

## 13:72-4.16 Emergencies not covered by this chapter

In the event that an emergency arises with respect to simulcast wagering in a casino simulcasting facility which is not covered by this chapter and an immediate decision is necessary, the simulcast shift supervisor or above shall make a good faith effort to contact and consult with the Supervisor of Mutuels prior to taking action, and shall promptly render a written report regarding the incident to the [Commission,] Division and Racing Commission.

## SUBCHAPTER 5. LICENSING OF EMPLOYEES

## 13:72-5.1 Employees of a casino simulcasting facility

All employees of a casino simulcasting facility shall be licensed pursuant to the Casino Control Act or registered in accordance with the rules of the [Commission] Division.

## SUBCHAPTER 6. LICENSING AND REGISTRATION OF ENTITIES AND THEIR EMPLOYEES

## 13:72-6.1 Sending tracks

All sending tracks shall be [licensed, or determined to be exempt from licensure,] registered in accordance with the provisions of N.J.S.A. 5:12-[92c]92.c. [Any exemption of a sending track shall be subject to the conditions set forth in N.J.S.A. 5:12-92c, and each] Each sending track shall have on file with the [Commission] Division a vendor registration form, any updates to which shall be filed with the [Commission] Division within 10 days of the occurrence of any changes.

## 13:72-6.2 Simulcast wagering equipment

All manufacturers, suppliers, and repairers of simulcast wagering equipment, including totalisators, pari-mutuel machines, self-service pari-mutuel machines, and credit voucher machines, to casino licensees or hub facilities shall be licensed in accordance with the provisions of N.J.S.A. 5:12-[92a]92.a.

## 13:72-6.3 Hub facility

A hub facility shall be licensed in accordance with the provisions of N.J.S.A. 5:12-[92a]92.a, and all employees of the hub facility shall be licensed pursuant to the Casino Control Act or registered [with the Commission as if the hub facility were itself a casino licensee] in accordance with the rules of the Division. Additionally, a hub facility shall submit for [Commission] Division approval a jobs [compendium] compendium and descriptions of its security procedures and accounting controls. A hub facility and its employees, and vendors of a hub facility other than casino licensees, shall further be subject to the licensure jurisdiction of the Racing Commission.

## SUBCHAPTER 9. SUPERVISORS OF MUTUELS AND VERIFIERS

## 13:72-9.2 Duties of Supervisor of Mutuels

(a) The duties of a Supervisor of Mutuels at the hub facility shall include:

- 1.-5. (No change.)
6. Preparing and submitting to the Racing Commission a daily summary result of the pari-mutuel operations, with copies to the [Commission and] Division;
7. Preparing and submitting to the Racing Commission a seven-day financial report and a seven-day comparative statistic report, with copies [of] to the [Commission and] Division;
8. (No change.)
9. Reporting all discrepancies and irregularities to the Racing Commission[,] and Division [and Commission].

## 13:72-9.3 Continued access to hub facility by Racing Commission

The Racing Commission, its employees, and agents shall at all times have access to the hub facility in order to maintain the integrity of horse racing and, together with the [Commission and] Division, to effectuate the purposes of the Casino Simulcasting Act.

(a)

## JUVENILE JUSTICE COMMISSION

## Transfer of Adjudicated Delinquents to the New Jersey Department of Corrections

## Proposed Readoption with Amendments: N.J.A.C. 13:91

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable John Jay Hoffman, Attorney General and Chair, Christopher Iu, Attorney General's Designee and Gary M. Lanigan, Commissioner, Department of Corrections.

Authority: N.J.S.A. 52:17B-170, 52:17B-171, and 52:17B-175.

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

Proposal Number: PRN 2015-067.

