

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. 52:14B3. 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

Administration, Organization, and Management

Proposed Readoption with Amendments: N.J.A.C. 10A:1

Proposed Repeal: N.J.A.C. 10A:1-3.7

Proposed New Rule: N.J.A.C. 10A:1-3.8

Authorized By: Victoria L. Kuhn Esq., 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 2022-160.

Submit written comments by February 17, 2023, to:

Kathleen Cullen

Administrative Rules Unit

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 N.J.S.A. 52:14B-5.1, N.J.A.C. 10A:1 was scheduled to expire on November 9, 2022. Pursuant to N.J.S.A. 52:14B-5.1.c(2), as the Department of Corrections ("DOC" or

“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 May 8, 2023. The Department has reviewed this chapter and, with the exception of the proposed amendments, has determined it to be necessary, reasonable, and proper for the purpose for which it was originally promulgated. Therefore, the rules are proposed for readoption with amendments.

The Department of Corrections has determined that the comment period for this notice of proposal will 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.

N.J.A.C. 10A:1 sets forth rules for administration, organization, and management rules and regulations including, among other things, rulemaking activity, petitions, rule exemptions, the cost for copies, Americans with Disability matters, and inmate research requests.

Subchapter 1, Operation, procedures, and rulemaking activity of the Department of Corrections sets forth the functions of the agency including, but not limited to, petitions for rulemaking, public and inmate information requests, costs of copying, and other rulemaking activity.

Subchapter 2 contains general provisions, such as definitions, rulemaking, policy and procedure making, and high-level procedures for requesting rule exemptions. At N.J.A.C. 10A:1-2.2, the Department proposes to delete definitions of “administrative segregation” and “Centralized Reception and Assignment Facility (CRAF)” and to replace reference to the Central Reception and Assignment Facility (CRAF) within the definition of “Institutional Classification Reception Committee (I.C.R.C.)” with “an intake facility” as those terms are obsolete. At N.J.A.C. 10A:1-2.8(c), the Department proposes to replace “following form related to Disability Discrimination Grievance is available at N.J.A.C. 10A:1-3.7 or” with “Americans with Disabilities Act Grievance Form 100 can be obtained by contacting the ADA Coordinator, New Jersey Department of Corrections” and deleting paragraph (c)1, as it has been merged into subsection (c) and the contents of the form previously codified at N.J.A.C. 10A:1-3.7 is proposed for repeal.

Subchapter 3 sets forth provisions and procedures for disability discrimination and related grievance procedures. At N.J.A.C. 10A:1-3.3, the Department proposes to delete duplicate language also appearing at N.J.A.C. 10A:1-3.5, beginning with the words “As those rules indicate” through numbered paragraph 2. Existing N.J.A.C. 10A:1-3.7 is proposed for repeal. N.J.A.C. 10A:1-3.3, paragraphs 3 and 4 are proposed as new N.J.A.C. 10A:1-3.7(b) and N.J.A.C. 10A:1-3.3 paragraphs, 6 and 7 are proposed for relocation as new N.J.A.C. 10A:1-3.8, Rights of persons filing ADA grievances. N.J.A.C. 10A:1-3.5, paragraph 5 is proposed for deletion, as this language is better suited to internal documentation.

Subchapter 4 sets forth rules for the Inmate Remedy System, which also includes inmate inquiries, grievances, and administrative appeals.

Subchapters 5, 6, 7, 8, and 9 are reserved.

Subchapter 10 sets forth rules associated with research and the Department proposes to amend the heading at N.J.A.C. 10A:1-10.3 to replace “[p]rocedure for submitting and handling requests” with “[r]equests,” as this section does not include detailed procedures, but rather rules from which such procedures are developed for internal purposes. In order to update recent organizational changes, the Department proposes to update the address and include an email address at subsection (a). The Department proposes to delete N.J.A.C. 10A:1-10.3(b) and paragraphs (b)1 and 2, as the contents of the research application package is subject to change, as may be needed, to protect the rights of inmates and staff members. Existing paragraph (a)3 is

proposed to be recodified as subsection (b) with an amendment to add “In addition to completion of the research request application as instructed in the application package provided by DOC, the researcher(s) shall also provide.” At N.J.A.C. 10A:1-10.3(c)4, 10.4(a), and 10.5(c), the Department proposes to add the words “or staff” following the word “inmate,” so that research requests requiring inmates and/or Department staff are included in this chapter.

At N.J.A.C. 10A:1-10.4 and subsection (a), the rules refer to express written inmate informed consent, which is redundant and the Department proposes a technical correction to replace the language with “written informed consent” in both instances. The Department also proposes to delete N.J.A.C. 10A:1-10.4(b), as this level of detail is better suited to internal management procedures.

At N.J.A.C. 10A:1-10.5(b), the Department proposes to replace “constitute a reason for imposing penalties upon” with “result in adverse consequences or penalties for” to clarify the meaning of the subsection.

