

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

Pat Search

Proposed Amendments: N.J.A.C. 10A:3-5.6 and 10A:34-3.3

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

Authority: N.J.S.A. 2A:154-3 and 4, 2C:58-15, 30:1B-6, 30:1B-10, 30:4-123.47.c, and 52:17B-169; 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 2015-165.

Submit written comments by February 19, 2016, to:

Kathleen Cullen, Administrative Rules Unit

Office of the Commissioner

New Jersey Department of Corrections

PO Box 863

Trenton, NJ 08625-0863

or via e-mail at: ARU@doc.nj.gov

The agency proposal follows:

Summary

The Department proposes amendments to the rules regarding pat searches in State and municipal facilities as set forth at N.J.A.C. 10A:3-5.6 and 10A:34-3.3, respectively, to update these rules to be consistent with the Federal Prison Rape Elimination Act of 2003 (PREA). PREA provides specific pat search standards at 42 U.S.C. § 115-15(a) through (f) and the Department proposes to amend its rules accordingly, to limit the conduct of pat searches of female inmates to female staff.

As the Department of Corrections 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 proposed amendments to N.J.A.C. 10A:3-5.6(d) and 10A:34-3.3(d) are expected to have an overall positive impact on both inmates and staff. The Department anticipates a positive social impact to result from the proposed amendments as N.J.A.C. 10A:3-5.6 and 10A:34-3.3 will be consistent with the PREA pat searches standards.

Economic Impact

Additional funding is not necessary to implement the requirements of the proposed amendments. The cost of meeting and maintaining the requirements of the proposed amendments is met by the Department through the established budget with funds allocated by the State.

Federal Standards Statement

The proposed 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. The proposed amendments 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., therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed amendments will cause neither the generation nor the loss of any jobs.

Agriculture Industry Impact

The proposed amendments shall have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed 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 proposed amendments affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

Housing Affordability Impact Analysis

The proposed amendments shall have no impact on housing affordability and will not evoke

a change in the average costs associated with housing. The proposed amendments concerning pat searches affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

Smart Growth Development Impact Analysis

The proposed amendments 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. The proposed amendments concerning pat searches 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]):

CHAPTER 3

SECURITY AND CONTROL

SUBCHAPTER 5. SEARCHES OF INMATES AND FACILITIES

10A:3-5.6 Pat search

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

(d) Pat searches may be conducted by either male or female custody staff members [regardless of the gender of the inmate] **upon male inmates. Except in emergent circumstances, pat searches shall only be conducted by female custody staff members upon female inmates.**

CHAPTER 34

NEW JERSEY MUNICIPAL DETENTION FACILITIES

SUBCHAPTER 3. SECURITY AND CONTROL

10A:34-3.3 Pat search

(a) – (c) (No change.)

(d) Pat searches may be conducted by either male or female custody staff members [regardless of the sex of the inmate] **upon male inmates. Except in emergent circumstances, pat searches shall only be conducted by female custody staff members upon female inmates.**