Submit written comments by August 14, 2015, either:

By mail 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](mailto:Regulatory.Affairs@jjc.nj.gov)

The agency proposal follows:

## Summary

The New Jersey Juvenile Justice Commission (Commission) and the New Jersey Department of Corrections (DOC) are jointly proposing to readopt the rules at N.J.A.C. 13:91, with amendments. This chapter provides the procedure utilized to transfer certain adjudicated delinquents from the Commission to DOC. N.J.A.C. 13:91 was first adopted on an emergency basis, effective May 29, 1997. The chapter was readopted in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., effective August 18, 1997 (see 29 N.J.R. 2711(a) and 3733(b)). The rules subsequently were readopted with amendments, effective November 19, 2002 (see 34 N.J.R. 3198(a) and 4472(a)), and was readopted again effective May 15, 2008 (see 40 N.J.R. 97(a) and 3747(a)). Subchapter 2, Transfer, was renamed Transfer and Requirement for Transfer Hearing; and Subchapter 3, Transfer Hearing, was adopted as new rules, effective September 2, 2014 (see: 45 N.J.R. 1941(a) and 46 N.J.R. 1896(b)).

Pursuant to N.J.S.A. 52:14B-5.1, the rules in this chapter are scheduled to expire on May 15, 2015; in accordance with N.J.S.A. 52:14B-5.1.c(2), the submission of this notice of proposal to the Office of Administrative Law extends that expiration date 180 days to November 11, 2015. The Commission and DOC have reviewed these rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

The Commission is responsible for the custody and care of individuals who have been adjudicated delinquent in Family Court for offenses that if committed by an adult would constitute a crime. Adjudicated delinquents incarcerated in Commission facilities currently range in age from 13 to 23 years. Pursuant to N.J.S.A. 52:17B-175, an adjudicated delinquent may be transferred to the custody of the DOC when (i) the adjudicated delinquent demonstrates disruptive behavior and his or her continued presence in the Commission facility threatens the safety of either the adjudicated delinquent or others, or the ability of the Commission to operate the facility in a stable, safe, and orderly manner; (ii) when the maturity level and criminal sophistication of the adjudicated delinquent makes him or her inappropriate for Commission programs; or (iii) his or her continued presence in the Commission facility impedes the effective delivery of the programs, services, and sanctions. The DOC has the discretion to approve or disapprove all transfers.

N.J.S.A. 52:17B-175.e authorizes the transfer of adjudicated delinquents to adult facilities once they reach the age of 16, two years younger than is provided for in N.J.A.C. 13:91. The higher age threshold used in the rules is to ensure continued Federal funding of State and county programs under the Federal Juvenile Justice and Delinquency Prevention Act, P.L. 102-586, (JJDP). Federal regulations at 28 CFR 31.303, adopted pursuant to the provisions of the JJDP, condition

formula grants from the Federal government on a state maintaining sight and sound separation between adjudicated delinquents and convicted adult offenders at correctional facilities. The JJDP A requires adjudicated delinquents to have reached the age of full criminal responsibility established by state law before they may be transferred to an adult facility, and then only if state law authorizes such transfers. The rules proposed for readoption at N.J.A.C. 13:91 satisfy the provisions of the Federal regulations (28 CFR Part 31) because the age of full criminal responsibility in New Jersey is 18, and transfers to adult facilities are expressly authorized by state law, N.J.S.A. 52:17B-175.e.

In accordance with N.J.S.A. 52:17B-175, the Commission and DOC are jointly proposing the readoption of the rules at N.J.A.C. 13:91 with amendments, in order to continue to permit the transfer of adjudicated delinquents 18 years of age or older to DOC custody, based on criteria established in these rules. The rules proposed for readoption provide the criteria upon which 18 year old offenders may be considered for transfer, the process by which transfers are recommended and authorized, the procedures for transfer, and the confidentiality of information and records concerning transfers.

A subchapter summary of the rules contained in N.J.A.C. 13:91 follows:

N.J.A.C. 13:91-1, General Provisions, provides the chapter purpose, scope, definitions, and forms.