At N.J.A.C. 10A:1-10.8, the Department proposes a technical change by merging subsections (a) and (b) to improve readability, to replace “development of” with “related,” and to delete language related to the signatures needed on the documents.

Subchapter 11 sets forth rules for the personal property of inmates including, but not limited to permissible inmate personal property, inventory of such property, and storage of non-permissible property.

Social Impact

The rules proposed for readoption with amendments and a repeal and new rule provides information regarding the administration, organization, and management of Americans with Disabilities Act inquiries, grievance, and research requests. The Department does not anticipate either a positive or negative social impact as a result of the rules proposed for readoption with amendments and a repeal and new rule, as the rules are necessary, and the amendments reflect technical changes, as well as recent organizational changes within the Department.

Economic Impact

Additional funding is not necessary to implement the requirements of the rules proposed for readoption with amendments and a repeal and new rule. The cost of meeting and maintaining the requirements of the rules proposed for readoption with amendments and a repeal and new rule is met by the Department through the established budget with funds allocated by the State and has no external economic impact.

Federal Standards Statement

The rules proposed for readoption with amendments and a repeal and new rule are promulgated pursuant to the authority of the rulemaking requirements of the Department of Corrections, as established at N.J.S.A. 30:1B-6 and 10. The rules proposed for readoption with amendments and a repeal and new rule are not subject to any Federal statutes, requirements, or standards; even though they include processes related to the ADA, those processes are in compliance with the Act and a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption with amendments and a repeal and new rule will cause neither the generation nor the loss of any jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments and a repeal and new rule 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 and a repeal and new rule do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments and a repeal and new rule affect the New Jersey Department of Corrections and governmental entities responsible for the enforcement of the chapter.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and a repeal and new rule will have no impact on the affordability of housing and there is an extreme unlikelihood that the rules proposed for readoption with amendments and a repeal would evoke a change in the average costs associated with housing. The rules proposed for readoption with amendments and a repeal and new rule concern research requests with inmates and staff members of the New Jersey Department of Corrections.

Smart Growth Impact Development Analysis

The rules proposed for readoption with amendments and a repeal and new rule will have no impact on the achievement of smart growth and there is an extreme unlikelihood the rules proposed for readoption with amendments and a repeal 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 and a repeal and new rule concern research requests with inmates and staff members of the New Jersey Department of Corrections.

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 or sentencing. Research requests with inmates and staff members of the New Jersey Department of Corrections do not impact probation and potentially parole and has been implemented and updated in compliance with related State laws. 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:1.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10A:1-3.7.

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

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:

["Administrative segregation" means removal of an inmate from the general population of a correctional facility to a close custody unit because of one or more disciplinary infractions.]

...

["Central Reception and Assignment Facility (CRAF)" means the facility of the New Jersey Department of Corrections for inmate reception and correctional facility assignments.]

...

"Institutional Classification Reception Committee (I.C.R.C.)" means the committee of staff members responsible for determining the initial custody status and correctional facility assignments of male inmates; the custody status and correctional facility assignments of male parole violators, escapees, and Interstate Corrections Compact transferees; and for recommending inmates at [the Central Reception and Assignment Facility (CRAF)] **an intake facility** who are considered appropriate for Protective Custody.

...

10A:1-2.8 Forms

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

(c) The [following form related to Disability Discrimination Grievance is available at N.J.A.C. 10A:1-3.7 or] **Americans with Disabilities Act Grievance Form 100** can be obtained by contacting the ADA Coordinator, New Jersey Department of Corrections[:].

[1. Americans with Disabilities Act Grievance Form 100.]

SUBCHAPTER 3. DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

10A:1-3.3 Required ADA notice

In addition to any other advice, assistance, or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

[AGENCY NOTICE OF ADA PROCEDURE]

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances alleging any action prohibited by the U.S. Department of Justice regulations implementing Title 11 of the Americans with Disabilities Act. Title 11 states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 10A:1-3. [As those rules indicate, grievances should be addressed to the agency's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator

New Jersey Department of Corrections

PO Box 863

Trenton, New Jersey 08625-0863

1. A grievance may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. In cases of employment related grievances, the procedures established by the Department of Personnel, N.J.A.C. 4A:7-1.1 et seq. will be followed where applicable.

2. A grievance should be filed promptly within 30 calendar days after the grievant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3. An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.

4. In most cases a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the grievant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the agency relating to the grievances filed.

6. The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA grievance with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.]

10A:1-3.5 Grievance procedure

A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either, in writing, or orally to the designated ADA coordinator identified [in] at N.J.A.C. 10A:1-3.4 within 30 calendar days of the grievant becoming aware of the alleged violation. A grievance alleging employment discrimination will be processed pursuant to the rules of the [Department of Personnel] **Civil Service Commission**, N.J.A.C. 4A:7-1.1 through 3.4, if those rules are applicable.

