

## 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

#### Use of Body Imaging Scanning Equipment

**Proposed Amendments: N.J.A.C. 10A:1-2.2, 10A:3-5.5, and 10A:31-1.3 and 8.8**

**Proposed New Rule: N.J.A.C. 10A:31-8.3**

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

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 30:4-123.47C, 30:4-151, 2A:154-3 and 4, 2C:1-1 et seq., 2C:58-15, 10:5-3, 52:17B-169, and 52:27EE-26; and P.L. 2015, c. 213.

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

Proposal Number: PRN 2016-163.

Submit written comments by December 2, 2016, to:

Kathleen Cullen

Administrative Rules Unit

Office of the Commissioner

New Jersey Department of Corrections

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Trenton, NJ 08625-0863

or via e-mail: [ARU@doc.nj.gov](mailto:ARU@doc.nj.gov)

The agency proposal follows:

### **Summary**

The Department of Corrections (Department) proposes to add a definition of body imaging scanning equipment at N.J.A.C. 10A:1-2.2 and 10A:31-1.3, based on the definition set forth in P.L. 2015, c. 213 (herein referred to as The Bill). In compliance with The Bill, new N.J.A.C. 10A:3-5.5(c) is proposed, pertaining to the use of body imaging scanning equipment to search inmates in State correctional facilities. This subsection sets forth parameters for the operation of body imaging scanning equipment, as well as related training requirements, safety precautions, and circumstances under which searches with body imaging scanning equipment are permitted. Training requirements pertaining to the use of body imaging scanning equipment are proposed at new N.J.A.C. 10A:3-5.5(d) through (f).

In compliance with The Bill, new N.J.A.C. 10A:31-8.3 is proposed, pertaining to the use of body imaging scanning equipment to search arrestees, detainees, and inmates in adult county correctional facilities. This rule sets forth parameters for the operation of body imaging scanning

equipment, as well as related training requirements, training certifications, safety precautions, and circumstances under which searches with body imaging scanning equipment are permitted. Training requirements and certifications pertaining to the use of body imaging scanning equipment are proposed at N.J.A.C. 10A:31-8.3(c), (d), and (e).

The Department also proposes to recodify existing N.J.A.C. 10A:31-8.2, Search of inmates and facilities, and 8.3, Search of inmates, as N.J.A.C. 10A:31-8.1 and 8.2, respectively, with no change in text. As a result of the recodifications, a change is proposed to a cross-reference at N.J.A.C. 10A:31-8.8, from N.J.A.C. 10A:31-8.2 to 8.1.

The Department of Corrections has determined that the comment period for this notice of proposal shall be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

### **Social Impact**

The proposed amendments and new rule provide direction for the use of body imaging scanning equipment as an added search mechanism and enhanced safety and security tool in correctional facilities where such equipment may be deployed and include safeguards for the operation of such equipment within the manufacturers' recommended guidelines. The proposed amendments and new rule are anticipated to have an overall positive social impact as they involve the safe operation of a non-invasive search tool that will enhance the safe and secure operation of correctional facilities.

### **Economic Impact**

Should the Department of Corrections or county correctional facilities choose to deploy body imaging scanning equipment as an enhancement to existing search tools, there will be

added costs for the equipment itself, for development and delivery of staff training on the safe operation of the equipment, for mechanisms to track inmate and corrections staff radiation exposure, for ongoing equipment maintenance, manufacturer recommended upgrades, manufacturer recommended safety options, manufacturer recommended safety enhancements, etc.

The proposed amendments and new rule will not have a direct economic impact on the public. The economic impact will be borne by the Department of Corrections or county correctional facilities choosing to deploy body imaging scanning equipment.

#### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments and new rule are not subject to any Federal standards. P.L. 2015, c. 213 applies to the State and county correctional facilities and the use of body imaging scanning equipment.

#### **Jobs Impact**

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

#### **Agriculture Industry Impact**

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

#### **Regulatory Flexibility Statement**

The proposed amendments and new rule 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 proposed amendments and new rules impose training, reporting, and safety requirements on the Department of Corrections and/or county correctional facilities should they deploy body imaging scanning equipment, none of which qualify as a small

business.

### **Housing Affordability Impact Analysis**

The proposed amendments and new rule shall have no impact on housing affordability. The proposed amendments and new rule concerning the use of body imaging scanning equipment affect inmates, the New Jersey Department of Corrections, and county governmental entities responsible for the enforcement of the rules.

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

The proposed amendments and new rule 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 proposed amendments and new rule concerning the use of body imaging scanning equipment affects inmates, arrestees, and detainees, the New Jersey Department of Corrections, and county 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 1

### ADMINISTRATION, ORGANIZATION, AND MANAGEMENT

#### SUBCHAPTER 2. GENERAL PROVISIONS

##### 10A:1-2.2 Definitions

The following words and terms, when used in N.J.A.C. 10A:1 through 10A:30, shall have the following meanings unless the context clearly indicates otherwise:

...

**"Body imaging scanning equipment" means equipment that utilizes a low-dose conventional x-ray transmission to produce an anatomical image of the inmate capable of identifying external and internal contraband.**

...

