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RULE PROPOSALS

LAW AND PUBLIC SAFETY

JUVENILE JUSTICE COMMISSION

44 N.J.R. 2463(a)

Proposed New Rules: N.J.A.C. 13:90-1A

[Click here to view Interested Persons Statement](#)

Request and Remedy Process

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable Jeffrey S. Chiesa, Attorney General and Chair, Deborah R. Edwards, Attorney General's Designee.

Authority: N.J.S.A. 52:17B-170e, 52:17B-171, 52:17B-176, and 52:17B-178.

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

Proposal Number PRN 2012-155.

Submit written comments by January 4, 2013 to:

John Wolff, Administrative Practice Officer
New Jersey Juvenile Justice Commission
1001 Spruce Street - Suite 202
Trenton, New Jersey 08638

The agency proposal follows:

Summary

The Juvenile Justice Commission (Commission) has determined that there is a need for rules that formalize procedures for the filing and processing of juvenile requests that will be applicable to all juveniles under Commission care at both its secure facilities and community programs. Accordingly, the Commission is proposing new N.J.A.C. 13:90-1A, Request and Remedy Process.

The proposed new subchapter contains eight sections:

Proposed N.J.A.C. 13:90-1A.1 states that the purpose of the subchapter is to provide uniform procedures applicable to all juveniles assigned to Commission facilities and programs for the filing and resolution of a juvenile complaint; grievance; comment, request for [page=2464] redress, assistance, action, change in conditions, or treatment; or other comments related to his or her incarceration or assignment to a Commission facility or program.

Proposed N.J.A.C. 13:90-1A.2 contains definitions applicable to the proposed new subchapter.

Proposed N.J.A.C. 13:90-1A.3 provides that a juvenile has the right to submit requests reflecting any concern related to his or her care at the Commission and allows a juvenile to express a preference (subject to the provisions of proposed N.J.A.C. 13:90-1A.6) whether the request should be addressed by the Commission's Ombudsman or Office of Investigations. In addition, the section sets out the requirement for Request and Remedy Form; lockboxes to be provided in open areas accessible to juveniles.

Proposed N.J.A.C. 13:90-1A.4 sets out the procedures for the submission of a request, including the required use of the Remedy and Request Form; the form may either be signed or unsigned and submitted anonymously at the sole discretion of the juvenile. Juveniles unable to complete the Request and Remedy Form may request assistance from another juvenile or staff member in preparing the form. When staff assistance is requested the Superintendent or designee shall appoint an appropriate staff member.

Under proposed N.J.A.C. 13:90-1A.5, submitted Request and Remedy Forms are reviewed daily by the Superintendent, Assistant Superintendent, or Shift Coordinator to determine whether they reveal any information either that a juvenile may have been subjected to child abuse or acts of child abuse; that appears to identify or allege criminal activity; or that reveals an immediate threat to the juvenile, other juveniles, staff, or to the orderly operation of the facility. If so, the Executive Director or designee must immediately be notified by telephone.

After the initial review the forms are then forwarded to the Executive Director or designee, with a copy acknowledging receipt given to the requesting juvenile if the Request and Remedy Form was signed. Information provided on the form to be forwarded must be treated as confidential. Any investigation or any other

action with respect to a juvenile request at the facility level is prohibited, unless, and then to only to the extent, requested by the Executive Director or designee. The section requires that a log be maintained in the office of the Superintendent that captures the dates of the removal of a request from the lockbox, its being forward to the Executive Director and delivery of the copy to the requesting juvenile and requires that monthly a copy of the log be transmitted to the Office of the Executive Director.

