the custody and care of the New Jersey Department of Corrections.

The Commission and the Department anticipate that the proposed amendments will provide necessary administrative flexibility and will enhance the safe, secure and orderly operation of facilities throughout the Commission.

Economic Impact

The transfer costs associated with meeting and maintaining the requirements established by the rules proposed for re adoption and accompanying amendments will be met by the Commission and the Department of Corrections through the established budget process with funds allocated by the State. The Commission and the New Jersey Department of Corrections anticipate that neither the rules proposed for re adoption nor the accompanying amendments will have an economic impact on the Commission or any other department or agency of State government.

Federal Standards Statement

The rules proposed for re adoption and the proposed amendments comply with 28 C.F.R. Part 31 and do not exceed the standards or requirements imposed by this Federal law.

Jobs Impact

The Juvenile Justice Commission and the Department of Corrections do not anticipate that any jobs will be generated or lost if the rules proposed for re adoption and the proposed amendments are adopted.

Agriculture Industry Impact

The Juvenile Justice Commission and the Department of Corrections do not anticipate that the rules proposed for readoption and the proposed amendments would have any impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption and the proposed amendments impose no reporting, recordkeeping or other compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules relate to the transfer of persons 18 years of age or older from the custody of the Juvenile Justice Commission to the New Jersey Department of Corrections. Therefore, a regulatory flexibility analysis is not required.

Smart Growth Impact

The rules proposed for readoption and the proposed amendments will have no impact on the achievement of smart growth and 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. 13:91.

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

13:91-1.3 Definitions

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

...

“Deputy Executive Director” means the Deputy Executive Director of the New Jersey Juvenile Justice Commission.

...

“Juvenile facility” means [the New Jersey Training School for Boys, the Juvenile Medium Security Facility, the Valentine Female Unit, and/or any other secure care facility created by the Commission] any secure facility created or operated by the Commission including, but not limited to, the New Jersey Training School for Boys, the Juvenile Medium Security Facility, the Valentine Unit, the Stabilization and Reintegration Program (Boot Camp) and the Hayes Unit.

...

13:91-2.2 Recommendation for transfer of an adjudicated delinquent 18 years of age or older

(a) - (f) (No change.)

(g) If the Secure Care Administrator agrees with the recommendation for transfer of an adjudicated delinquent 18 years of age or older, the Secure Care Administrator shall submit Form 101 and the supporting documents identified in (b) above to the Executive Director or, if designated, the Deputy Executive Director.

(h) If the Secure Care Administrator does not agree with the recommendation for transfer of an adjudicated delinquent 18 years of age or older, the Secure Care Administrator shall provide his or her reason(s) for not recommending the transfer on Form 101 and shall submit it

and the supporting documents identified in (b) above to the Executive Director or, if designated, the Deputy Executive Director.

(i) The Executive Director or, if designated, the Deputy Executive Director shall approve or disapprove of the recommended transfer by signing Form 101.

13:91-2.3 Approval for transfer of an adjudicated delinquent 18 years of age or older

(a) The Executive Director or, if designated, the Deputy Executive Director shall approve the transfer of an adjudicated delinquent 18 years of age or older in those instances when [the Executive Director] he or she determines that such transfer is warranted and complies with the criteria in this subchapter.

(b) If the Executive Director or the Deputy Executive Director as designee disapproves of the transfer of an adjudicated delinquent 18 years of age or older, [the Executive Director] he or she shall provide the reason(s) for his or her decision on Form 101 and submit it to the JRCC through the Secure Care Administrator and the Superintendent of the facility where the adjudicated delinquent is housed. The JRCC shall then maintain placement of the adjudicated delinquent in a juvenile facility.

(c) If the Executive Director or Deputy Executive Director as designee approves the transfer of an adjudicated delinquent 18 years of age or older from the custody and care of the Commission to the custody and care of the Department the completed Form 101, along with the supporting documents set forth in N.J.A.C 13:91-2.2(b), shall be forwarded to the Commissioner of the Department of Corrections.

(d) The Commissioner or his or her designee shall approve or disapprove the [Executive Director's] Commission's request to transfer an adjudicated delinquent 18 years of age or older to the Department by signing Form 101.

(e) If the Commissioner or his or her designee approves the requested transfer of an adjudicated delinquent 18 years of age or older to the Department, [the Commissioner] he or she shall forward Form 101 indicating his or her approval of the transfer to the Executive Director or, if designated, the Deputy Executive Director. The Executive Director or, if designated, the Deputy Executive Director shall then submit Form 101 to the JRCC through the Secure Care Administrator and the Superintendent of the facility when the adjudicated delinquent is housed.

(f) If the Commissioner or his or her designee disapproves the requested transfer of an adjudicated delinquent 18 years of age or older to the Department, [the Commissioner] he or she shall provide the reason(s) for his or her decision on Form 101 and submit it to the Executive Director. The Executive Director shall then submit Form 101 to the JRCC through the Secure Care Administrator and the Superintendent of the facility where the adjudicated delinquent is housed. The JRCC shall then maintain placement of the adjudicated delinquent in a juvenile facility.

13:91-2.4 Procedures for transfer

(a) Upon approval [by the Executive Director and the Commissioner] of a requested transfer, the JRCC shall arrange for processing the adjudicated delinquent 18 years of age or older.

(b) - (c) (No change.)

Devon Brown
Commissioner
Department of Corrections

Date

Lori E. Grifa
Attorney General's Designee
Chair, Juvenile Justice Commission
Executive Board

Date