

LAW AND PUBLIC SAFETY

JUVENILE JUSTICE COMMISSION

Written Reports Regarding Release of a Juvenile from Custody; Definitions; Juveniles Ineligible for Assignment to Non-Secure Facilities

Proposed Amendments: N.J.A.C. 13:95-21.3 and 13:100-1.3 and 2.4

Authorized By: The Executive Board of the Juvenile Justice Commission, by the Honorable Gurbir S. Grewal, Attorney General and Chair, Rahat Babar, Attorney General's Designee.

Authority: P.L. 2015, c. 89; N.J.S.A. 2A:4A-26, 43, and 60; 2C:39-6a(9); 9:17A-1 and 4; 30:4-27.2; 30:4-27.24; 30:4-82.4; 30:4-123.53a; 52:17B-170; 52:17B-171; 52:17B-174; 52:17B-175; 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 2018-100.

Submit written comments by January 4, 2019, to:

John Wolff, Administrative Practice Officer

New Jersey Juvenile Justice Commission

1001 Spruce Street – Suite 202

Trenton, New Jersey 08638

or by e-mail to: Regulatory.Affairs@jjc.nj.gov

The agency proposal follows:

Summary

The New Jersey Juvenile Justice Commission (Commission) is proposing to make amendments to N.J.A.C. 13:95, Secure Facilities, and 13:100, Classification Assignment Process for Juveniles.

N.J.A.C. 13:95, Secure Facilities

N.J.A.C. 13:95, Secure Facilities, contains rules governing the operations of Commission Secure Facilities. Subchapter 21, Reports, among other things, provides guidelines for providing reports to outside law enforcement agencies. N.J.A.C. 13:95-21.3, Written reports regarding release of a juvenile from custody, requires that the Superintendent or designee of a secure facility from which a juvenile is to be released, provide written notification to the prosecutor of the county from which the juvenile was committed 90 days before a juvenile's anticipated release, whenever possible, but in no event fewer than 30 days before release if such release is due to the expiration of the juvenile's maximum term. The Commission proposes to amend subsection (c) to reflect that, under the provisions of N.J.A.C. 10A:71-3, prosecutor notification for juveniles to be released on parole is made by the New Jersey State Parole Board.

N.J.A.C. 13:100, Classification Assignment Process for Juveniles

The rules at N.J.A.C. 13:100, Classification Assignment Process for Juveniles, govern the procedures through which juveniles are evaluated and assigned to specific Commission facilities and programs. N.J.A.C. 13:100-2.4 provides limitations on the assignment of juveniles to non-secure facilities (residential community homes).

Such an assignment is prohibited for a juvenile committed for a homicide, fire-setting behavior, or having an outstanding charge in any jurisdiction that, in New Jersey, would be classified as a first- or second-degree offense, or any non-municipal adult charge. Such an assignment is also prohibited if the juvenile has a current sentence involving a term of incarceration to an adult State or county facility.

In addition, a juvenile committed for conduct involving a sex offense may be assigned to a residential community home only when the residential community home has a program specifically designed to treat sex offenders.

The Commission proposes to amend N.J.A.C. 13:100-2.4 primarily in view of the provisions of P.L. 2015, c. 89, which was signed into law on August 10, 2015, making various changes to New Jersey's juvenile justice system.

Among other things, P.L. 2015, c. 89 amended the law governing waiver of juveniles to adult criminal court under the provisions of N.J.S.A. 2A:4A-26 (Waived Juveniles), providing that a juvenile whose case was waived would serve his or her sentence temporarily in a Commission facility, rather than a Department of Corrections facility, until the juvenile reaches the age of 21. Under P.L. 2015, c. 89, a juvenile may continue to serve a sentence in a Commission facility after reaching the age of 21 in the discretion of the Commission, if the juvenile consents.

The clear intent of, P.L. 2015, c. 89 is to provide Waived Juveniles with the same programs and services generally available to committed juveniles. Accordingly, the Commission proposes to amend N.J.A.C. 13:100-2.4(a)1 and 2 to remove the absolute bars against assignment to a residential community home for a juvenile under a sentence involving a term of incarceration to an adult facility, or against whom there is an outstanding non-municipal adult charge.

In connection with these proposed amendments, the Commission investigated modifying restrictions under which juveniles who are otherwise eligible for community program assignments, are barred from community programs because of blanket prohibitions contained in Chapter 100.

More specifically, the Commission considered whether, while maintaining safety and security, specific restrictions contained in N.J.A.C. 13:100-2.4 might be relaxed to allow otherwise prohibited community program assignments, when determined by a “qualified mental health care professional” to be clinically appropriate.

Accordingly, after a review of the issues, the Commission proposes to amend N.J.A.C. 13:100-2.4(a)1 and 2 to permit assigning a juvenile committed for a homicide or arson to a residential community home, and assigning a juvenile committed for conduct involving a sex offense to a residential community home that does not have a program specifically designed to treat sex offenders, when a qualified mental health care professional determines that the assignment is clinically appropriate.