10A:1-3.6 Grievance contents

(a) A grievance submitted pursuant to this subchapter may be submitted in or on the form [set forth] **available from the ADA Coordinator, as indicated** at N.J.A.C. 10A:1-[3.7]**3.4**.

(b) [A] **All ADA** grievances [submitted pursuant to this subchapter] shall include the following information:

1. - 3 (No change.)

10A:1-[3.8]**3.7** Investigation

(a) Upon receipt of a **verbal or written** grievance submitted pursuant to this subchapter **on the form provided by the ADA Coordinator**, the designated ADA coordinator will notify the grievant of the receipt of the grievance and the initiation of an investigation into the matter. The [designated] ADA coordinator will also indicate a date by which [it is expected that] the investigation [will] **is expected to be completed**[, which]. **The investigation completion** date shall not be later than 45 calendar days from the date of receipt of the grievance, if practicable, or unless a later date is agreed to by the grievant.

(b) An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal, but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.

(c) In most cases a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the grievant no later than 45 days after its filing.

[(b)] **(d)** (No change in text.)

10A:1-3.8 Rights of persons filing ADA grievances

(a) The right of a person to a prompt and equitable resolution of the grievance filed pursuant to this chapter will not be impaired by the person's pursuit of other remedies, such as the filing of an ADA grievance with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

(b) This section will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards, and to ensure that the agency complies with the ADA and implementing Federal rules.

SUBCHAPTER 10. RESEARCH

10A:1-10.3 [Procedure for submitting and handling requests] **Requests** to conduct research projects [to] **and** the Departmental Research Review Board (DRRB)

(a) Any person(s) or agency(ies) who wishes to conduct research projects shall complete and submit, to the Department of Corrections, the research request application package, which is available by contacting:

Departmental Research Review Board
Office of [Policy and Planning] **Compliance and Strategic Planning**
New Jersey Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863
DOC_Research@doc.nj.gov

[(b)] The research request application package includes the following:

1. The Application Form to Request Review of a Research Protocol. This form requires:
 - i. The title of the project;
 - ii. The name and title of, and contact information for, the principal researcher and any other researchers;
 - iii. A description of the research project to include the purpose;
 - iv. The name of the agency or organization with which the researcher(s) is affiliated;
 - v. Funding information;
 - vi. Whether human subjects will be involved in the research and related information such as, but not limited to, age, gender, race and projected number of participants;
 - vii. The Departmental sites and units involved;
 - viii. Whether questionnaires, surveys, tests, or interviews will be used;
 - ix. The use of documents, files or records;
 - x. How data will be stored and secured when necessary;
 - xi. Data disposition;
 - xii. Projected research start and end dates;
 - xiii. The conditions under which participation by the subject may be terminated by the researcher or subject, if relevant;

xiv. A summary of the potential social impact, benefits and risks associated with the research project; and
xv. Signatures of the principal researcher, any other researcher, supervisor or advisor as appropriate;

2. A Researcher Checklist. This checklist is designed to assist the researcher in the gathering of information necessary to complete the Application Form to Request Review of a Research Protocol and includes the information listed in (b) above, in addition to a list of items that must be provided by the researcher and appended to the completed application form, which includes but is not limited to:

i. The informed consent that will be used;
ii. Copies of instruments to be used, such as, questionnaires, surveys or tests; and
iii. Copies of any letters, waivers or disclaimers related to the research project from the agency or organization with which the researcher is affiliated; and]

[3.] (b) [Any] **In addition to completion of the research request application as instructed in the application package provided by the Department, a researcher shall also provide any additional information as may be required by the Department concerning a particular research project.**

(c) The DRRB shall review the research request application package. This review shall consider whether or not the research will:

1. - 3. (No change.)

4. Require inmate **or staff** participation, such as an interview or to respond to questionnaires.

(d) - (f) (No change.)

10A:1-10.4 [Express written inmate informed] **Informed** consent requirement

(a) [The express] **Express** written informed consent of the inmate **or staff member** shall be required:

1. To ensure that direct inmate **and staff** participation in any research project is on a voluntary basis; and

2. (No change.)

[(b) A written informed consent of an inmate to directly participate in a research activity shall be required and signed by:

1. The inmate:

2. A witness and/or legal representative when deemed necessary; and

3. The principal researcher.]

10A:1-10.5 Refusal to participate in research

(a) An inmate **or staff member** shall not be required or coerced to participate in research activities.

(b) Refusal by an inmate to participate in research shall not [constitute a reason for imposing penalties upon] **result in adverse consequences or penalties for** the inmate.

10A:1-10.8 Written internal management procedures

[(a)] Each correctional facility Administrator, community program supervisor, operational unit supervisor, and the appropriate Assistant Commissioner shall ensure the [development of]

related written internal management procedures governing research projects and activities consistent with the requirements of this subchapter[.

(b) These written internal management procedures shall be] **are** reviewed at least annually and updated as necessary [and signed and dated by the Administrator, community program supervisor, or operational unit supervisor].