

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

Inmate Abuse Reporting and Investigation

Proposed New Rules: N.J.A.C. 10A:7

Authorized By: Marcus O. Hicks 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 2020-077.

Submit written comments by September 18, 2020, to:

Kathleen Cullen
Administrative Rules Unit
Office of the Commissioner
New Jersey Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863
or via email to ARU@doc.nj.gov

The agency proposal follows:

Summary

The proposed new rules are intended to promulgate and incorporate some of the requirements set forth in N.J.S.A. 30:1B-39 through 45 (the Act), effective August 1, 2020.

The Department of Corrections (Department) proposes to add new rules to carry out the requirements of the Act to create an Inmate Abuse Reporting and Investigation Program. The Act sets forth definitions and requirements for the Commissioner to establish training in which correctional facility employees and others will gain an understanding of the obligation to report incidences or any reasonable suspicion of inmate abuse to designate an individual(s) to receive the reports of abuse and to establish penalties for failure to report inmate abuse.

At N.J.A.C. 10A:7-1.1 the Department proposes to state the requirement to establish the program as set forth at N.J.S.A. 30:1B-39, and to note that this program is in addition to existing policies and procedures related to the Prison Rape Elimination Act (PREA).

The definitions set forth at N.J.S.A. 30:1B-39 include those for employees, Inmate Abuse Liaison, and State correctional facility and are proposed for inclusion at N.J.A.C. 10A:7-1.2. Although some of these definitions appear elsewhere in N.J.A.C. 10A, the Department proposes to add them at N.J.A.C. 10A:7-1.2 for the convenience in the context of this section of the administrative rules.

At N.J.A.C. 10A:7-1.3, the Department proposes to include the obligations of State employees and any other person to report suspected inmate abuse to be in compliance with N.J.S.A. 30:1B-40.

At N.J.A.C. 10A:7-1.4, the basic contents of the report are proposed in accordance with the Act.

The Department proposes, at N.J.A.C. 10A:7-1.5, to include the requirement from the Act to establish an inmate abuse reporting program for State correctional facilities including the need for a training component and a designation of an individual(s) to receive reports of inmate abuse.

At N.J.A.C. 10A:7-1.6, the Department proposes the following minimum areas for inclusion in the training. As stated in the Act, these include recognizing and understanding what is inmate abuse, the duty to report inmate abuse, and how to report inmate abuse including contact information.

At N.J.A.C. 10A:7-1.7, the Department proposes designation of an Inmate Abuse Liaison to be the recipient of abuse reports, as well as take on the functional responsibility to transmit inmate abuse reports (incidents and allegations) to the Commissioner for investigation as required at N.J.S.A. 30:1B-41.

The responsibility to report all instances of inmate abuse, as determined by an investigation, to the county prosecutor is proposed at N.J.A.C. 10A:7-1.8 for compliance with the Act, which may include a review by the county prosecutor, but does not preclude the Department of Corrections from conducting an investigation.

The Department proposes to include rules pursuant to N.J.S.A. 30:1B-42, regarding confidentiality, immunity from liability, and retaliation at N.J.A.C. 10A:7-1.9.

At N.J.A.C. 10A:7-1.10, the Department proposes to include rules for assessing penalties for failure to report inmate abuse as set forth at N.J.S.A. 30:1B-43. These may include a penalty of not more than \$5,000 and Departmental disciplinary action.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules incorporate the requirements of N.J.S.A. 30:1B-39 through 45 into the administrative rules of the Department. The Department anticipates a positive social impact on the general public and inmate population resulting from the proposed rule changes as they provide an added measure of inmate protection from abuse and require that correctional facility staff and others report all known and suspected inmate abuse.

Economic Impact

The cost of meeting and maintaining the requirements of the proposed new rules should be accommodated by within the existing budget.

Federal Standards Statement

The proposed new rules are promulgated 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 proposed amendments are not subject to any Federal statutes, requirements, or standards; therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed new rules will have no impact on jobs.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, recordkeeping, and other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules only impose reporting, recordkeeping, and other compliance requirements on the New Jersey Department of Corrections and governmental entities responsible for the enforcement of the rules.

Housing Affordability Impact Analysis

The proposed new rules shall have no impact on housing affordability and there is an extreme unlikelihood that the proposed new rules would evoke a change in the average costs associated with housing. The proposed new rules set forth requirements for an inmate abuse reporting and investigation program for State correctional facilities brought about by the requirements of the Act concern inmates in New Jersey State correctional facilities, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

Smart Growth Impact Development Analysis

The proposed new rules will have no impact on the achievement of smart growth and there is an extreme unlikelihood the proposed new rules 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 proposed new rules set forth requirements for an inmate abuse reporting and investigation program for State correctional facilities brought about by requirements of the Act concern inmates in New Jersey State correctional facilities, 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 proposed new rules follows:

CHAPTER 7

INMATE ABUSE REPORTING AND INVESTIGATION

SUBCHAPTER 1. INMATE ABUSE REPORTING AND INVESTIGATION

10A:7-1.1 Inmate abuse reporting and investigation

The Department shall maintain a required Inmate Abuse Reporting and Investigation program in accordance with N.J.S.A. 30:1B-39 through 45, effective August 1, 2020. This chapter is in addition to existing Prison Rape Elimination Act (PREA) compliance processes and internal management procedures.

