

## RULE PROPOSALS

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### INTERESTED PERSONS

The Department of Corrections provides notices of rule proposals in the New Jersey Register (N.J.R.), a semi-monthly official publication of the Office of Administrative Law which contains all State agency rule proposals and adoptions. The following paragraph is quoted from the Proposal section of the New Jersey Register:

**Interested persons** may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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### CORRECTIONS

#### THE COMMISSIONER

New Jersey Municipal Detention Facilities

**Proposed Readoption with Amendments: N.J.A.C. 10A:34**

**Proposed New Rule: N.J.A.C. 10A:34-4.5**

Authorized By: Gary M. Lanigan, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10, and the Federal Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601 et seq.

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

Proposal Number: PRN 2014-126.

Submit written comments by November 1, 2014, to:

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Office of the Commissioner  
New Jersey Department of Corrections  
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The agency proposal follows:

### **Summary**

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1.b, N.J.A.C. 10A:34 expires on June 27, 2014. Pursuant to N.J.S.A. 52:14B-5.1.c(2), as the Department of Corrections (Department) submitted this notice of proposal to the Office of Administrative Law prior to that date, the chapter expiration is extended 180 days to December 24, 2014. The Department has reviewed these rules and, with the exception of the amendments and new rule proposed, has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The rules are, therefore, proposed for readoption at this time.

Subchapter 1 provides the purpose and scope of the chapter and the definitions of words and terms used.

Subchapter 2 establishes inspection provisions, minimum standards for compliance, renovation, cell, and holding room specifications and equipment, requirements for sallyports, and sanitation of municipal detention facilities.

Subchapter 3 sets forth provisions for security and key control, monitoring systems, searches of persons detained, arrested, or lawfully confined within municipal detention facilities, and related reports.

Subchapter 4 establishes provisions for the supervision and care of detainees within the municipal detention facilities.

The Department proposes a technical amendment to reflect that the Bureau of County Services in the Department of Corrections, Office of Community Programs and Outreach Services, has been renamed the Office of County Services. Accordingly, the reference to the "Bureau" of County Services in N.J.A.C. 10A:34-1.2 is thus deleted and replaced with "Office" of County Services.

The Department proposes to amend N.J.A.C. 10A:34-2.4, Notification of intent to construct or renovate a municipal detention facility, and 4.4, Reporting deaths, to delete the requirement that such reports or notifications be made to the "Coordinator, Bureau of County Services" and to replace it with a requirement that such reports or notifications be made to the "Director, Office of Community Programs and Outreach Services, or designee." The Office of Community Programs and Outreach Services is the division that oversees and supervises the Office of County Services. This amendment will provide flexibility for the Director, Office of Community Programs and Outreach Services, to receive and review such reports or to designate a staff member to perform these functions. It is anticipated that the amendment will provide for enhanced oversight and supervision of the functions and matters set forth in N.J.A.C. 10A:34-2.4 and 4.4.

### **Subchapter 2**

The Department proposes to amend N.J.A.C. 10A:34-2.3(a) to add that municipal detention facilities shall be in conformance with all applicable fire and sanitation codes, set forth by the State of New Jersey and the county and municipality in which the facility is located. The Department proposes to amend N.J.A.C. 10A:34-2.3(d) to add that all municipal detention facilities shall additionally be in compliance with applicable county and municipal ordinances.

These amendments are necessary to ensure that municipal detention facilities are in compliance with all relevant local codes and ordinances.

The Department proposes a technical amendment to N.J.A.C. 10A:34-2.5 to change the heading of this section from "Cells construction specifications" to "Cell construction specifications" for grammatical correctness.

The Department proposes to amend N.J.A.C. 10A:34-2.5(c) to add the phrase "or prefabricated steel, having a minimum 3/16 inch steel plate, provided that a professional engineer licensed in the State of New Jersey shall stamp and sign the cell drawing submitted attesting to the integrity and constructability of the modular cells. Subsections (d), (e), and (f) are revised to cross-reference the standard in subsection (c). These amendments are necessary to reflect current construction standards in which prefabricated steel or metal panel security ceilings are used in prefabricated housing such as municipal detention facility cells.