### CHAPTER 3

#### SECURITY AND CONTROL

##### SUBCHAPTER 5. SEARCHES OF INMATES AND FACILITIES

###### 10A:3-5.5 Use of scanning/testing devices

(a) Searches of inmates, areas, and objects by the use of scanning/testing devices may be done routinely and randomly, where necessary for security purposes. This may be, but is not limited to, a walk-through device or a handheld device [which] **that** is passed over the fully clothed body of the inmate. A scanning/testing device may also be utilized in conjunction with a strip search **or body cavity search.**

(b) (No change.)

**(c) Body imaging scanning equipment may be utilized for the purpose of searching inmates. The use of body imaging scanning equipment shall be limited to searches conducted in any of the following circumstances:**

- 1. When an inmate enters or leaves the correctional facility;**

2. Any time before or after an inmate is placed in close custody, prehearing restrictive housing, administrative segregation, protective custody, psychological observation, or suicide watch;

3. Any time before or after an inmate has a contact visit in which the inmate and a visitor are permitted physical contact with each other;

4. After an inmate has been in any area where the inmate has had access to dangerous or valuable items;

5. During a mass search of an inmate housing unit or inmate work area;

6. When a custody staff member with a rank of sergeant or above determines that there exists a reasonable suspicion that an inmate is carrying or concealing contraband on the inmate's person, or in the inmate's anal or vaginal cavity; or

7. When a custody staff member with a rank of sergeant or above determines that the search is reasonably necessary for safety and security.

(d) Notwithstanding the provisions of any other law to the contrary, the body image scanning equipment may be operated by an employee of a correctional facility or other law enforcement officer.

(e) Prior to operating body imaging scanning equipment, an employee or officer shall successfully complete a training course approved by the Police Training Commission pursuant to P.L. 1961, c. 56 ( N.J.S.A. 52:17B-66 et seq.).

(f) Body imaging scanning equipment shall be operated in compliance with all manufacturer standards, guidelines, instructions, recommendations, and safety precautions for inmates and equipment operators.

CHAPTER 31

ADULT COUNTY CORRECTIONAL FACILITIES

SUBCHAPTER 1. GENERAL PROVISIONS

10A:31-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...

**"Body imaging scanning equipment" means equipment that utilizes a low-dose conventional x-ray transmission to produce an anatomical image of the inmate capable of identifying external and internal contraband.**

...

SUBCHAPTER 8. SECURITY AND CONTROL

[10A:31-8.1 (Reserved)]

Recodify existing 10A:31-8.2 and 8.3 as **10A:31-8.1 and 8.2** (No change in text.)

**10A:31-8.3 Use of body imaging scanning equipment**

**(a) Body imaging scanning equipment may be utilized for the purpose of searching arrestees, detainees, and inmates. The use of body imaging scanning equipment pursuant to this section shall be limited to searches conducted in any of the following circumstances:**

- 1. When an inmate enters or leaves the correctional facility;**
- 2. Any time before or after an inmate is placed in close custody, prehearing**



restrictive housing, administrative segregation, protective custody, psychological observation, or suicide watch;

3. Any time before or after an inmate has a contact visit in which the inmate and a visitor are permitted physical contact with each other;

4. After an inmate has been in any area where the inmate has had access to dangerous or valuable items;

5. During a mass search of an inmate housing unit or inmate work area;

6. When a custody staff member with a rank of sergeant or above determines that there exists a reasonable suspicion that an inmate is carrying or concealing contraband on the inmate's person, or in the inmate's anal or vaginal cavity; or

7. When a custody staff member with a rank of sergeant or above determines that the search is reasonably necessary for safety and security.

(b) Notwithstanding the provisions of any other law to the contrary, the body image scanning equipment may be operated by an employee of the county correctional facility or other law enforcement officer.

(c) Prior to operating body imaging scanning equipment, an employee or officer shall successfully complete a training course approved by the Police Training Commission pursuant to P.L. 1961, c. 56 (N.J.S.A. 52:17B-66 et seq.).

(d) Body imaging scanning equipment shall be operated in compliance with all manufacturer standards, guidelines, instructions, recommendations, and safety precautions for inmates and equipment operators.

**(e) County correctional facilities that utilize body imaging scanning equipment shall submit all training materials to the Police Training Commission for approval and certification.**

**1. Body imaging scanning equipment training materials shall be updated no less than every three years unless substantial changes are required to the training materials to incorporate manufacturer updates, enhancements, recommended operating changes, and/or safety precautions.**

**2. Should manufacturer changes be recommended, the body imaging scanning equipment operator training materials shall be updated as needed and submitted to the Police Training Commission for approval and recertification.**

**3. Copies of all Police Training Commission approvals and certifications shall be submitted to the Department of Corrections upon receipt and at least every three years, or upon receipt of recertification, and made assessable during all Department of Corrections inspections of county facilities.**

10A:31-8.8 Search of facilities

(a) (No change.)

(b) Procedures to be utilized in conducting searches shall be as set forth by each facility's plan governing searches required by N.J.A.C. 10A:31-[8.2]**8.1**. Such procedures may provide that an inmate may be excluded from entry into an area being searched to facilitate the safe and effective performance of the search.

(c) - (g) (No change.)

48 NJR 10(1)  
October 3, 2016  
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