10A:7-1.2 Definitions

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

“Employee” is a person employed by the State to work at a State correctional facility or a person employed by a private entity under contract with the State to provide contracted services at a State correctional facility.

“Inmate Abuse Liaison” is the person designated by the Commissioner of Corrections to receive reports of suspected inmate abuse.

“State correctional facility” means a correctional facility listed in section 8 of P.L. 1976, c. 98 (N.J.S.A. 30:1B-8).

10A:7-1.3 Obligation to report inmate abuse

(a) Any employee of a State correctional facility, who, as a result of information obtained in the course of employment, has reasonable cause to suspect or believe that an inmate is being, or has been, abused by any other employee of the State correctional facility shall report the information in a timely manner to the designated Inmate Abuse Liaison.

(b) Any other person having reasonable cause to suspect or believe that an inmate is being or has been abused by an employee of a State correctional facility may report the information to the Inmate Abuse Liaison.

(c) Any employee of a State correctional facility who has reasonable cause to suspect or believe that an inmate is being, or has been, abused by any other employee of the State correctional facility and fails to report it shall be subject to internal Department disciplinary action.

10A:7-1.4 Report contents

(a) The report shall be made on the suspected Inmate Suspected Abuse form and must contain, at a minimum, the following:

1. Name of the inmate;
2. Name of the employee who is suspected of abusing the inmate (if known);
3. Name of the inmate and State correctional facility and the unit in which the inmate is confined (if known); and
4. Information regarding the nature of the suspected abuse and any other information that might be helpful in an investigation of the case and the protection of the inmate.

10A:7-1.5 Inmate Abuse Reporting Program

The Inmate Abuse Reporting Program will include training of State correctional facility employees, designation of an Inmate Abuse Liaison by the Department of Corrections Commissioner, and information coordination with the Department Special Investigations Division (SID) and applicable county prosecutors.

10A:7-1.6 Training

(a) State correctional facility employees shall receive, at a minimum, training in areas:

1. Recognizing probable incidents of behavior that constitute inmate abuse and other abuse prevention strategies;
2. The duty to report all suspected inmate abuse; and
3. How to report suspected inmate abuse including the name and telephone number of the person designated by the Commissioner of Corrections (the Inmate Abuse Liaison) who shall be notified of any suspected inmate abuse.

10A:7-1.7 Inmate Abuse Liaison

(a) The Commissioner of Corrections shall designate one or more DOC employees who are not employees of any State correctional facility to serve as the Inmate Abuse Liaison(s) for State correctional facility employees or, any other person to notify when there is reasonable cause to suspect that an inmate is being, or has been, abused by any employee of the correctional facility.

(b) The Inmate Abuse Liaison shall transmit all reported incidents or allegations of inmate abuse to the Commissioner of Corrections, or a designee. The Commissioner shall cause a prompt investigation of any report of inmate abuse by the Special Investigations Division or other agency, as may be appropriate.

10A:7-1.8 Reporting inmate abuse to the county prosecutor

(a) The Commissioner of Corrections, or a designee, shall promptly report all instances of suspected inmate abuse, as determined by an investigation, to the county prosecutor of the county in which the State correctional facility is located. The report to county prosecutor shall be in accordance with regulations or internal policies adopted by the Commissioner in consultation with the County Prosecutors Association of New Jersey and the State Attorney General.

(b) Upon receipt of a report, the county prosecutor may conduct a review of the suspected inmate abuse and take any appropriate action.

10A:7-1.9 Confidentiality

- (a) The name of any person who reports suspected inmate abuse shall not be disclosed publicly, unless the person who reported the abuse specifically requests the disclosure, there is a judicial proceeding resulting from the report, or the disclosure is in accordance with the law.
- (b) A person who reports suspected abuse pursuant to this chapter or who testifies in any administrative or judicial proceeding arising from the report or testimony shall have immunity from any civil or criminal liability and shall not be retaliated against on account of the report or testimony, unless the person has acted in bad faith or with malicious purpose.

10A:7-1.10 Failure to report inmate abuse

- (a) After all administrative appeals are exhausted and a final adjudication is made, any person required to report suspected inmate abuse pursuant to this chapter who fails to make the report shall be liable to a penalty of not more than \$5,000. The penalty shall be collected and enforced by summary proceedings pursuant to the provisions of the Penalty Enforcement Law of 1999, P.L. 1999, c. 274 (N.J.S.A. 2A:58-10 et seq.). Each violation of this chapter shall constitute a separate offense.