

**LAW AND PUBLIC SAFETY**

**JUVENILE JUSTICE COMMISSION**

**Secure Facilities**

**Forms; Collection and Analysis of Urine Specimens; Scheduling Orientation**

**Proposed Amendments: N.J.A.C. 13:95-1.4, 5.11, and 12.2**

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable Paula T. Dow, Attorney General and Chair, Deborah R. Edwards, 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 2011-247.

Submit written comments by February 3, 2012 to:

John Wolff, Administrative Practice Officer  
New Jersey Juvenile Justice Commission  
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Trenton, New Jersey 08638

The agency proposal follows:

## Summary

N.J.A.C. 13:95 establishes rules governing operations at secure facilities run by the Juvenile Justice Commission (Commission). N.J.A.C. 13:95 was last readopted effective June 30, 2011 and is scheduled to expire on June 30, 2018. The Commission is currently proposing to amend N.J.A.C. 13:95-1.4, 5.11, and 12.2.

N.J.A.C. 13:95-5 sets out standards and procedures for searches of juveniles. In that context, N.J.A.C. 13:95-5.11 addresses the collection and processing of urine specimens. The Commission proposes to amend N.J.A.C. 13:95-5.11 to eliminate current urinalysis procedures that require the use of test labs. The Commission proposes to replace these procedures with newer technology: on-site urinalysis test kits. Test kit procedures produce results in five to 10 minutes, compared to waiting periods from one to three weeks for lab results, eliminating the need for storage and chain of evidence procedures. Further, the test kits are as accurate as lab testing. In addition, the Commission anticipates that use of test kits will reduce the costs of urinalysis by 65 percent, resulting in an anticipated annual savings of over \$16,000 in current dollars.

Therefore, the Commission proposes to amend N.J.A.C. 13:95-5.11(a) to reflect to use of test kits, rather than test labs for substance abuse testing. The Commission proposes to delete existing N.J.A.C. 13:95-5.11(b) through (e), which all deal with specimen collection and testing procedures utilized for test labs. Existing subsection (f) is proposed for recodification with amendments as subsection (b), to address test kit collection and testing procedures and at least two staff members of the same gender, rather than just one. Existing paragraphs (f)2, 4, 5, 6, and 8 are proposed for deletion.

Existing paragraph (f)3 is recodified with amendments as paragraph (b)2, to address test kit collection and testing procedures. Existing paragraph (f)7, is recodified with amendments as paragraph (b)3, to include the use of the Office of Substance Abuse Administration, Continuity of Evidence Form, by authorized staff during administration of the testing, as well as what information is required on the form. Existing paragraph (f)9 is recodified with amendments as paragraph (b)4, to address specimen disposal. Lastly, existing subsections (g)-(i) are recodified as subsections (c)-(e).

In connection with the proposed amendments to N.J.A.C. 13:95-5.11, the Commission proposes to amend existing N.J.A.C. 13:95-1.4 to add the, "Office of Substance Abuse Administration, Continuity of Evidence" form to the list of chapter-related forms set forth under this rule. Under recodified N.J.A.C. 13:95-5.11(b)3, as proposed for amendment, this form will be used to record the test kit information and will include: the identity of the person administering the test, the date and times the specimens are taken and read, the results of the test, and the names of the staff member witnesses.

Finally, the Commission proposes to clarify and refine language in N.J.A.C. 13:95-12.2(d), which requires that juvenile orientation sessions be presented in a "foreign language" when necessary or appropriate. Under the proposed amendment the operative words would be changed to a language "other than English."

As the Commission 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 amendments to N.J.A.C. 13:95-1.4 and 5.11 will have a positive social impact by ensuring near instantaneous urinalysis results, eliminating the uncertainty inherent in procedures under the current rule caused by delays in obtaining test results. In addition, the proposed amendment to N.J.A.C. 13:95-12.2(d) will have a positive social impact by eliminating any possible stigma that might result from the implication that when a juvenile's primary language is a language other than English, the juvenile is necessarily foreign.

### **Economic Impact**

The costs associated with N.J.A.C. 13:95 are met through the established budget process with funds allocated by the State. The Commission anticipates that the proposed amendments will not have any negative economic impact on the Commission or any other department or agency of the State government. In addition, the proposed amendments to N.J.A.C. 13:95-5.11 will have a positive economic impact on the Commission and the State by saving approximately \$16,000 annually when lab test procedures are eliminated in favor of on-site test kits.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments are not being proposed 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 will either be generated or lost if the proposed amendments are adopted.

### **Agriculture Industry Impact**

The proposed amendments will have no impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Statement**

The proposed amendments 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 proposed amendments affect only 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.

### **Housing Affordability Impact Analysis**

The proposed amendments 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 proposed amendments concern clarifying terminology regarding scheduling orientation and amending the testing procedures used for performing urinalysis testing on juveniles housed at juvenile correc-

tional facilities.

