

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

Records

Proposed Readoption with Amendments: N.J.A.C. 10A:22

Proposed Amendments: N.J.A.C. 10A:31-6.10 and 10A:34-1.6

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

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 2C:52-1 et seq., 47:1A-1 through 47:1A-5, and 2A:4A-60 et seq.

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

Proposal Number: PRN 2016-149.

Submit written comments by November 5, 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: 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:22 expires on August 13, 2016. 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 February 9, 2017. 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 readoption at this time.

Subchapter 1, General Provisions, provides the purpose and scope of the chapter and definitions for terms used in the chapter.

Subchapter 2 establishes provisions relative to government records pursuant to the Open Records Act, N.J.S.A. 47:1A-1 et seq.

The Department proposes to readopt the rules at N.J.A.C. 10A:22 with amendments intended

to update the rules to reflect a change to a reference to another State department, and a Department unit name change at N.J.A.C. 10A:22-2.2(b)1 and 2.11(b)7, respectively. The name changes include a change from the “Office of External Affairs” to the “Office of Legal and Regulatory Affairs”; and a change from the “Division of Youth and Family Services” to the “Department of Children and Families.”

Some of the records addressed in Chapter 22 may be made available under the Open Public Records Act (OPRA), which provides that all government records shall be subject to public access unless exempt from such access by P.L. 1963, c. 73, as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; rule promulgated under the authority of any statute or Executive Order of the Governor; Rules of Court; any Federal law, Federal regulation, or Federal order. The Commissioner, pursuant to N.J.S.A. 47:1A-1 et seq., Executive Orders No. 9 (1963), 21 (2002), and 26 (2002), proposes to classify as exempt from public access certain additional records held or controlled by the Department or agencies within the Department of Corrections. The Act also provides that a public agency should be mindful of the need to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy. The amendments proposed at N.J.A.C. 10A:22-2.3(a), 10A:31-6.10(a), and 10A:34-1.6(a) are designed to serve both these legislative policies by facilitating public access to government records while at the same time balancing citizens’ reasonable expectations of privacy and the integrity and effectiveness of government operations. The existing rules at N.J.A.C. 10A:22-2.3(a), 10A:31-6.10(a), and 10A:34-1.6(a) set forth a list of records that are designated confidential and shall not be released for purposes of ensuring safety and security within the Department of Corrections. The existing rules include, but are not limited to, certain informant

documents, investigative records, and medical records. Since these rules were originally promulgated in 2010, the Department has found the need to add the following categories of records to the list of confidential records:

- all internal management procedures, or any portion thereof, including any portions of those procedures and/or any indexes or lists identifying the procedures related to safety and security measures, inmate movement, staffing, investigative techniques, contraband detection, intelligence gathering techniques, structural or physical plant designs, surveillance techniques, and search techniques;
- records related to involuntary or voluntary protective custody;
- records related to security threat groups or security threat group investigations or validations;
- records and/or content related to inmate phone, e-mail or visit information;
- log books ; and
- surveillance footage of areas located within a correctional facility's secured perimeter.

The Department's primary function is to provide a safe and secure environment for inmates, staff, and the public. In part, this is accomplished by developing and implementing detailed procedures. Release of these procedures would allow for exposure of vulnerabilities, compromise security measures, endanger individuals, and generally impede the Department's ability to provide a safe and secure environment. This could result in serious consequences and potentially grave danger including escapes, bodily injury, loss of life, etc. For those reasons, the Department proposes to add "all internal management procedures including any portions of those procedures as well as any indexes or lists identifying the procedures" to the list of confidential records appearing at N.J.A.C. 10A:22-2.3(a), 10A:31-6.10(a), and 10A:34-1.6(a).

The Department also proposes to add “records related to involuntary or voluntary protective custody” to the list of confidential records appearing at N.J.A.C. 10A:22-2.3(a), 10A:31-6.10(a), and 10A:34-1.6(a) since inmates committed to protective custody have been identified as being in danger of serious bodily injury or of posing a grave risk to the safety of others. Records relating to protective custody can be used for retaliation and to undermine the Department's ability to provide a safe and secure environment for protective custody inmates and should be treated as confidential documents.

