

CORRECTIONS

THE COMMISSIONER

Classification Process

Adopted Amendments: N.J.A.C. 10A:9-1.1, 2.3, 2.4, 2.5, 2.6, 2.7, 2.13, 2.14, 3.1, 3.13, 3.14, 4.6, 4.7, 5.2, 7.3, and 10.2

Adopted Repeals: N.J.A.C. 10A:9-1.2 and 1.4

Proposed: July 20, 2020, at 52 N.J.R. 1385(a).

Adopted: January 7, 2021, by Marcus O. Hicks Esq., Acting Commissioner, Department of Corrections.

Filed: April 6, 2021, as R.2021 d.043, **without change**.

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

Effective Date: May 3, 2021.

Expiration Date: April 24, 2022.

Summary of Public Comments and Agency Responses:

The official comment period ended September 18, 2020 and comments were received from the following:

1. Tess Borden for ACLU-NJ; and
2. Anthony DeFazio, Northern State Prison.

A summary of the timely submitted comments to the proposed amendments and the Department of Corrections' ("Department" or "DOC") responses follow. The Department has grouped related comments into major topics as they appear below and provided responses to each topic. The number(s) in parentheses following each comment identifies the commenter listed above.

1. COMMENT: The commenter states that the DOC has not proposed substantively amending N.J.A.C. 10A:9-7.1 through 7.5, regarding inter-institutional transfers. In line with the ACLU-NJ's public

comment on Chapter 5, regarding protective custody, Chapter 9 should be updated to reflect the following requirement of the Act: “The facility administrator shall place an inmate in a less restrictive intervention, including transfer to the general population of another institution or to a special-purpose housing unit for inmates who face similar threats, before placing the inmate in isolated confinement for protection unless the inmate poses a security risk so great that transferring the inmate would be insufficient to ensure the inmate’s safety.” N.J.S.A. 30:4-82.8.d(4)(f). (1)

RESPONSE: The rules at N.J.A.C. 10A:9-7.1 through 7.5 set forth generic processes for inter-institutional transfers, so that the reason for the transfer is transparent and the rules can be applied to most instances. Requirements to consider transfer to another institution before placing the inmate in isolated confinement for protection are included in a separate rulemaking, published elsewhere is in this edition of the New Jersey Register.

2. COMMENT: The commenter states that the proposed changes to Chapter 9 - or any of the other rule proposals – appear not to address how members of vulnerable populations will be identified, to ensure they are not placed in isolated confinement. The commenter suggested ways in which some of the information about vulnerable populations could be determined. The ACLU-NJ also stated that robust processes to ensure the proper identification and protection of members of vulnerable populations will be critical for compliance with the Act. The commenters noted that if the DOC means to establish these processes through internal policymaking, rather than rulemaking, it should clarify this intention and ensure those policies are available to the public, with redactions, as appropriate, at least upon request. (1)

RESPONSE: The Department has put in place the processes, policies, and internal management procedures necessary to identify members of a vulnerable population. While the necessary steps have been taken for identifying members of a vulnerable population to comply with the Act, many internal documents may be protected due to safety and security concerns.

3. COMMENT: The commenter states that N.J.A.C. 10A:9-5.2 conflicts with the newly proposed N.J.A.C. 10A:5-1.3(p). The commenter suggests that “inmates” should be changed to “inmate” at N.J.A.C. 10A:9-5.2(f). (2)

RESPONSE: The Department agrees. N.J.A.C. 10A:9-5.2(f) states that work credits shall not be awarded to Restorative Housing Unit inmates and N.J.A.C. 10A:5-1.3(p)4 states that inmates in close custody units who are participating in formal school (not independent study) shall be entitled to earn work credits and special program credits, but shall not receive pay. The conflict is caused by an issue at N.J.A.C. 10A:5-1.3(p)4 as it should state that inmates in Protective Custody instead of inmates in close custody units. This clarification has been included in the notice of adoption affecting that rulemaking.

4. Comment: The commenter stated that upgrading prohibited act *.053, indecent exposure will not only carry harsher and unwarranted sanctions, the upgrading will also result in a higher classification score from two or three points to five points. Points can negatively impact an inmate’s eligibility for reduced custody status, housing assignment, and programing availability. Under no circumstances should these prohibited acts be elevated from Category C and D to Category B, as proposed. (2)

RESPONSE: The Department provided a response to this commenter on this same topic in the rulemaking associated with Chapter 4, Inmate Discipline, and refers the commenter to that rulemaking as the comment is beyond the scope of this rulemaking.

Federal Standards Statement

The amendments and repeals are adopted under the authority of the rulemaking requirements of the Department of Corrections at N.J.S.A. 30:1B-6 and 30:1B-10. The adopted amendments and repeals are not subject to any Federal statutes, requirements, or standards; therefore, a Federal standards analysis is not required.

Full text of the adopted amendments follows:

TEXT