

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

Municipal Detention Facilities

Proposed Readoption with Amendments: N.J.A.C. 10A:34

Authorized By: Victoria L. Kuhn 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 2021-120.

Submit written comments by February 18, 2022, to:

Kathleen Cullen
Administrative Rules Unit
Office of the Commissioner
New Jersey Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863
or through email to 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:34 was scheduled to expire on December 23, 2021. 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 is extended 180 days to June 21, 2022. 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. The Department proposes to replace the word “establish” with the words “set forth” for technical accuracy at N.J.A.C. 10A:34-1.2, Scope, since the chapter and all related rules have been established for a number of years. The Department proposes to update the definition of “municipal detention facility” at N.J.A.C. 10A:34-1.3, by: 1) by adding the word “areas” following the word “holding” to reflect that some facilities only have holding areas and not standard lockups; and 2) to reflect the actual timeframe persons are usually detained, by replacing “no more than” preceding the words “24 hours” with the word “approximately.”

Subchapter 2 addresses the Commissioner of the Department of Correction’s (Commissioner) statutory authority to conduct inspections of municipal detention facilities and sets forth standards for those inspections. The Department proposes to add the phrase “on a biennial basis” at the end of the first sentence at N.J.A.C. 10A:34-2.1(a) to assure that municipal detention facilities are inspected at least every other year. The Department also proposes to add a new second sentence to make clear that while the Department has the right to conduct biennial inspections of municipal detention facilities, the Department reserves the right to make unannounced annual inspections. The Department also proposes to add a new requirement at N.J.A.C. 10A:34-2.1(d), that municipal detention facilities shall be responsible for retention of all inspection and rule exemption records and documents pertaining to their specific facility, as it is reasonable to expect each facility to maintain such documents. At N.J.A.C. 10A:34-2.2(b), the Department proposes to replace the generalization used to convey the timeframe for municipal detention facilities to take corrective action when particular standards are found to be noncompliant with the standards in this chapter by replacing the words “given a period of time within which to come into compliance with” with the more specific phrase “notified that corrective action must be effected or initiated within 60 days for.” The Department proposes to set forth that forms may be sent to the Department through email by adding new N.J.A.C. 10A:34-2.2(e) to state that the municipal detention facility shall submit current forms obtained on the Department of Corrections website for inspections, rule exemptions, incident reporting, and any required statistical information.

In order to reflect the current office responsible for inspections and construction standards for municipal detention facilities, the Department proposes to replace references to “Director, Office of Community Programs and Outreach Services, or designee” with “Office of County Services, Department of Corrections, through email at municipal.inspections@doc.nj.gov” at N.J.A.C. 10A:34-2(a), (b), (c), and (d). At N.J.A.C. 10A:34-2.5(g) and (h) and 2.8(i), the Department proposes to replace reference to a particular security glazing manufacturer by replacing the words “security type lexan” with a generic description of the material as “security grade polycarbonate” for the purposes of vendor neutrality. The following parenthetical phrase is proposed at the end of N.J.A.C. 10A:34-2.9(b)3, “(including radios with panic buttons)” because some sallyport areas do not have alarm buttons and rely on the radio panic button for emergency assistance.

Subchapter 3 sets forth rules regarding security and control within municipal detention facilities, including searches of persons detained, arrested, and lawfully confined. N.J.A.C. 10A:34-3.1(b) sets forth the prohibited use of cells, cell blocks, and sallyport areas, as storage. The Department proposes to add the phrase “unless officially decommissioned by written notice to the Office of County Services, or otherwise approved by the Office of County Services, as appropriate” as a means of allowing the use of

cells, cell blocks, and sallyport areas, when no longer needed for their original purpose. The Department proposes replacing the word “sex” with the word “gender” at N.J.A.C. 10A:34-3.4(b)2; 3.5(c)2, (e)2, and (f)2; 3.6(b)3 and 4 and 3.6(c)1; 3.7(b)1 and 4 and (c)1; 4.1(d); and 4.4(a) and (b). This change will bring these rules into alignment with Prison Rape Elimination Act (PREA) standards.

Subchapter 4 sets forth rules for the supervision and care of detainees, including rules for detainee housing, reporting of detainee deaths, and protection of detainees from abuse. The Department proposes replacing the first word at N.J.A.C. 10A:34-4.4(a) with “within 72 hours” and removing the words “within 3 business days” at the end of the sentence to emphasize the need to report the death of a detainee in a more expeditious manner. The contact information is also updated at N.J.A.C. 10A:34-4.4. N.J.A.C. 10A:34-4.5 sets forth the rules for protection of detainees from abuse and the Department proposes to add a cross-reference to N.J.A.C. 10A:7, Inmate Abuse Reporting and Investigation.

Social Impact

The rules proposed for readoption with amendments are anticipated to have an overall positive social impact. The readoption with amendments of N.J.A.C. 10A:34 will continue to promote uniformity among municipal detention facilities in New Jersey. The rules proposed for readoption with amendments will assist municipalities in processing and confining persons detained, arrested, or lawfully confined; providing care and treatment to these persons; and maintaining the safe, secure, and orderly operation of municipal detention facilities. The proposed amendments will clarify existing rules related to inspections, related corrective actions, and protection from abuse, as well as make several technical/grammatical updates.