The Department proposes to add “records related to security threat groups or security threat group investigations or validations” to the list of confidential records appearing at N.J.A.C. 10A:22-2.3(a), 10A:31-6.10(a), and 10A:34-1.6(a). Security threat groups, as defined at N.J.A.C. 10A:1-1.2 have been identified by the Department as posing a risk to the safe and secure operation of its facilities. Records relating to intelligence gathering, investigations, and/or identification of security threat group inmates would reveal the Department’s vulnerabilities and capabilities, as well as expose inmates to the risk of bodily injury. It could enable security threat groups to undermine and defeat the Department's efforts to investigate, detect, and prevent disruptive and/or criminal behavior by such groups and/or their members.

Department records such as telephone, visit, and e-mail records expose in detail information about the outside contacts of an inmate while incarcerated. This information should remain confidential since inmates may use the phone system to relay confidential informant or victim information to the Department’s Special Investigation Division (SID), as well as outside law enforcement sources. Telephone records contain confidential phone numbers and call recordings that, if exposed, could pose a security risk to all parties involved and jeopardize safety and security within Department facilities. Similar content can be found in the inmate visitor logs and

visit reports, as well as any other communication mechanisms or systems, such as e-mail, that may be implemented for communicating with an inmate. Therefore, the Department proposes to add “records and/or content related to inmate phone, e-mail, or visit information” to the list of confidential records appearing at N.J.A.C. 10A:22-2.3(a), 10A:31-6.10(a), and 10A:34-1.6(a).

Log books are proposed for inclusion as confidential documents since, in general, they contain internal security measures and cannot be made available to the public, as divulging such information could undermine security and the safe operation of correctional facilities.

Should surveillance footage of areas located within a correctional facility’s secured perimeter be made available as a government record, it could severely jeopardize security. Such footage could reveal information such as the location of cameras, staffing patterns, or other images that reveal the structural layout and security measures of secured areas. It is, therefore, proposed that “surveillance footage of areas located within a correctional facility’s secured perimeter” be added to the list of confidential records excluded from OPRA requests.

Subchapter 3 is reserved.

Subchapter 4 sets forth provisions for the expungement and sealing of records.

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 rules proposed for readoption with amendments implement the requirements of N.J.S.A. 47:1A-1 et seq., as amended and supplemented by P.L. 2001, c. 404. The law requires that government records be readily accessible for inspection, copying, or examination by citizens of

this State, unless exempt by law or rule, but also calls upon a public agency to safeguard from public disclosure access a citizen's personal information with which it has been entrusted when disclosure would violate the citizen's reasonable expectation of privacy. The rules proposed for readoption with amendments attempt to balance the competing policies in the statute and to exclude records where it would not be in the public interest to permit indiscriminate disclosure or copying of certain records. The rules proposed for readoption with amendments also provide safeguards to protect the legitimate privacy interests of persons and affected parties.

Economic Impact

The rules proposed for readoption with amendments will not have an economic impact on the public in excess of that provided by the statute. Persons requesting copies of government records will be required to pay the fees authorized by the statute for copies of records (see N.J.S.A. 47:1A-5). The rules proposed for readoption with amendments do not impose any additional costs.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to any Federal standards. The Federal Freedom of Information Act, 5 U.S.C. §§ 550a et seq., does not apply to records of State, county, and municipal government and does not constitute a Federal standard.

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

The rules proposed for readoption with amendments do not impose reporting, recordkeeping, or compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments impose requirements on Department of Corrections staff in regard to records being requested by persons who are seeking access to government records pursuant to N.J.S.A. 47:1A-1 et seq. The cost to the State, county, or municipal governmental entities of providing the records does not depend on whether the requester is a small business.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments shall have no impact on housing affordability. The rules proposed for readoption with amendments concerning records designated confidential affect inmates, the New Jersey Department of Corrections, county, and municipal governmental entities responsible for the enforcement of the rules.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments shall have no impact on smart growth development because they would 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 concerning records designated confidential affect inmates, the New Jersey Department of Corrections, county and municipal 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:22.

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

CHAPTER 22

RECORDS

SUBCHAPTER 2. GOVERNMENT RECORDS

10A:22-2.2 Designation of custodian of records

(a) (No change.)

