

CORRECTIONS

THE COMMISSIONER

Reports

Proposed Readoption with Amendments: N.J.A.C. 10A:21

Authorized By: Marcus O. Hicks Esq, Acting Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

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

Proposal Number: PRN 2018-094.

Submit written comments by December 14, 2018, to:

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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:21 was scheduled to expire on September 14, 2018. 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 date was extended 180 days to March 13, 2019. The Department has reviewed these rules and, with the exception of the

proposed amendments, 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 with amendments at this time.

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.

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

Subchapter 2 establishes rules for the community emergency information systems and sets forth provisions for same.

Subchapter 3 sets forth rules regarding written reports of inmate release.

Subchapter 4 establishes rules for written reports of the critical illness or death of an inmate.

Subchapter 5 sets forth provisions for reports of unusual incidents or events. The Department proposes to amend Subchapter 5 to reflect current practices. N.J.A.C. 10A:21-5.1(c) sets forth restrictions for access to secured areas under investigation by the Special Investigations Division. The Department proposes to add the phrase “or has provided authorization for other staff to access the area” at the end of the sentence to relax the restriction and permit other staff to enter the areas as authorized by the Special Investigations Division.

The Administrator, or designee, currently notifies the prosecutor in writing of inmate escapes. Existing N.J.A.C. 10A:21-5.3(a) states that the notification is done by the Administrator and the Department proposes to replace the word “Administrator” with the words “Administrator, or designee.” The Department proposes to amend the list of outside law

enforcement agencies at N.J.A.C. 10A:21-5.4(b) by adding U.S. Marshall Service to the list as a new paragraph (b)5.

N.J.A.C. 10A:21-5.5(a) sets forth the process for the Special Investigations Division to report certain crimes to a county prosecutor. In practice, the Special Investigations Division reports all first, second, third, and fourth degree crimes appearing at N.J.A.C. 10A:21-5.5(a)1 to a county prosecutor and all other crimes are reported to the prosecutor when notified of the crime by the Administrator. In order to make clear when certain crimes require notification by the Administrator, the Department proposes to remove the phrase “upon notification by the Administrator” at N.J.A.C. 10A:21-5.5(a) and proposes to add a new N.J.A.C. 10A:21-5.5(b) to indicate that the Special Investigations Division shall report the crimes listed at N.J.A.C. 10A:21-5.5(a)2 through 5 to a county prosecutor upon notification by the Administrator.

At recodified N.J.A.C. 10A:21-5.5(c), the phrase “the Administrator or designee” is used twice in the sentence and the Department proposes to delete the second appearance. At recodified N.J.A.C. 10A:21-5.5(d), the Department proposes to replace the reference to “the New Jersey Division of Criminal Justice” with a general agency reference of “an outside law enforcement agency” and to replace the reference to “New Jersey Division of Criminal Justice 24-hour Control Number” with the phrase “appropriate law enforcement agency.”

Existing N.J.A.C. 10A:21-5.8(a) sets forth a reporting process following the occurrence of unusual events or incidents. The Department proposes to add the “Office of Volunteer Services” to the list of potential report recipients. N.J.A.C. 10A:21-5.8(b) further requires that a written report following the occurrence of an unusual event or incident be submitted by the facility Administrator to the Commissioner or designee. The Department proposes to add the

“Assistant Commissioner, Division of Programs” to the list of parties copied on the report as new paragraph (a)2.

Subchapter 6 and 7 are reserved.

Subchapter 8 sets forth the rules regarding reporting violations of criminal statutes. N.J.A.C. 10A:21-8.5(d) is proposed for amendment to require the Special Investigations Division to make investigative reports available to the Commissioner or designee. The Department proposes to remove the redundant phrase, “and the appropriate Assistant Commissioners or designees.”

Social Impact

The rules proposed for readoption with amendments provide procedures necessary to expedite the dissemination of information to persons within the Department of Corrections and, when necessary, to outside law enforcement agencies and other agencies and individuals as required by law when certain scheduled or unusual incidents or events occur within the correctional facilities or community-based facilities of the New Jersey Department of Corrections.

The rules proposed for readoption with amendments are transparent to the general public and inmate population, as they include a technical change at N.J.A.C. 10A:21-8.5(d) and several amendments to Subchapter 5 that are proposed to reflect current practices. The Department anticipates a positive social impact as a result of the rules proposed for readoption with amendments.