Economic Impact

The rules proposed for readoption with amendments will continue to impose the existing economic responsibilities on municipal detention facilities in the form of rule compliance requirements. However, the rules proposed for readoption with amendments will not impose any new economic responsibilities. The nature of the costs imposed include those expenses associated with inspections; conformance with applicable health, safety, and construction codes; the development and update of policy and procedure manuals; the maintenance of recodes and information systems; staff training; and the maintenance of security and control to include searches, housing of detainees, and electronic surveillance. 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 by the Department, including inspection of facilities and evaluating compliance, 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 comply with, and do not exceed, the Federal requirements established by the Federal Prison Rape Elimination Act of 2003 (PREA), [42 U.S.C. §§ 15601](#) et seq. With the exception of PREA, 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 a direct 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:34.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10A:34-1.1 Purpose

- (a) The purpose of this chapter is to [establish] **set forth** the minimum standards for the:
1.-2. (No change.)

10A:34-1.2 Scope

This chapter shall be applicable to the New Jersey Department of Corrections, [the] Office of County Services, and all adult municipal detention facilities.

10A:34-1.3 Definitions

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

...

“Municipal detention facility” means a holding **area** or lockup facility, usually located in, and operated by, a municipal police department, which receives and temporarily detains for [no more than] **approximately** 24 hours, excluding holidays or weekends, persons who have been arrested who are awaiting release or transfer to other authorities.

...

SUBCHAPTER 2. INSPECTION AND MINIMUM STANDARDS FOR NEW JERSEY MUNICIPAL DETENTION FACILITIES

10A:34-2.1 Inspection of municipal detention facilities

(a) As provided [by] **at** N.J.S.A. 30:1-15, the Commissioner of the Department of Corrections has the authority to designate Departmental staff to visit and inspect all municipal detention facilities **on a biennial basis. The Department of Corrections reserves the right to conduct annual unannounced inspections.**

(b) Each municipal detention facility shall be subject to **unannounced** visits by staff designated by the Commissioner of the Department of Corrections for the purpose of inspecting and observing the:

1.-3. (No change.)

(c) (No change.)

(d) Municipal detention facilities shall be responsible for the retention of all inspection and rule exemptions records and documents.

10A:34-2.2 Minimum standard compliance or non-compliance procedure

(a) (No change.)

(b) The municipal detention facility shall be [given a period of time within which to come into compliance with] **notified that corrective action must be effected, or initiated, within 60 days for** any standard(s) that was rated in non-compliance.

(c)-(d) (No change.)

(e) The municipal detention facility shall submit current forms obtained on the Department of Corrections’ website for inspections, rule exemptions, incident reporting, and any required statistical information.

10A:34-2.4 Notification of intent to construct or renovate a municipal detention facility

(a) A letter of intent to construct or renovate a municipal detention facility shall be submitted to the [Director, Office of Community Programs and Outreach Services or designee] **Office of County Services, Department of Corrections, through email to municipal.inspections@doc.nj.gov**, by the authority responsible for the municipal detention facility.

(b) Upon receipt of the letter of intent, the [Director, Office of Community Programs and Outreach Services or designee,] **Office of County Services, Department of Corrections**, shall furnish technical assistance throughout the planning process to assure that the detention facility complies with this subchapter.

(c) All plans and specifications shall be submitted to the [Director, Office of Community Programs and Outreach Services or designee] **Office of County Services, Department of Corrections, through email to municipal.inspections@doc.nj.gov** and copies also shall be submitted to any other authorities, as required by law.

(d) Contracts for new construction, alterations, additions, and repairs shall not be executed until final plan approval is received in writing from the [Director, Office of Community Programs and Outreach

Services or designee] **Office of County Services, Department of Corrections, through email from municipal.inspections@doc.nj.gov and from other authorities, as required by law.**

10A:34-2.5 Cell construction specifications

(a)-(f) (No change.)

(g) Cell doors shall be security type hollow core metal (minimum 12 gauge) steel. The doors shall slide or swing into the cell corridor and shall contain a standard food pass/cuff port, a pull type safety door handle, and observation port of security glass at least nine-sixteenths inch thick or security [type lexan] **grade polycarbonate** at least one half inch thick. Doors shall be secured with detention type locks (preferably lever tumbler and paracentric keyway) with independent dead bolts.

(h) Natural light is recommended for each cell. All windows in the cell block area shall be of the approved security type (a tool resistant type steel frame with nine-sixteenths inch security glazing or one-half inch security [type lexan] **grade polycarbonate**).

(i) (No change.)

10A:34-2.8 Cell corridors

(a)-(h) (No change.)

(i) Hollow core metal or wood doors shall contain a vision port of nine-sixteenths inch security glass or one half inch security [type lexan] **grade polycarbonate**. Pull type safety handles shall be provided, where necessary.

(j) (No change.)

(k) Access to [a cordless or cell phone or] a telephone [jack] shall be provided in the cell corridor.

(l) (No change.)

