

LAW AND PUBLIC SAFETY

JUVENILE JUSTICE COMMISSION

Detention of Juveniles In Municipal and Other Adult Facilities

Proposed New Rules: N.J.A.C. 13:94

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable Peter C. Harvey, Attorney General and Chair, Markus Green, Attorney General's Designee.

Authority: N.J.S.A. 52:17B-170e(6),(13), (14), (17), (21) and (22); 52:17B-171a(5); 2A:4A-31; 2A:4A-32; 2A:4A-37; 2A:4A-60; 2A:4A-88 and 47:1A-1 et seq.

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

Proposal Number: PRN 2005-302

Comments with respect to this proposal must be received on or before November 18, 2005 and must be submitted in writing. One copy must be directed to following addresses, as indicated:

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The agency proposal follows:

Summary

The New Jersey Juvenile Justice Commission (the “Commission”) is proposing new rules, N.J.A.C. 13:94, Detention of Juveniles in Municipal and Other Adult Facilities, to implement the Commission’s authority under its enabling legislation, N.J.S.A. 52:17B-169 et seq., and the New Jersey Code of Juvenile Justice, N.J.S.A 2A:4A-20 et seq. (the “Juvenile Code”) to specify the circumstances and conditions under which juveniles may be detained at police stations and similar facilities that hold detained adults and juveniles for brief periods of time. The new rules codify protections that are also consistent with provisions contained in the Federal Juvenile Justice and Delinquency Prevention Act of 2002, P.L. 107-273, 42 U.S.C. 5601 et seq., (the “JJDP Act”).

Pursuant to the JJDP Act, the State receives and administers annual grants from the U.S. Department of Justice, dedicated to funding both state and local delinquency prevention and intervention strategies. These strategies include programs to reduce truancy, discourage gang affiliation and violence, provide youth and family case management, and provide after-school recreational and other youth services. In Federal Fiscal Year 2004, grants under the Federal Act amounted to approximately \$2.0 million. The Commission is the administrative entity that receives and manages these grants on behalf of the State.

As a condition of these grants, the Commission is required to monitor jail and lockup facilities for compliance with three “core protections” for juveniles. Those core

protections are:

1. The deinstitutionalization of juveniles detained for conduct that does not constitute criminal behavior (for example, truants and runaways);
2. The maintenance of sight and sound separation between juveniles and adults being held in secure custody; and
3. A six-hour limitation with respect to how long a juvenile may be held in secure custody.

Accordingly, the proposed rules codify procedures for monitoring compliance with these “core protections” at the facilities described above.

A description of the proposed new rule follows.

Subchapter 1 provides the general provisions of the chapter, including purpose, scope, definitions of terms, applicable legal authorities and the Commission’s oversight authority and responsibility.

Subchapter 2 sets out special conditions and restrictions that apply when juveniles are being held by police, specifically with respect to the three core protections. In addition the proposed rules address the nature and scope of supervision that must be afforded to detained juveniles, reasonable exceptions for extraordinary circumstances, and mandatory log/record keeping standards.

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

Arrested and detained juveniles are children. In recognition of this fact, both Federal and State law place a number of restrictions on how a juvenile is to be treated when detained by police. They include maintaining strict sight and sound separation between detained juveniles and securely held adults, limiting how long a juvenile may be detained before being processed either to release or to county detention facilities, and requiring that detained juveniles be under observation for their own protection. The proposed new rules will have a positive social impact, both by setting out a regulatory scheme that captures all applicable restrictions in one place, and by formalizing State monitoring of lock-up facilities for compliance with those restrictions, so that juveniles will have some safeguards and protections as children within the juvenile justice system.

Economic Impact

The proposed new rules will have a positive economic impact by helping to ensure funding to the State by the Federal government, under the Juvenile Justice and Delinquency Prevention Act of 2002, P.L. 107-273, 42 U.S.C. 5601 et seq. The proposed new rules will not result in any negative economic impact, because additional funding is not necessary to implement these rules. The cost of meeting and maintaining the

requirements established by these rules will be met through the routine budgetary process, with monies allocated by the State.

Federal Standards Statement

A Federal standards analysis is not required because the new rules are being proposed to ensure compliance with, and to conform with, the Juvenile Justice and Delinquency Justice Prevention Act of 2002, P.L. 107-273, 42 U.S.C. 5601 et seq. They do not exceed any existing Federal standards.

Jobs Impact

The Juvenile Justice Commission does not anticipate that any jobs will be generated or lost if the proposed new rules are adopted.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed new rules will impose no reporting, recordkeeping, or other compliance requirements, and will have no other impact upon 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. Facilities regulated under the proposed rules are operated exclusively by governmental units and public administrative bodies. In addition, beneficiaries and sub-beneficiaries of Federal funding received in connection with the proposed rules are all either governmental units or governmental agencies.

