

LAW AND PUBLIC SAFETY

JUVENILE JUSTICE COMMISSION

Juvenile Discipline

Proposed Readoption with Amendments: N.J.A.C. 13:101

Proposed New Rule: N.J.A.C. 13:101-1.5

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable Paula T.

Dow, Attorney General and Chair, Carolyn Murray, Attorney General's Designee.

Authority: N.J.S.A. 52:17B-170e, 52:17B-171, 52:17B-176, 52:17B-178 and 52:17B-182 through 186.

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

Proposal Number: PRN 2011-021.

Submit written comments by March 19, 2011 to:

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New Jersey Juvenile Justice Commission

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The agency proposal follows:

Summary

N.J.A.C. 13:101 contains rules governing the discipline of juveniles who have been adjudicated delinquent and remanded to the custody of the Juvenile Justice Commission (Commission); those rules are scheduled to expire on February 6, 2011, pursuant to N.J.S.A. 52:14B-5.1. The Commission now is proposing to readopt N.J.A.C. 13:101, with three minor

amendments; pursuant to N.J.S.A. 52:14B-5.1c, the filing of this notice of proposal with the Office of Administrative Law has extended the scheduled expiration date 180 days, to August 5, 2011.

The Commission has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

N.J.A.C. 13:101, both existing and as proposed to be readopted contains 8 subchapters. The Commission is proposing a new rule in Subchapter 1 and two amendments to Subchapter 6. A description of the rule's subchapters and proposed amendments follows.

Subchapter 1 contains general provisions, including sections addressing purpose, scope, definitions and required forms. First, the Commission proposes to add new N.J.A.C. 13:101-1.5, to incorporate the confidentiality provisions of N.J.S.A. 2A:4A-60, 60.2 and 60.3 that govern the release of certain juvenile information, and also to clarify that although such information may be used by Commission personnel in the course of a juvenile disciplinary proceeding it remains confidential. The confidentiality provisions apply to:

1. Records of a law enforcement agency that would disclose information pertaining to juveniles charged or adjudicated delinquent;
2. Statements made by juveniles in the course of a suicide or mental health screening; and
3. Records relating to mental health services provided to a juvenile prior to an adjudication of delinquency or a finding of guilt.

These requirements attach both to Commission records and to records of other entities in the possession of the Commission. The amendment is proposed to make existing confidentiality requirements more routinely accessible to Commission personnel who refer to Chapter 101 in the ordinary course of their work.

Subchapter 2 requires that notification of disciplinary rules and related facility procedures be given to juveniles through the publication of facility-specific juvenile handbooks. Periodically the

Superintendent must review the handbooks and internal procedures.

Subchapter 3 establishes the rights and responsibilities of juveniles, and requires that those rights and responsibilities to be set forth in the above referenced handbooks.

Subchapter 4 sets out a comprehensive list of violations that are the basis for any disciplinary charge brought against a juvenile. The subchapter provides that all violations are to be handled via a full disciplinary proceeding, except for those deemed minor, which may be handled through less formal immediate corrective action procedures set out in Subchapter 5.

Subchapter 5 establishes procedures for immediate corrective action, disciplinary measures appropriate for relatively minor violations that are deemed not sufficiently serious to warrant the heavier sanctions that are available through formal disciplinary hearings. A juvenile must be given written notice of the charged violation and proposed corrective action by the end of the shift on which the violation occurred, and the juvenile has the right to challenge the violation and any proposed corrective action at an informal immediate corrective action conference.

Following a conference, or following a review of the violation, a shift supervisor or unit manager shall either confirm the violation and the proposed action, conclude that the violation is sufficiently serious to warrant a formal disciplinary hearing, or decide that there is no cause for action and dismiss the charges. Available corrective actions are withdrawal of privileges, restitution for damaged property, room restriction of up to four hours, facility restriction, a formal reprimand and up to four hours extra work duty.

Subchapter 6 contains procedures and sanctions applicable to cases coming before disciplinary hearings, which are heard before Disciplinary Hearing Officers. Procedures are formal in nature, requiring a detailed Disciplinary Report, and service upon a juvenile of a Notice of Violation within 24 hours of the violation. A juvenile has the right to use immunity, meaning that statements made by the juvenile and evidence derived from those statements will not be used in any subsequent criminal or delinquency proceeding; this is to encourage a juvenile to

make a statement in his or her defense. A thorough and formal investigation is required, and the violation is heard at a formal hearing before a Disciplinary Hearing Officer. At the hearing, a juvenile has the right to a counsel substitute, to assist in presentation of his or her case, as well as a limited right to cross-examination. Available disciplinary sanctions include all sanctions available for immediate corrective action under Subchapter 5, as well as up to five days room restriction, loss of privileges for as much as 30 days in certain circumstances, confiscation of personal property for up to 14 days and referral to mental health or other programs. A formal disciplinary decision must be rendered by the Disciplinary Hearing Officer and delivered to the juvenile. Subchapter 6 also sets forth recordkeeping requirements and procedures for expungement of records.

The Commission is proposing to make two amendments to Subchapter 6. The first is to amend N.J.A.C. 13:101-6.11(b) to make mandatory that a juvenile receive services of a counsel substitute or staff assistance at a disciplinary hearing whenever the Disciplinary Hearing Officer determines that the juvenile cannot adequately collect and present the evidence on his or her own behalf. Although this already is the practice at disciplinary hearings, the rule currently makes such assistance permissive, not mandatory, and the Commission believes it appropriate to amend this provision as described.