10A:34-2.9 Sallyport

(a) (No change.)

(b) The vehicle sallyport or designated sallyport area shall be in close proximity to the detention area and shall contain the following:

1.-2. (No change.)

3. Emergency alarm button (**including radios with panic buttons**).

(c) (No change.)

SUBCHAPTER 3. SECURITY AND CONTROL

10A:34-3.1 Security and key control

(a) (No change.)

(b) Cells, cell blocks, and sallyport areas shall not be used as storage areas, **unless officially decommissioned by written notice to the Office of County Services and approved by the Office of County Services, as appropriate.**

(c)-(e) (No change.)

10A:34-3.4 Strip search of a person(s) who has been detained or arrested for commission of an offense other than a crime

(a) (No change.)

(b) As authorized [in] **at** (a) above, a strip search of a person shall be conducted:

1. (No change.)

2. By a custody staff member of the same [sex] **gender** who has been authorized to conduct the search;

3.-5. (No change.)

(c)-(d) (No change.)

10A:34-3.5 Strip searches of a person(s) who is lawfully confined for commission of a crime

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

(c) The authorized strip search of a person who has been confined in a municipal detention facility for the commission of a crime shall be conducted:

1. (No change.)

2. By a custody staff member of the same [sex] **gender**, except as set forth [in] **at** (e) below;

3.-5. (No change.)

(d) (No change.)

(e) Under exigent circumstances, a strip search may be conducted by a custody staff member of the opposite [sex] **gender** and/or in the presence of only those custody staff members deemed reasonably necessary for security of the opposite [sex] **gender**, as ordered by the custody staff supervisor in charge.

(f) For all strip searches conducted in accordance with this section, the custody staff member authorized to conduct a strip search shall file a written report to be made a part of the record of the person, as set forth in this section. The report shall be reviewed by the supervisor who authorized the search and filed in accordance with internal management procedures. The report shall include, but not be limited to, the following information:

1. (No change.)

2. A statement of the exigent circumstances requiring the presence of a custody staff member of the opposite [sex] **gender**;

3.-6. (No change.)

(g) (No change.)

10A:34-3.6 Body cavity searches of a person(s) who has been detained or arrested for commission of an offense other than a crime

(a) (No change.)

(b) When the search is authorized in accordance with (a) above, the person shall be escorted immediately to the medical unit or hospital used by the facility and the body cavity search of the person who has been detained or arrested for commission of an offense other than a crime shall be conducted:

1.-2. (No change.)

3. By a licensed medical professional who must be of the same [sex] **gender** as the detained or arrested person;

4. In the presence of only those custody staff members deemed reasonably necessary by the custody staff supervisor in charge for security, who are of the same [sex] **gender** as the detained or arrested person; and

5. (No change.)

(c) The person who has been detained or arrested for the commission of an offense other than a crime may:

1. Remove the object in the presence of the licensed medical professional and a custody staff member of the same [sex] **gender** as the person; or

2. (No change.)

(d)-(g) (No change.)

10A:34-3.7 Body cavity searches of a person(s) lawfully confined for the commission of a crime

(a) (No change.)

(b) When the search is authorized in accordance with (a) above, the lawfully confined person shall be escorted immediately to the medical unit or hospital used by the municipal detention facility and removal of contraband shall be conducted:

1. By a licensed medical professional of either [sex] **gender**;

2.-3. (No change.)

4. In the presence of only the custody staff member(s) deemed reasonably necessary by the custody staff supervisor in charge for security, who are of the same [sex] **gender** as the person; and

5. (No change.)

(c) The lawfully confined person may:

1. Remove the object in the presence of the licensed medical professional and a custody staff member(s) of the same [sex] **gender** as the person; or

2. (No change.)

(d)-(g) (No change.)

SUBCHAPTER 4. SUPERVISION AND CARE OF DETAINEES

10A:34-4.1 Supervision and care of detainees

(a)-(c) (No change.)

(d) A record of the physical cell checks shall be maintained in a log that shall contain, at a minimum, the following information on the detainee:

1. (No change.)

2. [Sex] **Gender**;

3.-6. (No change.)

(e)-(h) (No change.)

10A:34-4.4 Reporting deaths

(a) [At] **Within 72 hours** of the death of a detainee, notification shall be given by the Chief of Police to the [Director, Office of Community Programs and Outreach Services or designee,] **Office of County Services**, Department of Corrections[, within three business days] **at municipal.inspections@doc.nj.gov**.

(b) Following the notification [in] **at** (a) above [and within two weeks], a written report shall be submitted by the Chief of Police to the [Director,] Office of-[Community Programs and Outreach Service or designee] **County Services**, Department of Corrections **at municipal.inspections@doc.nj.gov** within **14 days**. This report shall contain, at a minimum, the following information:

1. Detainee's name, age, and [sex] **gender**;

2.-6. (No change.)

10A:34-4.5 Protection from abuse

(a) All persons detained, arrested, or lawfully confined to a municipal detention facility shall be protected by municipal detention facility staff from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment (**see N.J.A.C. 10A:7, Inmate Abuse Reporting and Investigation**).

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