Smart Growth Impact

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

Full text of the proposed new rules follows:

CHAPTER 94
DETENTION OF JUVENILES IN MUNICIPAL
AND OTHER ADULT FACILITIES

SUBCHAPTER 1. GENERAL REQUIREMENTS

13:94-1.1 Purpose and scope

(a) The purposes of this chapter are:

1. To define and to clarify the special conditions and restrictions that apply when juveniles are detained in adult facilities;
2. To provide a basis for monitoring such facilities under the Federal Juvenile Justice and Delinquency Prevention Act of 2002, P.L. 107-273, 42 U.S.C. 5601 et seq;
3. To provide a regulatory framework for enforcing requirements of the New Jersey Code of Juvenile Justice, N.J.S.A. 2A:4A-20 et seq., including, but not limited to, provisions governing the taking of a juvenile into custody and limiting the amount of time a juvenile may be held in short term custody; and
4. To promote the health and safety of juveniles detained in adult facilities.

(b) This chapter applies to all juveniles detained in an adult facility, as defined in N.J.A.C. 13:94-1.2.

13:94-1.2 Definitions

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

“Act of delinquency” means the commission of an act by a juvenile that if committed by an adult would constitute either a crime, a disorderly persons offense, a petty disorderly persons offense, or a violation of any other penal statute, ordinance or regulation, as limited by N.J.S.A. 2A:4A-23.

“Adult facility” or “facility” means any jail, lockup or other similar facility used for the detention of adults and which may be used to detain juveniles, whether or not the facility was designed or intended for such purpose, and that is operated either by:

1. The State of New Jersey;
2. A county, township, municipality, or other instrumentality of the State of New Jersey;
3. An agency or authority of, or administered in whole or part by the State of New Jersey; or
4. A private university, arena, amusement park or other similar institution.

“Commission” means the New Jersey Juvenile Justice Commission.

“Department of Corrections” means the New Jersey Department of Corrections.

“Detain” means any holding of a person in police custody, whether pending court or other disposition of charges filed or to be filed against the person, or under circumstances

where the person is being held on account of a serious danger to the person's health or safety.

"Detention" means a situation in which a person is being detained.

"JJDP Act" means the Juvenile Justice and Delinquency Prevention Act of 2002, P.L. 107-273, 42 U.S.C. 5601 et seq., and regulations thereunder, 28 C.F.R.31.303.

"Non-offender" means a detained juvenile, other than one charged with an act of delinquency or a status offense.

"Non-secure custody" means detention in conditions such that an individual is not being held in secure custody.

"Secure area" means a building or an area within a building that restricts the mobility of an individual in custody through the use of hardware or architectural features.

"Secure custody" means detention in conditions such that:

1. The individual is held in a secure room or cell or other secure area;
2. The area where the individual is held is located within a larger secure perimeter;
3. The area where the individual is held is designed or intended to be used for residential purposes;
4. The individual is physically secured to a cuffing rail or other stationary object;
5. The individual is held in conditions that violate the sight and sound restrictions of N.J.A.C. 13:94-2.1;
6. The individual is held in conditions that violate the supervision requirement

of N.J.A.C. 13:94-2.5(d); or

7. The individual is held in a facility with a delayed egress device having a delay of greater than 30 seconds, or any delayed egress device that is not in compliance with the Building Subcode of the Uniform Construction Code, N.J.A.C. 5:23.

“Sight and sound separation” means the maintenance of physical separation between a juvenile and a securely held adult so that both sustained visual contact and direct and sustained oral communication between them is not possible.

“Status offender” means a juvenile accused, charged or adjudicated for conduct that, under the laws of the jurisdiction in which the conduct took place, would not be a crime if committed by an adult, or a juvenile detained protectively because the juvenile’s health or safety is in serious danger.

“Status offense” means conduct that if committed by an adult would not constitute a crime in the jurisdiction in which the conduct occurred.

13:94-1.3 Legal requirements

(a) The detention of a juvenile in a facility is subject to the requirements of:

1. This chapter;
2. The JJDP Act;
3. The New Jersey Code of Juvenile Justice, N.J.S.A. 2A:4A-20 et seq;
4. All other applicable laws, regulations and other authorities related to the

confinement of juveniles, including, but not limited to, requirements addressing the

deinstitutionalization of status offenders and non-offenders, sight and sound separation of juveniles and adults, and timely removal of juveniles from adult secure facilities; and

5. All applicable public health, safety, construction, building, fire and other codes, laws and regulations promulgated either by the State of New Jersey or by the county, township or municipality in which the facility is located.

13:94-1.4 Commission oversight authority and responsibility

(a) The Commission is authorized to issue advisory recommendations appropriate to assisting facilities to comply with the provisions of this chapter. Such recommendations may address:

1. The physical design and layout of facilities, including the design and furnishing of secure holding rooms or cells;
2. Operational procedures at facilities;
3. Procedures and formats for recordkeeping and reporting; and
4. Facility staffing levels;

(b) A facility shall grant the Commission access to staffing and other records, and shall comply with Commission requests for reports and information, reasonably necessary to verifying the facility's compliance with the provisions of this chapter.

13:94-1.5 Confidentiality of information relating to juveniles

(a) Law enforcement records pertaining to juveniles charged 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.