N.J.A.C. 13:91-2, Transfer and Requirement for Transfer Hearing, sets forth the criteria upon which an adjudicated delinquent may be considered for transfer, transfer recommendation and approval, transfer procedures, including the requirement for a due process hearing in the case of an involuntary transfer, and confidentiality of information and records.

N.J.A.C. 13:91-3, Transfer Hearing, sets forth provisions for the designation and authority of the hearing officer, procedural requirements, and due process procedural safeguards.

The Commission proposes to make a number of amendments to N.J.A.C. 13:91.

N.J.A.C. 13:91-1.3 contains definitions used in Chapter 91. In order to reinforce the existing requirement that a hearing officer, who is to be appointed by the Attorney General, be "impartial," the Commission proposes to amend the definition of hearing officer to include a requirement that he or she cannot be an employee of the Commission.

The Commission proposes to amend both N.J.A.C. 13:91-2.1(a)2 and 3.1 to clarify expressly that the requirement for a transfer hearing applies to proposed involuntary transfers, not voluntary ones.

Existing N.J.A.C. 13:91-3.5(c) provides that a request for one postponement of up to one week shall be granted if a request is communicated to the office of the Superintendent at any time prior to the hearing time by either the juvenile or the juvenile's representative. The Commission believes that substituting the one week adjournment provision with "reasonable and necessary adjournments for an adequate presentation of the evidence" will better serve the interests of justice.

The Commission proposes to make two amendments to N.J.A.C. 13:91-3.12, which addresses a hearing officer's recommendation, the standard for a recommendation, and a hearing officer's written findings.

First, the Commission proposes to amend the rule to provide that a hearing officer may recommend transfer of an adjudicated delinquent only on the basis of a written recommendation supported by "clear and convincing evidence," in place of the rule's existing language, which provides that the recommendation be supported by "substantial evidence," that applicable transfer criteria have been met.

Second, the Commission proposes to add new paragraphs (a)2, 3, and 4, which provide that in any case in which the hearing officer's recommendations and findings are based on evidence from a confidential informant, the findings must contain both a concise summary of the facts on which the hearing officer concluded that the informant was credible or his or her information reliable, and a factual summary of the informant's statement, based on the informant's personal knowledge of the matters contained in the statement; and that in any case in which the hearing officer's recommendations and findings are based on evidence that includes confidential information, the findings must contain a concise summary in language that is factual rather than a conclusion.

The Commission proposes to add new N.J.A.C. 13:91-3.13(b)2 to require that the juvenile be given copies of all evidence relied upon by the hearing officer in making the written recommendations and findings, except for evidence that, if released, would pose a threat to the safety of either the juvenile, other juveniles, staff, or to the orderly and safe operation of the facility.

The notice of proposal is excepted from the rulemaking calendar requirement because the Commission is providing a 60-day comment period, pursuant to N.J.A.C. 1:30-3.3(a)5.

#### **Social Impact**

The rules proposed for readoption will have a positive social impact. They will allow the Commission to continue its focus on the rehabilitative efforts of offenders in its facilities, and to better protect the public, facility staff, and other juvenile offenders. In the day-to-day management of Commission secure facilities, the statutorily mandated ability to transfer an adjudicated delinquent to DOC, under the circumstances set forth in the chapter, and with the protections afforded by required due process hearings, is essential to the safe, stable, and orderly operation of those facilities.

The proposed amendments will have a positive social impact by reinforcing the impartiality of hearing officers designated to hear transfer cases, and by formalizing procedures ensuring the greatest feasible access by an adjudicated delinquent to evidence presented at his or her transfer hearing.

#### **Economic Impact**

The costs associated with the transfers provided for in N.J.A.C. 13:91 have been, and will be met through the established budget process with funds allocated by the State. The Commission and DOC anticipate that the rules proposed for readoption with amendments will not have an economic impact on the Commission or any other department or agency of the State government.

#### **Federal Standards Statement**

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

#### **Jobs Impact**

The Commission and DOC do not anticipate that any jobs will be generated or lost if the rules proposed for readoption with amendments are adopted.

