

RULE PROPOSALS

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.

CORRECTIONS

THE COMMISSIONER

Interjurisdictional Agreements and Statutes

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

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

Authority: N.J.S.A. 2A:159A-1 et seq., 2A:160-6 et seq., 30:1B-6, 30:1B-10, 30:7C-1 et seq., and 30:7D-1; U.S. Const. Art. 4, § 2, cl. 2; and 18 U.S.C. App. 2 § 2.

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

Proposal Number: PRN 2015-066.

Submit written comments by August 14, 2015, to:

Kathleen Cullen

Administrative Rules Unit

Office of the Commissioner

New Jersey Department of Corrections

PO Box 863

Trenton, NJ 08625-0863

or via email at: ARU@doc.nj.gov

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 10A:10 expires on May 14, 2015. 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 November 10, 2015. The Department has reviewed these rules and, with the exception of the amendments proposed herein, has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The rules are, therefore, proposed for re-adoption at this time.

The rules proposed for re-adoption with amendments at N.J.A.C. 10A:10-3.7(d) and (e), 3.8(a)24, 3.14(c) and (d), and 3.16(b) and (f), will continue to facilitate the processing and transfer of inmates to and from the jurisdiction of other states, the Federal government, and an inmate's country of citizenship. Additionally, the rules should continue to help to reduce the number of administrative complexities experienced as a result of the incarceration of foreign

nationals.

Amendments proposed herein address correction to job titles and the following changes needed for the purposes of consistency with the processes related to the Interstate Corrections Compact (Compact):

- Sharing additional standard medical information;
- Sharing of institutional infractions between sending and receiving state facilities; and
- Responsibilities of the sending and receiving state facilities pertaining to access to legal information and research materials.

Subchapter 1 sets forth the general provisions for the requirements for the interstate transfer of inmates in accordance with N.J.S.A. 2A:160-6 et seq. (Uniform Criminal Extradition Law) and for the international transfer of inmates that are citizens of a foreign country in accord with the Vienna Convention on Consular Relations.

Subchapter 2 is reserved.

Subchapter 3 sets forth the applicability of the Interstate Corrections Compact, including eligibility requirements and procedures and information necessary to complete an interstate transfer. The title of Assistant Commissioner is proposed to be replaced with Deputy Commissioner at N.J.A.C. 10A:10-3.7(d) and (e) and at 3.14(d) since reference is made to Assistant Commissioner which is not a current title in the Department's Operations group. The reference to appropriate Assistant Deputy Commissioner is proposed to be replaced with Director, Division of Operations in N.J.A.C. 10A:10-3.14(c) as the Director initially approves or denies interstate transfers and forwards the decision to the Commissioner for final approval. That final approval step is also proposed to be added to N.J.A.C. 10A:10-3.7(e) and 3.14(d).

The processes related to the Compact now require that the results of tuberculosis (TB), Hepatitis C, and Human Immunodeficiency Virus (HIV) tests be provided as a basic element of shared medical records involving interstate transfers. It is therefore proposed that this requirement be added to N.J.A.C. 10A:10-3.8.

The Compact agreements contain specific responsibilities for the sending and receiving states with respect to providing legal research materials to the transferred inmate so the inmate would be capable of bringing a suit or challenging the conviction or sentence. It is therefore proposed to add this requirement to N.J.A.C. 10A:10-3.16(b) and to replace the Office of Educational Services with the Office of Interstate Services as the point of contact for obtaining the information/case law sought.

An amendment regarding a Compact related requirement is proposed at N.J.A.C. 10A:10-3.16(f), so that the sending state is notified of inmate infractions committed while at the receiving correctional facility so the sending state can determine the impact, if any, on the original sentence.

Subchapter 4 sets forth information specific to the Interstate Agreement on Detainers (IAD).

Subchapter 5 sets forth the rules pertaining to Uniform Criminal Extradition Act.

Subchapter 6 addresses rules and related criteria related to international transfer of inmates.

Subchapter 7 sets forth rules for the notification of foreign consuls when foreign nationals are imprisoned in a New Jersey facility.

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 are anticipated to have an overall positive social impact. The rules proposed for readoption with amendments are necessary to reflect the Department's current practice and procedures and are necessary for the purpose of providing rules that comply with State law and implement processes related to the Interstate Corrections Compact.

The Department does not anticipate a negative social impact as a result of the rules proposed for readoption with amendments. Though some inmates may oppose a nonconsensual transfer or extradition, the Department of Corrections considers the enforcement of State laws, maintenance of public safety, and the safe, secure, and orderly operation of correctional facilities to be paramount.

Economic Impact

Additional funding is not necessary to implement the requirements of the rules proposed for readoption with amendments. The cost of meeting and maintaining the requirements of the rules proposed for readoption with amendments 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 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 and 30:7C et seq.