### **Smart Growth Development Impact Analysis**

The proposed amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rule 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 proposed amendments concern clarifying terminology regarding scheduling orientation and amending the testing procedures used for performing urinalysis testing on juveniles housed at juvenile correctional facilities.

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

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 13:95-1.4 Forms

(a) The following forms related to secure facilities shall be reproduced by each facility from originals that are made available through the office of the Director of Custody Operations:

1. – 25. (No change.)

26. BAU-02 (Behavior Accountability Unit Case Review Form); [and]

27. BAU-03 (Behavior Accountability Unit Appeal)[.]; **and**

## 28. Office of Substance Abuse Administration, Continuity of Evidence

### Form.

#### SUBCHAPTER 5. SEARCHES OF JUVENILES AND FACILITIES

##### 13:95-5.11 Collection[, storage] and analysis of **urine** specimens

(a) [Testing] **Substance abuse testing** shall be **by urinalysis utilizing a Commission-approved urinalysis specimen test kit and shall be** conducted by staff who have been trained to perform [the test(s)] **such testing**.

[(b) Specimens shall be collected, labeled, handled and, when necessary, sealed, stored, and transported in accordance with the instructions/standards provided by the manufacturer of the test.

(c) Testing shall be conducted using methods deemed reliable by the Commission.

(d) If the initial test result is positive, the specimen shall be subject to a confirmation test of equal or greater sensitivity than the initial test.

(e) Each time a specimen is collected for the reasons stated in N.J.A.C. 13:95-5.10, a New Jersey Department of Health and Senior Services drugs of abuse urine (DAU) chain of custody form (Form LAB-45) and a shipping log (Form LAB-46) shall be completed and maintained with the specimen. Proper chain of custody procedures shall be observed at all times.]

[(f)] **(b)** [If testing is conducted through urinalysis, specimens] **Specimens** taken from juveniles shall be voided directly into an approved specimen container and immediately [labeled] **read** in the presence of the juvenile and at least [one custody staff member or other] **two** authorized staff members of the same gender as the juvenile.

1. (No change.)

[2. Urine specimen testing shall be performed on-site or at a licensed laboratory as determined by the Executive Director or designee.]

[3.] **2.** [For initial on-site and confirmatory on-site testing of a urine specimen, the labeled specimen] **Testing** shall be [tested and handled] in accordance with the instructions/standards provided by the manufacturer of the [on-site] test. [Chain of custody of the specimen shall be maintained.]

[4. For initial laboratory and confirmatory laboratory testing of a urine specimen, the labeled specimen shall immediately be closed and sealed in the presence of the juvenile by the custody staff member or other authorized staff member. Chain of custody of the specimen shall be maintained.

5. The specimen label shall include the juvenile's name and number, the secure facility to which the juvenile is assigned, the name of the custody staff member or other authorized staff member who witnessed the voiding of the specimen, the date and time the specimen was voided, the current use or non-use of prescription medication by the juvenile, and the juvenile's signature. Should the juvenile refuse to sign, the custody staff member or other authorized staff member who witnessed the voiding of the specimen shall indicate the refusal on the label and on the continuity of evidence form.

6. For laboratory confirmatory testing, the urine specimen shall be placed in a locked and secure refrigerator or freezer by the custody staff member or other authorized staff member responsible for maintaining custody over evidence as soon as reasonably practical, but in no event later than eight hours after the specimen was voided.]

[7.] **3.** The custody staff member or other authorized staff member who [receives custody of the urine specimen] **administers the test** shall record on the [continuity of evidence form] **Office of Substance Abuse Administration, Continuity of Evidence Form, his or her name and job title**, the date and times the specimen was [received,] **taken and read, the results of the test, and** the names of the staff member [from whom it was received, and the date and time of specimen placement into the evidence locker and/or locked refrigerator] **witnesses**.

[8. Juvenile urine specimens transported out of the secure facility for laboratory testing shall be transported, where reasonably practical, in an iced cooler or similar device. The date and time of the removal of the urine specimen from the secure facility, as well as the date and time of specimen receipt by the testing facility shall be noted on the continuity of evidence form by the person(s) performing these functions.]

[9.] **4.** [Laboratory testing of urine] **Urine** specimens shall be [conducted only when the urine specimen arrives at the testing facility in a sealed and approved urine specimen container] **disposed of promptly upon the recording of information provided for in (b)3 above**.

Recodify existing (g)–(i) as **(c)-(e)** (No change in text.)

## SUBCHAPTER 12. JUVENILE ORIENTATION AND HANDBOOK

13:95-12.2 Scheduling orientation

(a) – (c) (No change.)

(d) [Orientation] **When necessary or appropriate for adequate comprehension, orientation sessions shall be presented in a [foreign] language [when necessary] other than English.**