SUBCHAPTER 2. OPERATIONAL REQUIREMENTS

13:94-2.1 Sight and sound separation

Except as may be necessary when incidental to initial processing, sight and sound separation shall be maintained at all times between a juvenile and an adult held in secure custody. This requirement applies equally with respect to non-offender juveniles, status offender juveniles and juveniles detained for an act of delinquency.

13:94-2.2 Limitations on holding juveniles in custody and six-hour restrictions

(a) A juvenile held in secure custody shall be placed only in a holding room, cell or other designated area that has been determined by the Commission to conform to prevailing safety standards for the detention of juveniles.

(b) Status-offenders and non-offenders shall not be held in secure custody.

(c) Status-offenders, non-offenders and juveniles held on a charge of delinquency

but not being held in secure custody, shall not be held in custody for more than six hours.

(d) A juvenile held on a charge of delinquency may be held in secure custody, provided that such secure custody may not exceed six hours commencing from the time the juvenile was placed in secure custody,

1. The six-hour restriction set forth in this section shall not apply to the holding of a juvenile in a judicial facility in connection with a court appearance.

13:94-2.3 Notification to parent or guardian

(a) Upon taking a juvenile into custody, the detaining officers shall immediately notify the parents or guardians of the juvenile:

1. That the juvenile is being detained;
2. Where the juvenile is being held; and
3. The reasons that the juvenile is being detained.

13:94-2.4 Exceptions for extraordinary circumstances

(a) In the event of an extraordinary circumstance, the highest-ranking facility staff member on duty may determine that a juvenile should be held in conditions that deviate from the restrictions otherwise imposed by this chapter.

1. Any such deviation shall be only to the extent and duration as is required to address the specific extraordinary circumstance.

(b) Each determination made under (a) above shall be explained in a written report that describes the facts upon which the determination was based, the deviations from restrictions otherwise imposed by this chapter, the duration of such deviations, and why the deviations were necessary to address the extraordinary circumstance.

1. The report shall be prepared and signed by the highest ranking person who made or approved the determination, within eight hours of the determination it covers, and shall be maintained on file as part of the juvenile admissions log required by N.J.A.C.

13:94-2.6.

(c) For the purpose of this section, an extraordinary circumstance is one in which a deviation from restrictions otherwise imposed by this chapter is:

1. Necessary for the safety and security of either the juvenile or others, including facility staff and the public; or

2. Necessary for the safe and secure operation of the facility.

13:94-2.5 Supervision of juveniles

(a) Facility staff shall provide supervision for all detained juveniles. The level of supervision shall be that necessary to ensure the safety and well-being of the juvenile, facility staff and the public at large. Factors to be considered when determining the appropriate level of supervision shall include, but shall not necessarily be limited to:

1. The juvenile's mental and physical health;

2. The nature of the offense charged, if any; and

3. The physical environment of the area where the juvenile will be held, including any objects or architectural elements that could facilitate self-injury or injury to others.

(b) A law enforcement officer or other facility staff shall directly observe a juvenile placed in a secure holding room or cell at least every 15 minutes.

(c) When a juvenile is placed in a secure holding room or cell or other designated area with potential suicide hazards, or other safety hazard, continuous face-to-face supervision shall be maintained by a law enforcement officer or other facility staff.

1. Such hazards include, but are not limited to, barred walls, doors and windows; door knobs; exposed pipes; and any other object or design feature to which an item may be tied.

(d) A detained juvenile, other than a juvenile detained in a secure holding room or cell, shall not be left unattended at any time.

(e) A law enforcement officer or other facility staff shall provide continuous face-to-face visual supervision, if the juvenile:

1. Appears intoxicated;
2. Appears to be under the influence of drugs;
3. Shows signs of emotional disturbance or risk of self-injury; or
4. Is detained in a secure holding room or cell in which there is a suicide or safety hazard.

(f) Audio/video monitoring systems shall not be used as a substitute for required continuous face-to-face supervision of juveniles.

13:94-2.6 Juvenile admissions and secure custody logs

(a) Each facility shall maintain a juvenile admissions log that documents all juveniles detained at the facility.

(b) The juvenile admissions log shall include the following information concerning each detained juvenile:

1. Name;
2. Date of birth;
3. Gender;
4. Race/ethnicity;
5. The charges or other circumstances in connection with which the juvenile is being held;
6. The date and time of admission into the facility;
7. The date and time of release from the facility;
8. If the juvenile is held beyond six hours in the facility;
9. Whether the sight and sound separation required by N.J.A.C. 13:94-2.1 has been maintained; and
10. Information sufficient to enable the reader to determine whether the juvenile was held in secure or non-secure custody.

(c) A separate secure custody log shall be maintained for each juvenile held in a secure holding room or cell. The secure custody log shall be kept or posted in close

proximity to the secure holding room or cell, and shall contain the following information:

1. The name of the juvenile;
2. The cell or room number;
3. The date and time the juvenile was placed in the cell or room;
4. The date and time of release from the cell or room; and
5. A record of each inspection of the juvenile by law enforcement personnel.
 - i. Each inspection shall be recorded, showing the date and time, describing the general condition of the juvenile, and shall be initialed by the inspecting law enforcement personnel.
 - ii. Inspections shall be made not less frequently than every 15 minutes.