Pursuant to N.J.S.A. 30:7D-1, regarding treaties on interstate prisoner transfer, the Commissioner, Department of Corrections, is authorized to transfer offenders having foreign citizenship status to their countries of citizenship, provided that a treaty exists between the United States and the foreign country. All arrangements relative to this treaty process are negotiated between the New Jersey Office of the Governor, the New Jersey Department of Corrections, and the United States Department of Justice, Office of International Affairs. Extradition provisions in the proposed readoption with amendments have been added pursuant to N.J.S.A. 2A:160-6 et seq. (Uniform Criminal Extradition Law) and in accordance with the extradition clause of the Federal Constitution (U.S. Const. Art. 4, § 2, cl. 2). The rules proposed for readoption with amendments comply with and do not exceed any related Federal statutes, requirements, or standards. Accordingly, a Federal Standards Analysis is not required.

Jobs Impact

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

Agriculture Industry Impact

The rules proposed for readoption with amendments shall 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 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 affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments shall 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 concern transfer and extradition of inmates while the proposed amendments, concern job title changes, inclusion of additional but standard medical information, sharing of institutional infractions, and clarification regarding access to legal information and research materials which affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments 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 concern transfer and extradition of inmates while the

proposed amendments concern job title changes, inclusion of additional but standard medical information, sharing of institutional infractions, and clarification regarding access to legal information and research materials, which affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

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

SUBCHAPTER 3. INTERSTATE CORRECTIONS COMPACT

10A:10-3.7 Processing consensual interstate transfers

(a) - (c) (No change.)

(d) If the inmate's request is approved by the Administrator, the Administrator or designee shall forward to the [appropriate Assistant] **Deputy** Commissioner a complete set of documents along with the application and a cover letter which shall explicitly state the reason(s) the Administrator is supporting the requested transfer.

(e) If the [appropriate Assistant] **Deputy** Commissioner approves the inmate's request, all documents shall then be forwarded to the Administrator of the Interstate Corrections Compact or [appropriate] designee who shall determine whether the application and proposed transfer complies with the terms of the Interstate Corrections Compact, N.J.S.A. 30:7C-1 and this subchapter. **The final decision to approve or deny the out-of-State request shall be made by the Commissioner.**

(f) - (i) (No change.)

10A:10-3.8 Classification summary

(a) Pursuant to the requirements of N.J.A.C. 10A:10-3.7, the Classification Department Supervisor or designee of the correctional facility where the inmate is housed shall prepare a classification summary to be forwarded to the Administrator which contains current information concerning the inmate in areas of:

1. - 23. (No change.)

24. Medical history and recommendations which shall include:

i. A report on the results of a general physical examination; [and]

ii. (No change.)

iii. Results of TB (tuberculosis), Hepatitis C, and HIV (Human Immunodeficiency Virus) tests; and

25. (No change.)

(b) (No change.)

10A:10-3.14 Review of requests from other state compact members for transfer of inmates to New Jersey

(a) - (b) (No change.)

(c) The request shall then be forwarded to the [appropriate Assistant Commissioner] **Director, Division of Operations** for approval or disapproval.

(d) Upon receipt of the determination of the [appropriate Assistant] **Deputy** Commissioner, the Administrator of the Interstate Corrections Compact, or [appropriate] designee, shall determine whether the application and transfer comply with the Interstate Corrections Compact and this

subchapter. **The final decision to approve or deny the out-of-State request shall be made by the Commissioner.** The requesting state shall then be notified of the **final** decision by the Administrator of the Interstate Corrections Compact or [appropriate] designee.

10A:10-3.16 Administration of conditions of confinement, hearings and administrative proceedings to which inmates are entitled

(a) (No change.)

(b) The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate correctional facility of the sending state. **The sending state shall be responsible for providing sufficient legal research materials for the inmate to be capable of bringing a suit before the appropriate court challenging his or her conviction or sentence where the same are not available in the correctional facility of the receiving state. The receiving state shall be responsible for providing sufficient legal research materials for the inmate to be capable of bringing a suit before an appropriate court challenging his or her conditions of confinement.** An inmate serving a New Jersey sentence out-of-State maintains the right to legal access by writing to the New Jersey Department of Corrections, [Office of Educational Services] **Office of Interstate Services** at PO Box 863, Trenton, New Jersey 08625-0863. Such a request shall:

1. - 4. (No change.)

(c) - (e) (No change.)

(f) Inmates in the receiving state, pursuant to the Interstate Corrections Compact, shall be subject to the receiving state's rules and regulations governing discipline and disciplinary sanctions except that any sanction providing for the loss of commutation credits shall not affect the terms

and conditions of the sending state's sentence [in excess of the amount provided for by the laws and regulations governing disciplinary sanctions in the sending state]. **All institutional infractions committed while at the receiving correctional facility, shall be forwarded by the Office of Interstate Services to the sending state for a determination on how, or if, sanctions shall affect the original sentence.**

(g) - (h) (No change.)