In the proposed amendment to N.J.A.C. 13:100-2.4(a)1, the Commission also proposes to substitute “arson” for “fire-setting behavior,” as arson more accurately reflects both the criminal charge and psychological profile of concern.

N.J.A.C. 13:100-2.4(a)2, in part, prohibits the assignment of a juvenile to a residential community home, if there is currently pending against the juvenile, anywhere, a juvenile charge that in New Jersey would be classified as a first- or second-degree offense. The Commission proposes to amend this provision to remove the absolute assignment bar with respect to a charge that would be classified as a second-degree offense and to remove the provision's restriction that limits the relevant pending charges to a "juvenile charge."

The Commission believes that the absolute bar with respect to juveniles with pending "second-degree" offenses unreasonably limits the Commission's discretion in making informed decisions regarding the assignment of juveniles to programs that are most reasonable and appropriate, in light of both their personal progress and rehabilitative goals and that routine classification reviews are adequate to screen out inappropriate assignments.

The Commission believes that the restriction in N.J.A.C. 13:100-2.4(a)2, which limits relevant pending charges to a "juvenile charge," is an oversight and has no rational basis.

Finally, the Commission proposes to amend N.J.A.C. 13:100-1.3 by adding definitions for "qualified mental health care professional" and, relatedly, for "operating agent."

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

Social Impact

The proposed amendments will have a positive social impact, by ensuring the classification and assignment of juveniles to correctional facilities appropriate to their rehabilitative needs, while providing reasonable and appropriate protection for the larger community.

Economic Impact

The costs associated with the proposed amendments have been and will be met through the established budget process with funds allocated by the State. The Commission anticipates that the proposed amendments will not have an economic impact on the Commission or any other department or agency of the State government.

Federal Standards Statement

The proposed amendments comply with 28 CFR 31.303 and do not exceed the standards or requirements imposed by this Federal law.

Jobs Impact

The Commission does not anticipate that any jobs will be generated or lost if the proposed amendments are adopted.

Agriculture Industry Impact

The Commission does not anticipate that the proposed amendments would have any impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping, or other compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is not required because the proposed amended rules concern only the incarceration of juveniles.

Housing Affordability Impact Analysis

The proposed amendments will have an insignificant impact on the affordability of housing in New Jersey, and there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing because the proposed amendments concern only the incarceration of juveniles.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact on smart growth, and there is an extreme unlikelihood that the proposed amendments 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 only the incarceration of juveniles.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commission 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 proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 95 SECURE FACILITIES

SUBCHAPTER 21. REPORTS

13:95-21.3 Written reports regarding release of a juvenile from custody

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

(c) Except as provided in (b) above, **and unless the juvenile is released on parole, in which case the State Parole Board shall notify the prosecutor of the release under the provisions of N.J.A.C. 10A:71-3**, pursuant to N.J.S.A. 30:4-6.1 and 30:4-123.53a, the Superintendent or designee of the secure facility in which a juvenile is confined shall provide written notification to the prosecutor of the county from which the juvenile was committed 90 days before a juvenile's anticipated release whenever possible, but in no event fewer than 30 days before release if such release is due to the expiration of the juvenile's maximum term [or is authorized by the State Parole Board] or any other release of a juvenile from custody.

(d) (No change.)

CHAPTER 100
CLASSIFICATION ASSIGNMENT PROCESS FOR JUVENILES

SUBCHAPTER 1. GENERAL PROVISIONS

13:100-1.3 Definitions

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

...

“Operating agent” means any person or other entity under contract with the Commission to provide medical and/or mental health services to juveniles.

...

“Qualified mental health care professional” means an employee of the Commission or of an operating agent who is a licensed psychiatrist or psychologist, or other professional who by virtue of education, credentials, and experience in the provision of mental health assessment and counseling procedures is permitted by law to provide mental health services.

...

SUBCHAPTER 2. RECEPTION AND ASSIGNMENT PROCESS; PAROLE CONTRACT AGREEMENT

13:100-2.4 Juveniles ineligible for assignment to non-secure facilities

(a) [Assignment] **Unless assignment to a non-secure facility is determined in writing by a qualified mental health care professional to be clinically appropriate, assignment** of a juvenile to a non-secure facility is prohibited when:

1. The commitment being reviewed involves a homicide or [an offense involving fire-setting behavior] **arson; or**

2. There is currently pending against the juvenile in New Jersey, or in any jurisdiction, [either] a juvenile charge that in New Jersey would be classified as a first [or second] degree offense[, or any non-municipal adult charge; or].

[3. The juvenile has a current sentence involving a term of incarceration to an adult State or county correctional facility.]

(b) A juvenile committed for conduct involving a sex offense may be assigned to a residential non-secure facility, provided that the residential non-secure facility has a program specifically designed to treat sex offenders, **or to another non-secure facility when a qualified mental health care professional determines in writing that such an assignment is clinically appropriate.**