

LAW AND PUBLIC SAFETY

JUVENILE JUSTICE COMMISSION

Office of Investigations

Proposed Readoption with Amendments: N.J.A.C. 13:97

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. 2A:4A-60, 2C:39-6a(9), 47:1A-1, 52:17B-170e(14) and (22) and 52:17B-174.

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

Proposal Number: PRN 2010-257.

Submit written comments on or before December 31, 2010 to:

John Wolff, Administrative Practice Officer
New Jersey Juvenile Justice Commission
1001 Spruce Street - Suite 202
Trenton, New Jersey 08638

The agency proposal follows:

Summary

N.J.A.C. 13:97, was originally enacted effective August 7, 2000 as “Office of Investigations,” and was readopted and promulgated in its current form, effective January 4, 2006. These rules are scheduled to expire on January 4, 2011. Pursuant to N.J.S.A. 52:14B-5.1c, the filing of this notice of rules proposed for readoption with amendments extends that expiration date 180 days to July 3, 2011.

The Commission has reviewed the rules at N.J.A.C. 13:97 and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

N.J.A.C. 13:97 as proposed to be readopted contains three subchapters. The Commission is proposing a number of minor amendments to N.J.A.C. 13:97. A description of the rule’s subchapters and the proposed amendments follows.

N.J.A.C. 13:97-1 contains general provisions covering purpose, scope, definitions, oath of office form and confidentiality of information. The Commission is proposing a number of minor amendments to this subchapter.

The Commission proposes to delete the list of applicable civil service titles found in N.J.A.C. 13:97-1.1(b). This list reference is redundant with the definition of “investigator” found in N.J.A.C. 13:97-1.2 and is unnecessary. Additionally, the Commission proposes to amend the definition of “investigator,” to conform it to recent changes in civil service titles that have replaced “Principal Investigator, Secured Facilities” with “Principal Investigator, Parole and Secured Facilities” and “Senior Investigator, Secured Facilities” with “Senior Investigator, Parole and Secured Facilities.” The Commission also proposes to add a definition for “director of

investigations.” The term is used throughout the rules, and the lack of a definition is an oversight the Commission wishes to correct. Finally, the Commission seeks to incorporate provisions of N.J.S.A. 2A:4A-60 that safeguard from public inspection law enforcement records that would disclose information pertaining to juveniles charged as a delinquent or found to be part of a juvenile-family crisis in N.J.A.C. 13:97-1.4(a). This is not a substantive change, but rather the amendment is proposed in order to make those requirements more routinely accessible to Commission personnel who refer to Chapter 97 in the ordinary course of their duties.

Subchapter 2 contains rules governing use of force issues, for both on-duty investigators and off-duty investigators. The Commission proposes two minor substantive amendments to this subchapter. First, in order to better report operational data in conformance with prevailing performance based standards, the Commission has prepared a comprehensive reporting form, the “JJ-001, Incident Report,” to replace a number of previously distinct special reports, operations reports and use of force forms used throughout the Commission. One of the forms proposed to be replaced is the “I301 Use of Force Report Form,” identified in N.J.A.C. 13:97-2.6(a) and (b), and language making the change to the JJ-001 form is proposed for those provisions. A second related change is to the text of N.J.A.C. 13:97-2.6(b). Under that subsection, the required form must “contain” the information enumerated in paragraphs (b)1 through 7. For both syntax and clarity, the word “contain” has been changed to “include.”

Subchapter 3, addresses firearms issues for both on-duty and off-duty investigators. The Commission proposes one non-substantive amendment in Subchapter 3 to correct a typographical error in N.J.A.C. 13:97-3.3(d), which governs storage of firearms when

entering a Commission facility. One option for storing a firearm allows a law enforcement officer to “secrete” the firearm “in an approved vehicle lock box.” The use of the word secrete is an error; it should rather read “secure,” and the Commission proposes to correct this error.