The investigation and resolution of requests, as well as mandatory reporting requirements, are governed by proposed N.J.A.C. 13:90-1A.6. Within two business days of receiving a Request and Remedy Form, the Executive Director, or designee, must assign responsibility for investigating and resolving the request. To the extent permitted by considerations of security and integrity of any ongoing investigations, the request shall be assigned to designated recipient identified by the juvenile on the Request and Remedy Form, with the following exceptions: Any request that gives reasonable cause to believe that a juvenile has been subjected to child abuse must be reported immediately to the Division of Child Protection and Permanency in the Department of Children and Families, as required by N.J.S.A. 9:6-8.10; if the request appears to identify or allege criminal activity, the request shall be reported to the Office of Investigations; and if considerations of security or the integrity of an ongoing investigation prevent assignment of the request to the designated recipient, or if no designated recipient was selected, the request shall be assigned to the Superintendent or to such other staff as the Executive Director, or designee, deems appropriate.

Within five business days of the assignment, the person tasked with investigating the request must prepare a proposed resolution, which, together with supporting documentation, must be forwarded to the Executive Director or designee for review and approval.

Upon giving final approval, the Executive Director or designee is to record the resolution on the Request and Remedy Form. If the juvenile elected to sign the Request and Remedy Form, he or she shall be given a copy of the Form with the resolution; in any event, should an on-going investigation delay a final resolution, within 20 business days from the date upon which the Request and Remedy Form was submitted into a lockbox, such a juvenile must receive a written response to his or her request.

Proposed N.J.A.C. 13:90-1A.7 provides an appeal from the resolution of a request. With assistance from another juvenile or staff member, if necessary, within 10 days of receiving notice of the resolution of a request, a juvenile who elected to sign the Request and Remedy Form may appeal the resolution by completing a Request and Remedy Appeal Form and depositing it into a Request and Remedy Lockbox for transmittal to the Executive Director, or designee. The Executive Director, or designee, is required to review the request and its resolution, undertaking such independent investigation as may be necessary or appropriate and to issue his or her decision on the appeal within 10 business days of its filing. The decision of the Executive Director, or designee, constitutes a final agency decision.

Finally, proposed N.J.A.C. 13:90-1A.8 provides that a juvenile cannot be subject to any coercion, discipline, or other retaliation, reprisal, or retribution as a result of his or her filing either a request or an appeal of a resolution; that protection explicitly is not to be construed to prevent the charging of any juvenile who commits a violation under N.J.A.C. 13:101, the Commission's rules on juvenile discipline.

Because the Commission has provided for 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 proposed new rules will have a positive social impact by ensuring that every juvenile has a meaningful, substantive right to address concerns related to his or her assignment to a Commission facility.

Economic Impact

The costs associated with the Commission facilities are met through the established budget process with funds allocated by the State. The Commission anticipates that the new rules will not have an economic impact on the Commission or any other department or agency of the State government.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not being proposed under the authority of, or in order to implement, comply with, or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

The Commission does not anticipate that any jobs either will be generated or lost if the proposed new rules are adopted.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

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

Housing Affordability Impact Analysis

The proposed new rules 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 proposed rules concern only an internal request and remedy process for juveniles assigned to Commission facilities.

Smart Growth Development Impact Analysis

The proposed new rules will have an insignificant 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 State Development and Redevelopment Plan in New Jersey, because the proposed rules concern only an internal request and remedy process for juveniles assigned to Commission facilities.

[page=2465] **Full text** of the proposed new rules follows:

SUBCHAPTER 1A. REQUEST AND REMEDY PROCESS

13:90-1A.1 Purpose

The purpose of this subchapter is to provide uniform procedures applicable to all juveniles assigned to Commission facilities and programs for the filing and resolution of a juvenile complaint; grievance; comment; request for redress, assistance, action, change in conditions, or treatment; or other comment related to his or her incarceration or assignment to such a facility or program.

13:90-1A.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Commission" means the New Jersey Juvenile Justice Commission.

"DCP&C" means the New Jersey Division of Child Protection and Permanency in the Department of Children and Families.

"Designated recipient" means either the Ombudsman or the Director of Investigations, as designated by a juvenile under the provisions of N.J.A.C. 13:90-1A.3(b).

"Executive Director" means the Executive Director of the Commission.

"Facility" means any facility of the Commission used to incarcerate, house, train, monitor, or educate juveniles.