The Department proposes a technical amendment to N.J.A.C. 10A:34-2.7(b) to delete the reference to "N.J.A.C. 10A:34-2.7" and add a reference to "N.J.A.C. 10A:34-2.5" to correct a typographical error. Effective August 6, 2007, then existing N.J.A.C. 10A:34-2.6 and 2.7 were recodified as N.J.A.C. 10A:34-2.5 and 2.6, respectively, and the Department inadvertently did not update the references in then existing N.J.A.C. 10A:34-2.8, which was recodified as N.J.A.C. 10A:34-2.7. (See 39 N.J.R. 1394(a); 3384(a))

The Department proposes to amend N.J.A.C. 10A:34-2.8(k) to add the phrase "access to a cordless or cell phone or" prior to "a telephone jack shall be provided in the cell corridor" to reflect current electronics and telecommunications technology.

The Department proposes to amend N.J.A.C. 10A:34-2.9(a) to add the phrase, "or designated sallyport area" and to amend N.J.A.C. 10A:34-2.9(b) to add "vehicle" prior to sallyport and to add the phrase, "or designated sallyport area," such that the amended sections require that either a vehicle sallyport or a designated sallyport area be provided. These changes are necessary to reflect the fact that some municipal detention facilities do not have a vehicle sallyport on site but do have a designated sallyport area.

### **Subchapter 3**

The Department proposes to amend N.J.A.C. 10A:34-3.1(c) to delete the term "weapons" and replace it with "firearms." This amendment is needed to clarify that correction officers are not allowed to have firearms within the security perimeter of the cell block area; however, correction officers may have other necessary and appropriate weapons, such as batons, within the security perimeter of the cell block area.

### **Subchapter 4**

The Department proposes new N.J.A.C. 10A:34-4.5, Protection from abuse, to reflect the Department's policy that, in accordance with the Federal Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601 et seq., a zero tolerance for the incidence of sexual assault shall be maintained at New Jersey municipal detention facilities. This new section is necessary to comply with PREA standards and is also substantially the same as a comparable rule, N.J.A.C. 10A:31-14.2, Protection from abuse, pertaining to adult county correctional facilities. The Department deems it reasonable and appropriate to add the new rule similar to N.J.A.C. 10A:31-14.2, to set forth the same standard to be applicable to municipal detention facilities. The new section reflects the Department's policy of zero tolerance for the incidence of sexual assault in New Jersey municipal detention facilities, and is expected to have an overall positive impact on

both inmates and staff. The proposed new rule serves to directly enforce the Department's policy of zero tolerance for the incidence of sexual assault, which is expected to have an overall positive impact on inmate well-being.

As the Department has determined that the comment period for this notice of proposal shall be 60 days, 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 and a new rule are anticipated to have an overall positive social impact. The readoption of N.J.A.C. 10A:34 will continue to promote uniformity among municipal detention facilities in New Jersey. The rules will assist municipalities in processing and confining persons detained, arrested, or lawfully confined; providing care and treatment to these persons; and maintaining the safe, secure, and orderly operation of municipal detention facilities. The amendments are necessary to reflect the Department's current practice and procedure; to update existing title and unit names; and to reflect current technology and usage. As noted, the proposed new rule, N.J.A.C. 10A:34-4.5, Protection from abuse, reflects the Department's policy of zero tolerance for the incidence of sexual assault in New Jersey municipal detention facilities, and is expected to have an overall positive impact on both inmates and staff. The proposed new rule serves to directly enforce the Department's policy of zero tolerance for the incidence of sexual assault, which is expected to have an overall positive impact on inmate well-being. The proposed new rule is necessary for the purpose of providing rules that comply with Federal and State law.