(b) Contact information for the custodian of records for the Department of Corrections is as follows:

1. Custodian of Records

Office of [External Affairs] **Legal and Regulatory Affairs**

Department of Corrections

PO Box 863

Trenton, New Jersey 08625-0863; or

2. (No change.)

10A:22-2.3 Records designated confidential

(a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., any other law, rule promulgated under the authority of any statute or Executive

Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq.:

1.-6. (No change.)

7. Records of another department or agency allocated to that department in the possession of the Department of Corrections when those records are made confidential by a rule of that department or agency allocated to that department adopted pursuant to N.J.S.A. 47:1A-1 et seq., and Executive Order No. 9 (1963) or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure; [or]

8. The Department of Corrections Disaster/Terrorism Contingency Report[.];

9. All internal management procedures, or any portion thereof, including any portions of those procedures and/or any indexes or lists identifying the procedures related to the following: safety and security measures, inmate movement, staffing, investigative techniques, contraband detection, intelligence gathering techniques, structural or physical plant designs, surveillance techniques, and search techniques;

10. Records related to involuntary or voluntary protective custody;

11. Records related to security threat groups or security threat group investigations or validations;

12. Records and/or content related to inmate phone, e-mail, or visit information;

13. Log books; and

14. Surveillance footage of areas located within a correctional facility's secured perimeter.

(b) (No change.)

10A:22-2.11 Juvenile records and information

(a) (No change.)

(b) Juvenile records shall be made available only to the following agencies or persons:

1. - 6. (No change.)

7. The [Division of Youth and Family Services] **Department of Children and Families**, if providing care or custody of the juvenile;

8. - 10. (No change.)

(c) (No change.)

CHAPTER 31

ADULT COUNTY CORRECTIONAL FACILITIES

SUBCHAPTER 6. MANAGEMENT INFORMATION SYSTEM AND RECORDS

10A:31-6.10 Records designated confidential

(a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., any other law, rule promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq.:

1.-6. (No change.)

7. Records of another department or agency allocated to that department in the possession of the Department of Corrections when those records are made confidential by a rule of that department or agency allocated to that department adopted pursuant to N.J.S.A. 47:1A-1 et seq., and Executive Order No. 9 (1963) or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure; [or]
8. The Department of Corrections Disaster/Terrorism Contingency Report[.];
- 9. All internal management procedures, or any portion thereof, including any portions of those procedures and/or any indexes or lists identifying the procedures related to the following: safety and security measures, inmate movement, staffing, investigative techniques, contraband detection, intelligence gathering techniques, structural or physical plant designs, surveillance techniques, and search techniques;**
- 10. Records related to involuntary or voluntary protective custody;**
- 11. Records related to security threat groups or security threat group investigations or validations;**
- 12. Records and/or content related to inmate phone, e-mail, or visit information;**
- 13. Log books; and**
- 14. Surveillance footage of areas located within a correctional facility's secured perimeter.**

(b) (No change.)

CHAPTER 34

NEW JERSEY MUNICIPAL DETENTION FACILITIES

SUBCHAPTER 1. GENERAL PROVISIONS

10A:34-1.6 Records designated confidential

(a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., any other law, rule promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq.:

1. - 6. (No change.)

7. Records of another department or agency allocated to that department in the possession of the Department of Corrections when those records are made confidential by a rule of that department or agency allocated to that department adopted pursuant to N.J.S.A. 47:1A-1 et seq., and Executive Order No. 9 (1963) or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure; [or]

8. The Department of Corrections Disaster/Terrorism Contingency Report[.];

9. All internal management procedures, or any portion thereof, including any portions of those procedures and/or any indexes or lists identifying the procedures related to the following: safety and security measures, inmate movement, staffing, investigative techniques, contraband detection, intelligence gathering techniques, structural or physical plant designs, surveillance techniques, and search techniques;

10. Records related to involuntary or voluntary protective custody;

11. Records related to security threat groups or security threat group investigations or validations;

12. Records and/or content related to inmate phone, e-mail, or visit information;

13. Log books; and

14. Surveillance footage of areas located within a correctional facility's secured perimeter.

(b) (No change.)