

LAW AND PUBLIC SAFETY

CORRECTIONS

JUVENILE JUSTICE COMMISSION

THE COMMISSIONER

Transfer of Adjudicated Delinquents to the New Jersey Department of Corrections

Proposed Amendments: N.J.A.C. 13:91-1.3, 1.4, 2.3, and 3.7

Proposed New Rule: N.J.A.C. 13:91-2.3A

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable John Jay Hoffman, Acting Attorney General and Chair, Deborah R. Edwards, Acting Attorney General's Designee and Gary M. Lanigan, Commissioner, Department of Corrections.

Authority: P.L. 2015, c. 89; N.J.S.A. 52:17B-170, 52:17B-171, and 52:17B-175.

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

Proposal Number: PRN 2016-041.

Submit written comments by June 3, 2016, either:

By mail to: John Wolff, Administrative Practice Officer
New Jersey Juvenile Justice Commission
1001 Spruce Street – Suite 202
Trenton, New Jersey 08638

or by email to: Regulatory.Affairs@jjc.nj.gov.

The agency proposal follows:

Summary

The New Jersey Juvenile Justice Commission (Commission) and the New Jersey Department of Corrections (DOC) are jointly proposing amendments to the rules found at N.J.A.C. 13:91, in order to

comply with provisions of P.L. 2015, c. 89, which was signed into law on August 10, 2015, and requires that they be promulgated by March 1, 2016.

Chapter 91 sets out procedures for the transfer of certain juveniles from the Commission to DOC, as authorized by N.J.S.A. 52:17B-175(e). P.L. 2015, c. 89 made various changes to New Jersey's juvenile justice system. Among other things, it amended the law governing waiver of juveniles to adult criminal court under the provisions of N.J.S.A. 2A:4A-26 (waived juveniles), 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.

Of direct impact upon N.J.A.C. 13:91, P.L. 2015, c. 89 changed the requirements related to the transfer of juveniles to DOC, as provided for under N.J.S.A. 52:17B-175(e).

Under N.J.A.C. 13:91-2.3, a juvenile can be transferred to DOC upon the recommendation of the Commission and approval of DOC. However, with respect to waived juveniles, N.J.S.A. 2A:4A-26.1.1.f(1)(a) provides that a waived juvenile under the age of 21 serving a custodial term in a Commission facility may be transferred "... in the discretion ..." of the Commission, without requiring DOC approval.

Accordingly, the Commission and DOC propose to make a number of amendments to N.J.A.C. 13:91 in order to implement the requirements of P.L. 2015, c. 89.

The Commission first proposes to change the heading of N.J.A.C. 13:91 from Transfer of Adjudicated Delinquents to the New Jersey Department of Corrections to Transfer of Juveniles to the Department of Corrections.

The Commission proposes to amend the definition of “juvenile” in N.J.A.C. 13:91-1.3, Definitions, to add to the definition waived juveniles sentenced to serve a custodial sentence in a Commission facility.

The Commission is proposing two amendments to reflect the provision of N.J.S.A. 2A:4A-26.1.1.f(1)(a), authorizing transfers of waived juveniles under the age of 21 to DOC upon the discretion of the Commission. First, the Commission proposes to amend N.J.A.C. 13:91-2.3, the provision providing for Commission recommendation and DOC approval or disapproval of a transfer, to restrict applicability of the rule to adjudicated delinquents. Second, the Commission proposes new N.J.A.C. 13:91-2.3A, Transfer of a juvenile waived under the provisions of N.J.S.A. 2A:4A-46, which serves to replicate the transfer process set forth in N.J.A.C. 13:91-2.3 for adjudicated juveniles, but without the DOC approval or disapproval. All other procedural steps for transfer, including all due process requirements, remain unchanged for waived juveniles. Proposed new subsection (b) provides for the requirement set out in P.L. 2015, c. 89, that authorizes a juvenile to request to continue to serve his or her sentence in a Commission facility, after reaching the age of 21, subject to the approval or disapproval of the Commission. Proposed new subsection (c) adds a requirement that upon reaching the age of 25, a waived juvenile will age-out and be transferred to DOC. For the purposes of making such requests, the Commission proposes to amend N.J.A.C. 13:91-1.4, Forms, to add a Form 104, Request of Waived Juvenile to Remain in Commission Custody.

Finally, the Commission proposes to amend N.J.A.C. 13:91-3.7(a) to conform to Section 4 of P.L. 2015, c. 89, which amends N.J.S.A. 52:17B-175(e), to require that a juvenile at a transfer hearing be represented 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. The Department proposes to delete “Ombudsman” from those providing representation, as the amended statute does not provide for Ombudsman representation

The notice of proposal is excepted from the calendar requirements of N.J.S.A. 52:14B-3(4),

because the agency is providing a 60-day comment period, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and new rule will have a positive social impact by ensuring compliance with the State law that provides for waived juveniles to serve their custodial sentences in an environment more conducive to juveniles.

Economic Impact

The costs associated with the transfers provided for in N.J.A.C. 13:91 have been and will be met through the established budget process with funds allocated by the State. The Commission and DOC anticipate that the proposed amendments and new rule will not have an economic impact on the Commission or any other department or agency of the State government.

Federal Standards Statement

The proposed amendments and new rule comply with 28 CFR 31.303, and do not exceed the standards or requirements imposed by this Federal law.

Jobs Impact

The Commission and DOC do not anticipate that any jobs will be generated or lost if the proposed amendments and new rule are adopted.

Agriculture Industry Impact

The Commission and DOC do not anticipate that the proposed amendments and new rule would have any impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments and new rule impose no reporting, recordkeeping, or other compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is not required because the proposed amendments and new rule concern only the transfer of youth from juvenile to adult correctional facilities.

Housing Affordability Impact Analysis

The proposed amendments and new rule will have an insignificant impact on the affordability of 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 the transfer of youth from juvenile to adult correctional facilities.

Smart Growth Development Impact Analysis

The proposed amendments and new rule will have an insignificant impact on smart growth development, 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 the transfer of youth from juvenile to adult correctional facilities.

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

CHAPTER 91. TRANSFER OF [ADJUDICATED DELINQUENTS] **JUVENILES** 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[.]” [for the purpose of transfers to DOC under this chapter,] means **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-46 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. (No change.)
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-46

(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-46:

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 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-46, shall be transferred to the Department of Corrections, unless:

1. The juvenile has completed 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) - (c) (No change.)