### **Economic Impact**

The rules proposed for readoption with amendments will continue to impose the existing economic responsibilities on municipal detention facilities in the form of rule compliance requirements. However, the rules proposed for readoption with amendments will not impose any new economic responsibilities. The nature of the costs imposed include those expenses associated with inspections; conformance with applicable health, safety, and construction codes; the development and update of policy and procedure manuals; the maintenance of recodes and information systems; staff training; and the maintenance of security and control to include searches, housing of detainees, and electronic surveillance. Additional funding is not necessary to implement the requirements of the rules proposed for readoption with amendments and a new rule.

The cost of meeting and maintaining the requirements of the rules proposed for readoption with amendments by the Department, including inspection of facilities and evaluating compliance, is met by the Department through the established budget with funds allocated by the State.

### **Federal Standards Statement**

The rules proposed for readoption with amendments and a new rule are promulgated under the authority of the rulemaking requirements of the Department of Corrections as established at N.J.S.A. 30:1B-6 and 30:1B-10. The rules proposed for readoption with amendments and a new rule comply with and do not exceed the Federal requirements established by the Federal Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601 et seq. With the exception of PREA, the rules proposed for readoption with amendments and a new rule are

not subject to any Federal statutes, requirements, or standards; therefore, a Federal standards analysis is not required.

### **Jobs Impact**

The rules proposed for readoption with amendments and a new rule will cause neither the generation nor the loss of any jobs.

### **Agriculture Industry Impact**

The rules proposed for readoption with amendments and a new rule will have no impact on the agriculture industry.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments and a new rule do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments and a new rule affect inmates, the New Jersey Department of Corrections, New Jersey municipal detention facilities, and governmental entities responsible for the enforcement of the chapter.

### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments and a new rule will have no impact on housing affordability and there is an extreme unlikelihood that the rules would evoke a change in the average cost associated with housing in New Jersey. The rules proposed for readoption with amendments and a new rule concern New Jersey municipal detention facilities, and affect inmates, the New Jersey Department of Corrections, New Jersey municipal detention facilities, and governmental entities responsible for the enforcement of the chapter.

### **Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments and a new rule will have no impact on smart growth development and will not 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. The rules proposed for readoption with amendments and a new rule concern New Jersey municipal detention facilities, and affect inmates, the New Jersey Department of Corrections, New Jersey municipal detention facilities, and governmental entities responsible for the enforcement of the rules.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:34.

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

## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **10A:34-1.2 Scope**

This chapter shall be applicable to the New Jersey Department of Corrections, the [Bureau] **Office** of County Services, and all adult municipal detention facilities.

## SUBCHAPTER 2. INSPECTION AND MINIMUM STANDARDS FOR NEW JERSEY MUNICIPAL DETENTION FACILITIES

### 10A:34-2.3 Compliance with orders from a court of jurisdiction, codes, regulations, and laws

(a) Municipal detention facilities shall be in conformance with all applicable public health, [and] **fire, safety, and sanitation** codes[,] set forth by the State of New Jersey[,], **and** the county and municipality in which the facility is located.

(b) New construction, alterations, additions, and repairs of municipal detention facilities shall comply with the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., the Uniform Construction Code [Rules] **rules**, N.J.A.C. 5:23[-1.1 et seq.], and with this subchapter.

(c) (No change.)

(d) All municipal detention facilities shall be in compliance with orders from a court of jurisdiction[, and]; applicable Federal and State codes, **rules**, regulations, and laws[.]; **and county and municipal codes and ordinances, all** as amended and supplemented.

### 10A:34-2.4 Notification of intent to construct or renovate a municipal detention facility

(a) A letter of intent to construct or renovate a municipal detention facility shall be submitted to the [Coordinator, Bureau of County Services] **Director, Office of Community Programs and Outreach Services or designee**, Department of Corrections, by the authority responsible for the municipal detention facility.

