

NEW JERSEY JUVENILE JUSTICE COMMISSION
OFFICE OF THE DEPUTY EXECUTIVE DIRECTOR, OPERATIONS

S-2003 – 13:91 AMENDMENTS IMPLEMENTATION DIRECTIVE
Effective March 1, 2016

This Directive is being issued to implement provisions of P.L. 2015, c.89 (S-2003), which the Commission must have fully operational on or before March 1, 2016. As explained more fully below, this Directive implements proposed amendments to the existing N.J.A.C. 13:91.

Among other things, S-2003 amends the law governing waiver of juveniles to adult criminal court, providing that a Waived Juvenile would serve his or her sentence in a Commission facility, rather than a DOC facility, until the juvenile reaches the age of 21. Juveniles under 21 years of age may be transferred to DOC if the Commission finds the juvenile's continued presence in a Commission facility threatens the public safety, the safety of juvenile offenders, or the operations of the Commission. Also, a juvenile may continue to serve a sentence in a Commission facility after reaching the age of 21 in the discretion of the Commission, if the juvenile consents.

S-2003 makes changes to the requirements related to the transfer of juveniles to DOC, under N.J.A.C. 13:91. With respect to waived juveniles, S-2003 provides that DOC approval is not required for the transfer of a waived juvenile under the age of 21, the transfer being "...in the discretion..." of the Commission.

In addition, under S-2003, all juveniles at transfer hearings, adjudicated and waived, are to be represented either by the Public Defender or by a privately retained attorney of the juvenile's choice, and at the juvenile's expense.

The Commission and DOC have proposed a number of amendments to N.J.A.C. 13:91 in order to implement the requirements of S-2003. Those amendments have been submitted for publication to the Office of Administrative Law.

In order to comply with the statutory requirements of S-2003, we are hereby directing that the proposed amendments shall become operationally effective as of March 1, 2016.

The amendments follow. Added text is denoted by underscored bold, **thus**; deleted text is noted by shaded brackets, [thus].

CHAPTER 91. TRANSFER OF JUVENILES [ADJUDICATED DELINQUENTS] TO THE NEW
JERSEY DEPARTMENT OF CORRECTIONS

SUBCHAPTER 1. GENERAL PROVISIONS

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.

“Juvenile” means, for the purpose of this chapter, **both** an individual who has been adjudicated delinquent and sentenced to a term of incarceration to be served under the custody of the Commission **and an individual who has been convicted of an offense subject to waiver under the provisions of N.J.S.A. 2A:4A-26 and sentenced to serve a custodial sentence in a Commission facility**, and who is residing in a juvenile facility.

13:91-1.4 Forms

(a) The following forms related to the transfer of juveniles are available through the Juvenile Reception Classification Committee:

1. Form 101, Request to Transfer to the New Jersey Department of Corrections;
2. Form 102, Transfer Hearing Form; [and]
3. Form 103, Voluntary Transfer Request Form; **and**
4. **Form 104, Request of Waived Juvenile to Remain in Commission Custody.**

SUBCHAPTER 2. TRANSFER AND REQUIREMENT FOR TRANSFER HEARING

13:91-2.3 Forwarding of recommendation to Commissioner[;] **and** Commissioner action **for a juvenile who has been adjudicated delinquent.**

(a) - (c) (no change)

13:91-2.3A Transfer of a juvenile waived under the provisions of N.J.S.A. 2A:4A-26

(a) The Executive Director or designee has the discretion to transfer a juvenile under the age of 21 who has been convicted of a crime and who is serving a custodial sentence in a Commission facility under the provisions of N.J.S.A. 2A:4A-26:

1. Upon receiving the written determination provided for in N.J.A.C. 13:91-3.14 that the hearing officer has approved the transfer of a juvenile; or

2. If a juvenile requests a transfer by signing a Form 103, Voluntary Request Form.

(b) Upon reaching the age of 21, a juvenile who has been convicted of a crime and who is serving a custodial sentence in a Commission facility under the provisions of N.J.S.A. 2A:4A-26, shall be transferred to the Department of Corrections, unless:

1. The juvenile has completed a Form 104, Request of Waived Juvenile to Remain in Commission Custody; and

2. The Form 104 request has been approved by the Executive Director or designee.

(c) In any event, upon reaching the age of 25, the juvenile shall be transferred to the Department of Corrections.

SUBCHAPTER 3. TRANSFER HEARING

13:91-3.7 Representation; interested party statements

(a) A juvenile shall be represented at a transfer hearing, including at an in absentia hearing held under the provisions of N.J.A.C. 13:91-3.9, [either by the Ombudsman or by private counsel, selected, retained and paid for by the juvenile] **by the Office of the Public Defender, unless the juvenile chooses to be represented by nonprofit counsel or engage private counsel at the juvenile's expense.**

1.- 3. – (No change)

(b) and (c) – (No change)

Felix Mickens
Deputy Executive Director< Operations

Date