"Juvenile" means any individual who has been adjudicated delinquent and sentenced to a term of incarceration to be served under the custody of the Commission, or who has been placed on probation by a court and assigned to the jurisdiction of the Commission, and who is residing in or assigned to a facility.

"Office of Investigations" means the Commission unit responsible for conducting internal investigations.

"Ombudsman" means the staff within the Commission responsible for resolving complaints made by juveniles about a facility, the action or inaction of staff, or any other matter of concern to the juvenile.

"Request" means a juvenile complaint; grievance; comment; request for redress, assistance, action, change in conditions, or treatment; or other comment related to his or her incarceration or assignment to a Commission facility or program.

"Request and Remedy Appeal Form" means the standard form for the filing and processing of an appeal from the resolution of a juvenile request that has been approved for such use by the Executive Director or designee.

"Request and Remedy Form" means the standard form for the filing and processing of juvenile requests that has been approved for such use by the Executive Director or designee.

"Request and Remedy Lockbox" means a lockbox provided for in N.J.A.C. 13:90-1A.3.

"Shift coordinator" means the staff person, by whatever name or title, with lead responsibility for overseeing operations during a tour of duty at a community program.

"Superintendent" means the chief executive officer of a facility.

13:90-1A.3 Request and Remedy Form; lockbox

(a) A juvenile has the right to submit requests reflecting any complaint or concern on a Request and Remedy Form.

(b) The Request and Remedy Form shall provide sufficient space for a complete narrative of the juvenile's request and shall allow the juvenile to express whether he or she would prefer to have the request addressed by either of the designated recipients (which is defined as the Ombudsman or the Office of Investigations).

(c) Each facility shall provide one or more clearly marked lockboxes for the submission of Request and Remedy Forms in an open area accessible to juveniles, which shall be emptied daily, exclusive of weekends and State holidays, by the Superintendent, Assistant Superintendent, or shift coordinator.

13:90-1A.4 Submission of requests

(a) All requests by juveniles shall be submitted on a Request and Remedy Form.

1. Each facility shall provide clearly marked boxes or trays in open areas accessible to juveniles where blank Request and Remedy Forms may be accessed by juveniles.

2. Juveniles unable to complete the Request and Remedy Form may request assistance from another juvenile or staff member in preparing the form. When staff assistance is requested the Superintendent or designee shall appoint an appropriate staff member.

(b) At the sole option of the juvenile, the Request and Remedy Form may either be signed or unsigned and submitted anonymously.

1. A juvenile shall neither be required nor be encouraged to sign a Request and Remedy Form.

13:90-1A.5 Forwarding Request and Remedy Form to Executive Director or designee; confidentiality and log

(a) The Superintendent, or designee, shall ensure that each Request and Remedy Lockbox is emptied at least daily.

(b) Upon emptying a Request and Remedy Lockbox the Superintendent, Assistant Superintendent, or shift coordinator shall promptly review submitted Request and Remedy Forms and Request and Remedy Appeal Forms, as provided for in N.J.A.C. 13:90-1A.7 and shall immediately notify the Executive Director or designee by telephone if they reveal any information:

1. That a juvenile may have been subjected to child abuse or acts of child abuse;
2. That appears to identify or allege criminal activity; or
3. Reveals an immediate threat to the juvenile, other juveniles, staff, or to the orderly operation of the facility.

(c) Within one business day of receipt the Superintendent or designee shall forward each Request and Remedy Form and Remedy Appeal Form to the Executive Director, or designee; a copy of the Request and Remedy Form, if signed, and of the Remedy Appeal Form shall be given to the juvenile acknowledging receipt.

(d) All information provided on the Request and Remedy Form by the juvenile shall be treated as confidential and no such information shall be released or otherwise disclosed to any person other than the Executive Director, or designee.

(e) Neither the Superintendent nor any other facility staff shall undertake any independent investigation or any other action with respect to a juvenile request, unless, and then to only to the extent, requested by the Executive Director or designee.

