

CORRECTIONS

THE COMMISSIONER

Inmate Records and Information Sharing by County Correctional Facilities

Proposed Amendment: N.J.A.C. 10A:31-6.8

Authorized By: Victoria L. Kuhn Esq., Acting Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

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

Proposal Number: PRN 2021-093.

Submit written comments by November 19, 2021, to:

Kathleen Cullen

Administrative Rules Unit

Office of the Commissioner

New Jersey Department of Corrections

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Trenton, New Jersey 08625-0863

or email to ARU@doc.nj.gov

The agency proposal follows:

Summary

The sharing of inmate records and information by all correctional facilities in the State of New Jersey must be done in compliance with the New Jersey Attorney General's Immigrant Trust Directive, issued in 2018 and revised in 2019. The rules at N.J.A.C. 10A:31-6.8(a) and (c)4 are not clear in that respect. The Department of Corrections (Department), therefore, proposes to amend, by adding "except that any release of information to law enforcement

authorities, including Federal law enforcement authorities, shall comply with any Attorney General law enforcement directives governing information sharing with other law enforcement agencies and officers” at the end of the sentence at N.J.A.C. 10A:31-6.8(a); and replacing the word “above” with “, except that any release of information to law enforcement authorities, including Federal law enforcement authorities, shall comply with any Attorney General law enforcement directives governing information sharing with other law enforcement agencies and officers” at N.J.A.C. 10A:31-6.8(c)4. The Department also proposes to amend N.J.A.C. 10A:31-6.8(c) to change “shall” to “may,” so that it will be consistent with subsection (b).

As the Department 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 better align the Department of Corrections’ administrative rules specific to county correctional facilities with the requirements of the Attorney General’s Immigrant Trust Directive. The Department anticipates a positive overall social impact on the general public and inmate population resulting from the proposed amendments. Some county correctional facilities may have concerns about these proposed amendments based on policy disagreements relating solely to their more limited ability to assist in the enforcement of Federal civil immigration law.

Economic Impact

The cost of meeting and maintaining the requirements of the proposed amendments are accommodated within the existing budget.

Federal Standards Statement

The proposed amendments are promulgated under the authority of the rulemaking

requirements of the Department, as established at N.J.S.A. 30:1B-6 and 10. The proposed amendments, which better align the Department of Corrections' administrative rules specific to county correctional facilities with the requirements of the Attorney General's Immigrant Trust Directive, do not alter any Federal laws or standards. To the contrary, the Attorney General's Immigrant Trust Directive explicitly states that nothing in the directive shall be construed to restrict, prohibit, or in any way prevent a State, county, or local law enforcement from complying with all applicable Federal laws.

Jobs Impact

The proposed amendments will have no impact on jobs.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments align with existing requirements of the Attorney General's Immigrant Trust Directive and other New Jersey Department of Corrections' rules.

Housing Affordability Impact Analysis

The proposed amendments shall have no impact on housing affordability and there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing. The proposed amendments set forth requirements in the Attorney General's Immigrant Trust Directive on County Correctional Facilities operating in the State of New Jersey.

Smart Growth Impact Development Analysis

The proposed amendments will have no impact on the achievement of smart growth and there is an extreme unlikelihood the proposed amendments will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments set forth requirements in the Attorney General's Immigrant Trust Directive on County Correctional Facilities operating in the State of New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department of Corrections has evaluated this rulemaking and determined that the proposed amendments will better align the Department of Corrections' administrative rules specific to County Correctional Facilities with the requirements of the Attorney General's Immigrant Trust Directive. The proposed amendments will also help further the common legislative goals of the Department of Corrections and the Attorney General in promoting a more unified system of criminal justice.

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

SUBCHAPTER 6. MANAGEMENT INFORMATION SYSTEM AND RECORDS

10A:31-6.8 Availability of information to non-institutional persons or outside agencies

(a) Information from adult inmate records shall be provided to law enforcement agencies or persons, who request it in the performance of their public duties, **except that any release of information to law enforcement authorities, including Federal law enforcement authorities,**

shall comply with any Attorney General law enforcement directives governing information sharing with other law enforcement agencies and officers.

(b) (No change.)

(c) Upon advice of the [County Counsel] **county counsel**, selected records of adult inmates [shall] **may** be made available to government agencies or other authorized persons upon request.

These agencies and persons include, but are not limited to, the following:

1. -3. (No change.)

4. Law enforcement agencies other than those [in] **at** (b) above, **except that any release of information to law enforcement authorities, including Federal law enforcement authorities, shall comply with any Attorney General law enforcement directives governing information sharing with other law enforcement agencies and officers;** or

5. (No change.)