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. The rules proposed for readoption with amendments are not subject to any Federal statutes, requirements, or standards; therefore, 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 will 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 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 proposed for readoption with amendments would evoke a change in the average costs associated with housing. The rules

proposed for readoption with amendments concern reports affecting inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

Smart Growth Impact Development Analysis

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and there is an extreme unlikelihood the rules proposed for readoption with amendments will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The rules proposed for readoption with amendments concern reports affecting inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department of Corrections has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:21.

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

SUBCHAPTER 5. REPORTS OF UNUSUAL INCIDENTS OR EVENTS

10A:21-5.1 Preliminary inquiry

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

(c) No one, including non-custody staff and custody staff, shall be permitted access to the secured area and nothing shall be touched, moved, or destroyed until the staff from the Special Investigations Division has completed the examination of the secured area, **or has provided authorization for other staff to access the area.**

10A:21-5.3 Telephone and written reports in the event of an escape

(a) Pursuant to N.J.S.A. 30:4-6.1, all inmate escapes from custody and returns to custody following an escape from a medium or maximum security correctional facility shall be reported immediately by telephone whenever possible, followed by written notification within 48 hours, by the DOC Administrator **or designee** of the correctional facility in which the inmate(s) is confined, to the prosecutor of the county from which the inmate was committed and the prosecutor of the county in which the facility is located.

(b)-(c) (No change.)

10A:21-5.4 Correctional facility liaison to outside law enforcement agencies

(a) (No change.)

(b) The liaison shall have the general responsibility of effecting a cooperative relationship with outside law enforcement agencies during investigations conducted and/or associated with a correctional facility. These outside law enforcement agencies shall include, but are not limited to:

1.-3. (No change.)

4. The Federal Bureau of Investigation; [and]

5. U.S. Marshals Service; and

[5.] **6.** (No change in text.)

10A:21-5.5 Telephone reports to outside law enforcement agencies; reportable unusual incidents and events

(a) [Upon notification by the Administrator, an investigator from the] **The** Special Investigations Division shall promptly report by telephone to the appropriate county prosecutor, the following unusual incidents or events:

1. (No change.)

(b) Upon request by the Administrator, the Special Investigations Division shall promptly report, by telephone, to the appropriate county prosecutor, the following unusual incidents or events:

Recodify existing 2.–5. as **1.–4.** (No change in text.)

[(b)] (c) For all incidents and events cited in [(a)]1 through 3] **(a) and (b)** above, the Administrator or designee shall, when deemed appropriate [by the Administrator or designee], consult with the appropriate Assistant Commissioner or designee in order to obtain approval prior to contacting:

1.–3. (No change.)

[(c)] **(d)** In the event that the unusual incident or event occurs after working hours, on a weekend or holiday, and the Assistant Commissioner or designee has determined that [the New Jersey Division of Criminal Justice] **an outside law enforcement agency** must be contacted, the Administrator or designee shall contact the Special Investigations Division who shall then contact the [New Jersey Division of Criminal Justice 24-hour Control Number] **appropriate law**

enforcement agency. The Special Investigations Division staff member shall provide a contact telephone number at which the Special Investigations Division can be reached.

[(d)] (e) (No change in text.)

10A:21-5.8 Written reports

(a) Within 24 hours following the occurrence of an unusual incident or event, the Departmental staff member, contract vendor personnel, or volunteer who witnessed or was involved in an unusual incident or event shall prepare and submit a written report to the Administrator or designee at the correctional facility or Office of Community Programs, **or Office of Volunteer Services**, as appropriate.

(b) Within 24 hours following the occurrence of an unusual incident or event, the Administrator or designee shall prepare and submit a written report to the Commissioner or designee, New Jersey Department of Corrections, with copies to:

1. The Assistant Commissioner, Division of Operations; [and]

2. The Assistant Commissioner, Division of Programs; and

[2.] **3.** (No change in text.)

(c) (No change.)

SUBCHAPTER 8. REPORTING VIOLATIONS OF THE CRIMINAL STATUTES

10A:21-8.5 Special Investigations Division reporting procedures

(a)–(c) (No change.)

(d) The Special Investigations Division shall be responsible to ensure that all investigative reports shall be made available upon request to the Commissioner or designee [and the appropriate Assistant Commissioners or designees].