(f) A confidential log shall be maintained in the office of the Superintendent, in a format approved by the Executive Director, or designee, verifying the dates of:

1. Removal of the request from the lockbox;
2. Forwarding of the request to the Executive Director, or designee; and
3. Delivery of a copy to the requesting juvenile, if the Request and Remedy Form was signed.

(g) A copy of the log shall be transmitted monthly to the Office of the Executive Director.

13:90-1A.6 Investigation and resolution; mandatory reporting requirements

(a) Within two business days of receiving a Request and Remedy Form, the Executive Director, or designee, shall assign responsibility for investigating and resolving the request and forward a copy of the Request and Remedy Form to the person assigned.

(b) To the extent permitted by considerations of security and integrity of any ongoing investigations, the request shall be assigned to the designated recipient identified by the juvenile on the Request and Remedy Form, with the following exceptions:

1. In accordance with the requirements of N.J.S.A. 9:6-8.10, any request that gives reasonable cause to believe that a juvenile has been subjected to child abuse or acts of child abuse shall be reported immediately by the Executive Director, or designee, to DCP&C. Any such report shall contain information as to the nature and extent of the child's injuries, abuse, or maltreatment, including any evidence of previous injuries, abuse, or maltreatment, and any other information that would be helpful with respect to the alleged child abuse and the identity of the perpetrator;

[page=2466] 2. If the request appears to identify or allege criminal activity the request shall be reported to the Office of Investigations; and

3. If considerations of security or the integrity of an ongoing investigation prevent assignment of the request to the designated recipient, or if no designated recipient was selected, the request shall be assigned to the Superintendent or to such other Commission staff member as the Executive Director, or designee, deems appropriate.

(c) Within five business days of an assignment under (b) above, the person assigned shall investigate and prepare a proposed resolution of the request. As part of the investigation the person assigned shall review the request and:

1. Consult with such Commission and contractor personnel who may possess knowledge and expertise of particular relevance to the request, such as medical or mental health staff; and

2. Undertake such independent investigation as may be necessary or appropriate to establish all relevant facts; such investigation may include, but shall not be limited to, interviewing any juvenile or other Commission or contractor personnel who may have information relevant to the request.

(d) The proposed resolution and supporting documentation shall promptly be transmitted to the Executive Director, or designee, for his or her review, modification and final approval.

(e) Upon giving final approval to the resolution, the Executive Director or designee shall record it on the Request and Remedy Form and if the juvenile elected to sign the Request and Remedy Form, shall ensure that a copy is promptly given to the juvenile.

(f) Under all circumstances, within 20 business days from the date upon which the Request and Remedy Form was submitted into a lockbox, a juvenile who has elected to sign the Request and Remedy Form shall receive a written response to his or her request.

13:90-1A.7 Appeal of resolution; Request and Remedy Appeal Form

(a) Within 10 days of receiving notice of the resolution of a request, a juvenile who elected to sign the Request and Remedy Form may appeal the resolution of his or her request by completing a Request and Remedy Appeal Form and depositing it into a Request and Remedy Lockbox for transmittal to the Executive Director, or designee.

1. A juvenile who is unable to complete the Request and Remedy Appeal Form may request assistance from another juvenile or staff member in preparing the form. When staff assistance is requested the Superintendent, or designee, shall appoint an appropriate staff member.

(b) The Executive Director, or designee, shall review the Request and Remedy Form and the Request and Remedy Appeal Form, undertaking such independent investigation as may be necessary or appropriate to establish the relevant facts, and shall issue his or her decision on the appeal within 10 business days of its filing.

1. The decision of the Executive Director, or designee, shall constitute a final agency decision.

13:90-1A.8 No coercion

(a) A juvenile shall not be subject to any coercion, discipline, or other retaliation, reprisal, or retribution as a result of his or her filing either a request or an appeal of a resolution.

(b) Nothing in this subchapter shall be construed to prevent the charging of any juvenile who commits a violation under the provisions of N.J.A.C. 13:101-4.1.