#### **Agriculture Industry Impact**

The Commission and DOC do not anticipate that the rules proposed for readoption with amendments would have any impact on the agriculture industry.

#### **Regulatory Flexibility Statement**

The rules proposed for readoption with 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. The rules relate to the transfer of persons 18 years of age or older from the custody of the Commission to DOC. Therefore, a regulatory flexibility analysis is not required.

#### **Housing Affordability Impact Analysis**

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 the transfer of persons 18 years of age or older from the custody of the Commission to DOC.

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

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 proposed for readoption with amendments concern the transfer of persons 18 years of age or older from the custody of the Commission to DOC.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:91.

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

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 13:91-1.3 Definitions

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

...  
 "Hearing officer" means an impartial hearing officer **who is not an employee of the Commission, and who has been** designated by the Attorney General or designee to hear requests for transfers of juveniles from the care and custody of the Commission to DOC under the provisions of N.J.A.C. 13:91-3, Transfer Hearing.  
 ...

#### SUBCHAPTER 2. TRANSFER AND REQUIREMENT FOR TRANSFER HEARING

##### 13:91-2.1 Transfer criteria; transfer hearing

(a) A juvenile who has reached the age of 18 may be transferred to the Department, only when the Superintendent, Secure Care Administrator, and Executive Director have approved a determination of the JRCC that the threshold criteria set forth in (b) below have been satisfied and:

1. (No change.)

2. [The] **With respect to a proposed involuntary transfer, the** determination has [then] been upheld after a hearing before a hearing officer under the provisions of N.J.A.C. 13:91-3.

(b) (No change.)

#### SUBCHAPTER 3. TRANSFER HEARING

##### 13:91-3.1 Applicability

The requirement for a transfer hearing and the provisions of this subchapter shall apply to all proposed **involuntary** transfers of a juvenile.

##### 13:91-3.5 Scheduling transfer hearings

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

(c) [A request] **Requests** for [one postponement of up to one week] **reasonable and necessary adjournments for an adequate presentation of the evidence** shall be granted if [a] **the** request is communicated to the office of the Superintendent at any time prior to the hearing time

scheduled under (a) above by either the juvenile or the juvenile's representative.

(d)-(e) (No change.)

##### 13:91-3.12 Hearing officer recommendation; standard for recommendation and written findings

(a) At the conclusion of the hearing, the hearing officer shall prepare written findings and a recommendation whether the proposed transfer should proceed.

1. A proposed transfer shall be recommended by the hearing officer only upon comprehensive and detailed findings, signed by the hearing officer and supported by [substantial credible] **clear and convincing** evidence that one or more of the threshold standards set forth in N.J.A.C. 13:91-2.1(b) have been satisfied.

i. (No change.)

**2. When the hearing officer's recommendations and findings are based on evidence from a confidential informant, the recommendations and findings shall not disclose the identity of the confidential informant and shall contain:**

**i. A concise summary of the facts on which the hearing officer concluded that the informant was credible or his or her information reliable; and**

**ii. The informant's statement, either in writing or as reported, in language that is factual rather than a conclusion, and based on the informant's personal knowledge of the matters contained in such statement.**

**3. In any case in which the hearing officer's recommendations and findings are based on evidence that includes confidential information, the findings shall contain a concise summary in language that is factual rather than a conclusion.**

##### 13:91-3.13 Referral to Executive Director for final agency action and notice to juvenile

(a) (No change.)

(b) Within 48 hours of receipt of the hearing officer's recommendation and findings, the Executive Director shall issue a written determination whether the juvenile shall be referred for transfer to the Department, which determination shall constitute final agency action.

1. (No change.)

**2. The juvenile shall be given copies of all evidence relied upon by the hearing officer in making the written recommendations and findings, except for evidence that, if released, would pose a threat to the safety of either the juvenile, other juveniles, staff, any witness or informant, or to the orderly and safe operation of the facility.**