Because the Commission has provided a 60-day comment period on the notice of rules proposed for readoption, 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 proposed to be readopted with amendments will continue have a positive social impact. They take into consideration the special needs of juveniles, while at the same time addressing the safety and security of the community. The rules incorporate the standards set out in the Attorney General’s Use of Force Policy. Specifically, only force that is objectively reasonable and necessary is permitted, and the utmost restraint is required. Additional restrictions are also provided in consideration of the juvenile population. For example, deadly force may not be used to thwart an escape. The use of chemical sprays is generally prohibited within Commission facilities, due to concerns for asthma among youth.

By balancing legitimate security and law enforcement concerns with the restraint necessary and appropriate to a juvenile population, the rules proposed to be readopted have a positive social impact.

Economic Impact

The proposed readoption of N.J.A.C. 13:97 with amendments will not result in any economic impact on businesses in New Jersey, and no new or additional funding is necessary to implement them. The cost of meeting and maintaining the requirements established by these rules will continue to be met by the Commission through the standard budgetary process with monies allocated by the State.

Federal Standards Statement

The rules proposed for readoption with amendments are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

The New Jersey Juvenile Justice Commission does not anticipate that the rules proposed for readoption with amendments will result in the generation or loss of jobs.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

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. Therefore, a regulatory

flexibility analysis is not required. The rules impact juveniles incarcerated in secure facilities of, and employees of, the New Jersey Juvenile Justice Commission, and have no effect on small businesses.

Smart Growth Impact

The Juvenile Justice Commission does not anticipate that the rules proposed for readoption with amendments will have any impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption with 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 rules concern only internal investigations within the Commission.

Smart Growth Development Impact

The rules proposed for readoption with amendments will not have an 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 internal investigations within the Commission.

Full text of the rules proposed for readoption may be found in the New Jersey

Administrative Code at N.J.A.C. 13:97.

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

SUBCHAPTER 1. GENERAL PROVISIONS

13:97-1.1 Purpose and scope

(a) (No change.)

(b) This chapter shall be applicable to **all** investigators employed by the [Office of Investigations of the New Jersey Juvenile Justice] Commission[, in the following titles: Chief Investigator, Secured Facilities; Assistant Chief Investigator, Secured Facilities; Principal Investigator, Secured Facilities; Senior Investigator, Secured Facilities; and Investigator, Secured Facilities].

13:97-1.2 Definitions

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

...

"Director of Investigations" means the Chief Investigator or other Commission staff member, by whatever name or title, charged with oversight and management responsibilities for the overall operation and supervision of Office of Investigations.

...

"Investigator" means juvenile corrections **and parole** officers employed in the following titles utilized by the Commission, who have been sworn as peace officers:

1. – 2. (No change.)
3. Principal Investigator, **Parole and Secured Facilities**;
4. Senior Investigator, **Parole and Secured Facilities**; and
5. (No change.)

...

13:97-1.4 Confidentiality of information

(a) All records of the Commission pertaining to juveniles charged or adjudicated as a delinquent or found to be part of a juvenile-family crisis 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.**

(b) All information contained in the master lists or reports maintained or submitted by employees of the Commission pursuant to the requirements of this chapter shall be confidential and such master lists and reports 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.

SUBCHAPTER 2. USE OF FORCE

13:97-2.6 Reports

(a) An investigator shall immediately contact the Director of Investigations or designee and shall complete [an I301 Use of Force Report] a **JJ-001 Form, Incident Report** when he or she participated in, or witnessed, any incident in which:

1. – 4. (No change.)

(b) The [I301 Use of Force Report] **JJ-001 Form, Incident Report** shall [contain] **include** the following information:

1. – 7. (No change.)

(c) (No change.)

SUBCHAPTER 3. USE OF FIREARMS WHILE ON-DUTY AND USE OF PERSONAL FIREARMS WHILE OFF-DUTY

13:97-3.3 On-duty firearm

(a) – (c) (No change.)

(d) The investigator entering any facility of the Commission shall either temporarily transfer custody of his or her firearm to an authorized staff member, store his or her firearm at the main secure facility or at a Commission authorized weapons storage unit or [secrete] **secure** it in a Commission approved vehicle lock box.

1. (No change.)

(e) – (g) (No change.)