(b) Upon receipt of the letter of intent, the [Coordinator, Bureau of County Services] **Director, Office of Community Programs and Outreach Services or designee**, shall furnish technical assistance throughout the planning process to assure that the detention facility complies with this subchapter.

(c) All plans and specifications shall be submitted to the [Coordinator, Bureau of County Services] **Director, Office of Community Programs and Outreach Services or designee** and copies also shall be submitted to any other authorities as required by law.

(d) Contracts for new construction, alterations, additions, and repairs shall not be executed until final plan approval is received in writing from the [Coordinator, Bureau of County Services] **Director, Office of Community Programs and Outreach Services or designee** and other authorities as required by law.

### 10A:34-2.5 Cell[s] construction specifications

(a)–(b) (No change.)

(c) Cell walls shall be constructed of six inch reinforced concrete or eight inch concrete block filled with cement containing vertical reinforcement rods every 12 inches **or prefabricated steel, having a minimum 3/16 inch steel plate, provided that a professional engineer licensed in the State of New Jersey shall stamp and sign the cell drawing submitted attesting to the integrity and constructability of the modular cells.**

(d) Cell ceilings shall be constructed of pre-cast concrete slabs, [or] reinforced concrete, **or prefabricated steel, which meets the criteria set forth in (c) above.**

(e) Cell floors shall be constructed of terrazzo, [or] sealed concrete, **or prefabricated steel, which meets the criteria set forth in (c) above,** and shall be sloped to a drain outside of the cell.

(f) Cell fronts shall be constructed of six inch reinforced concrete or eight inch concrete block filled with cement containing vertical reinforcement rods every 12 inches **or prefabricated steel, which meets the criteria set forth in (c) above.**

(g)–(i) (No change.)

#### 10A:34-2.7 Holding rooms

(a) (No change.)

(b) Construction and equipment of holding rooms shall be the same as required for cells in **N.J.A.C. 10A:34-2.5** and [N.J.A.C. 10A:34-]2.6, [and N.J.A.C. 10A:34-2.7] except the bunk shall be either:

1.–2. (No change.)

(c) (No change.)

#### 10A:34-2.8 Cell corridors

(a)–(j) (No change.)

(k) [A] **Access to a cordless or cell phone or a telephone jack** shall be provided in the cell corridor.

(l) (No change.)

#### 10A:34-2.9 Sallyport

(a) A vehicle sallyport **or designated sallyport** area shall be provided for the transfer of prisoners to and from the municipal detention facility.

(b) The **vehicle sallyport or designated sallyport area** shall be in close proximity to the detention area and shall contain the following:

1.–3. (No change.)

(c) (No change.)

### SUBCHAPTER 3. SECURITY AND CONTROL

#### 10A:34-3.1 Security and key control

(a)–(b) (No change.)

(c) [Weapons] **Firearms** shall be prohibited within the security perimeter of the cell block area.

(d)–(e) (No change.)

### SUBCHAPTER 4. SUPERVISION AND CARE OF DETAINEES

#### 10A:34-4.4 Reporting deaths

(a) At the death of a detainee, notification shall be given by the Chief of Police to the [Coordinator, Bureau of County Services] **Director, Office of Community Programs and Outreach Services or designee**, Department of Corrections, within three business days.

(b) Following [this] **the notification in (a) above** and within two weeks, a written report shall be submitted by the Chief of Police to the [Coordinator, Bureau of County Services] **Director, Office of Community Programs and Outreach Services or designee**, Department of Corrections. This report shall contain, at a minimum, the following information:

1.–6. (No change.)

#### 10A:34-4.5 Protection from abuse

(a) **All persons detained, arrested, or lawfully confined to a municipal detention facility shall be protected by municipal detention facility staff from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment.**

**(b) In accordance with the Federal Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601 et seq., a zero tolerance for the incidence of sexual assault shall be maintained at municipal detention facilities.**

**(c) Appropriate disciplinary action shall be taken against facility staff who engage in abusive behavior and, when necessary, these cases will be referred to the county prosecutor.**