Similarly, the Commission proposes to amend N.J.A.C. 13:101-6.13(a) to make mandatory a juvenile's opportunity for confrontation and cross examination of witnesses whenever the Disciplinary Hearing Officer deems it necessary for an adequate presentation of the evidence, particularly when serious issues of credibility are involved. The current rule would permit an opportunity for confrontation and cross-examination only when requested by the juvenile. The Disciplinary Hearing Officer's authority to refuse confrontation and cross-examination when it would be unduly hazardous to facility safety, as contained in the current rule, remains unchanged.

Subchapter 7 provides for appeals from Disciplinary Hearing Officer decisions; included are procedures for requesting a stay of sanctions pending appeal, for notifying a juvenile of the results of an appeal and for conducting re-hearings.

Subchapter 8 provides for the confinement of juveniles in pre-hearing room confinement, when necessary for the safety of the juvenile, staff or other juveniles or for the orderly operation of the facility.

Because the Commission has provided for a 60-day comment period on the 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 rules as proposed for readoption with amendments will continue to have a significant positive social impact by implementing generally accepted practices and procedures incidental to the discipline of juvenile offenders. These juveniles are troubled children, often with unique educational, vocational and social needs. The rules as proposed for readoption with amendments present programs and incentives to guide the juvenile to becoming a productive member of society, by modeling a structured and fair consequence-based system of progressive discipline. The rules strike an important balance. They provide an effective discipline regimen, one necessary to preserve a secure facility's orderly operation, as well as to protect the safety of its juveniles, staff and the public. At the same time they promote a primary responsibility of the Commission, which is to nurture and care for the children under its charge. In doing so, the Commission is at the same time better serving the larger community.

The proposed amendments to N.J.A.C. 13:101 will enhance this positive social impact. Holding juvenile offenders accountable for their delinquent behavior and providing rehabilitation to juvenile offenders are major and important goals of the Commission. The proposed

amendments will promote these goals, by explicitly setting out in the rule the statutory confidentiality requirements relating to juvenile information, and by ensuring that the right to adequately present a defense and to confront and cross-examine witnesses are formalized by rule. They will assist in promoting a discipline system, which carefully balances security requirements with the rehabilitation of juvenile offenders.

Economic Impact

The costs associated with the N.J.A.C. 13:101 are met through the established budget process with funds allocated by the State. The Commission anticipates that the proposed amendments and new rule will not have an economic impact on the Commission or any other department or agency of the State government.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments and a new rule are not being adopted under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Jobs Impact

The Commission does not anticipate that any jobs in the State of New Jersey either will be generated or lost if the rules proposed for readoption with amendments and a new rule are adopted.

Agriculture Industry Impact

The rules proposed for readoption with amendments and a new rule will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments and a new rule will impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules affect employees and juveniles under the supervision of the Juvenile Justice Commission and will have no effect on small businesses. Therefore, a regulatory flexibility analysis is not required.

Smart Growth Impact

The rules proposed for readoption with amendments and a new rule will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption with amendments and a new rule will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules concern only the discipline of juveniles at juvenile correctional institutions.

Smart Growth Development Impact

The rules proposed for readoption with amendments and a new rule will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would

evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules concern only the discipline of juveniles at juvenile correctional institutions.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:101.

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

SUBCHAPTER 1. GENERAL PROVISIONS

13:101-1.5 Confidentiality of information relating to juveniles; use of confidential information in disciplinary proceedings

(a) Records and statements in the possession of the Commission that are covered by the confidentiality provisions of N.J.S.A. 2A:4A-60, 60.2 and 60.3 may be reviewed when necessary and appropriate in the course of disciplinary proceedings under this chapter, and copies of such records and statements may be maintained in juvenile disciplinary files. However, at no time shall these permitted uses of such records and statements release or exempt them from the confidentiality provisions of this section.

(b) All facility records pertaining to juveniles charged as a delinquent, adjudicated delinquent or found to be part of a juvenile-family crisis, including records relating to the suicide or suicide attempt of a juvenile, are confidential. All such records:

- 1. Shall be strictly safeguarded from public access;**

2. May be released only in accordance with the provisions of N.J.S.A. 2A:4A-60;
and

3. Shall not be subject to public inspection or copying pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

(c) Unless otherwise required by law, statements made by a juvenile in the course of any suicide prevention or mental health screening, and any reports or records created to report the results of such screening shall not be:

1. Disclosed to any party, including prosecutors and law enforcement personnel;
or

2. Used in any investigation, or in any delinquency or criminal proceeding then pending or subsequently initiated. (See N.J.S.A. 2A:4A-60.2)

(d) No report or record relating to mental health services provided to a juvenile prior to an adjudication of delinquency, or any other finding of guilt, shall be disclosed or released to a court unless and until after such an adjudication or finding occurs. (See N.J.S.A. 2A:4A-60.3)

SUBCHAPTER 6.

DISCIPLINARY PROCEEDINGS

13:101-6.11 Aid in presentation of juvenile's case

(a) (No change.)

(b) When the Disciplinary Hearing Officer determines that a juvenile cannot adequately collect and present the evidence in his or her own behalf, the juvenile [may elect to] **shall** receive the services of a counsel substitute or the juvenile may request representation by a staff member.

(c) – (e) (No change.)

13:101-6.13 Confrontation and cross examination

(a) The opportunity for confrontation and cross examination[, if requested,] shall be provided to the juvenile in such instances where the Disciplinary Hearing Officer deems it necessary for an adequate presentation of the evidence, particularly when serious issues of credibility are involved.

(b) (No change.)