

LAW AND PUBLIC SAFETY

JUVENILE JUSTICE COMMISSION

Transfer of Adjudicated Delinquents to The New Jersey Department of Corrections

Proposed Readoption: N.J.A.C. 13:91

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable Anne Milgram, Attorney General and Chair, Kimberly Ricketts, Attorney General's Designee and George W. Hayman, Commissioner, Department of Corrections.

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Kimberly Ricketts

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Date

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George W. Hayman

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Date

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 2008

Submit written comments on or before March 7, 2008 to:

John Wolff, Legal Specialist,  
Office of The Executive Director  
New Jersey Juvenile Justice Commission  
1001 Spruce Street – Suite 202  
Trenton, New Jersey 08638

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. These rules provide the procedure utilized to transfer certain adjudicated delinquents from the Juvenile Justice Commission to DOC. The rules at N.J.A.C.13:91 were first adopted on an emergency basis, effective May 29, 1997. They were 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)), and were again readopted with amendments, effective November 19, 2002 (see 34 N.J.R. 3198(a) and 4472(a)). Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, these rules expire on November 19, 2007. Pursuant to N.J.S.A. 52:14B-5.1c, as the Commission submitted this notice of proposal to the Office of Administrative Law prior to that date, the chapter expiration is extended 180 days to May 27, 2008.

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. DOC has the discretion to approve or disapprove all transfers.

The Commission utilizes the transfer rules in the most difficult cases. In the nearly five years since the 2002 readoption of N.J.A.C. 13:91, 145 adjudicated delinquents have been transferred to DOC under its provisions.

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 regulation is to ensure continued federal funding of State and county programs under the Federal Juvenile Justice and Delinquency Prevention Act, P.L. 102-586, (JJDPA). Federal regulations at 28 C.F.R. 31.303, adopted pursuant to the provisions of the JJDPA, 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 JJDPA 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 C.F.R. 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 without change, 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 those 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, sets forth the criteria upon which an adjudicated delinquent may be considered for transfer, transfer recommendation and approval, transfer procedures and confidentiality of information and records.

The proposal is not subject to the calendar requirements of N.J.S.A. 52:14B-3(4) because the agency 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 have allowed the Commission to 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 a juvenile facility operated by the Commission, the ability to transfer an adjudicated delinquent 18 years of age or older, under the circumstances set forth herein, is essential to operate the facility in a stable, safe and orderly manner. The rules proposed for readoption set forth the criteria and procedures necessary for transferring such persons from the custody and care of the Commission to the custody and care of DOC.

### 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 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 comply with 28 C.F.R. 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 are adopted.

### Agriculture Industry Impact

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

### Regulatory Flexibility Statement

The rules proposed for readoption 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.

### Smart Growth Impact

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

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