



PC-NJ-001-010

PROPOSALS

CORRECTIONS

CORRECTIONS

(a)

THE COMMISSIONER

Definitions; Forms; Schedule of Sanctions for Prohibited Acts Committed at the Prison Complex; Schedule of Sanctions for Prohibited Acts Committed at the Youth Complex; Investigation; Disciplinary Sanctions; Placement in Disciplinary Detention; Medical and Psychiatric Services; Investigation of Appeal; Special Administrative Segregation Review Committee (S.A.S.F.C.)

Proposed Amendments: N.J.A.C. 10A:1-2.2; 10A:4-1.4, 5.1, 5.2, 9.5, 9.17, 10.2, 10.8 and 11.4; and 10A:5-3.2

Authorized By: Jack Terhune, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and *C.F. vs. Terhune et al.*, Civil Action No. 96-1840 (AET).

Proposal Number: PRN 1999-97.

Submit comments by May 3, 1999 to:
Kathleen C. Wlochak, Special Assistant
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Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863

The agency proposal follows:

Summary

In compliance with *C.F. v. Terhune et al.*, Civil Action No. 96-1840 (AET), the amendments proposed herein represent the efforts of the New Jersey Department of Corrections to ensure that the Departmental disciplinary procedures provide for consideration of the mental health needs of inmates.

The Commissioner of the Department of Corrections has directed that correctional facility Superintendents shall be known as Administrators; accordingly, all references to Superintendent have been amended throughout the text.

A definition for "special needs inmates" has been added to N.J.A.C. 10A:1-2.2 to establish a statement of meaning for interested individuals.

N.J.A.C. 10A:4-1.4 has been amended to include a new form related to inmate discipline that will be used by staff to request a psychological/psychiatric evaluation.

New paragraphs have been added to N.J.A.C. 10A:4-5.1(a) and (b) and 5.2(a) and (b) to address the mental health needs of special needs inmates. In N.J.A.C. 10A:4-5.2(d)7, the cite for disposal of contraband personal property seized within a correctional facility has been corrected.

To help ensure that a determination as to whether or not an inmate is a special needs inmate is provided to the Disciplinary Hearing Officer/Adjustment Committee, additional responsibilities for the coordinator of investigations have been added to N.J.A.C. 10A:4-9.3(c). New subsection (d) has been added to the investigation process to establish a procedure for the Disciplinary Hearing Officer/Adjustment Committee to determine the need to obtain a psychological/psychiatric evaluation, to set forth the handling of Form HSU-010, and to establish the requirement that the Disciplinary Hearing Officer/Adjustment Committee consider the evaluation along with other information gathered during the investigation.

The requirement that the disciplinary action be individualized by considering the history or presence of mental illness of an inmate has been added to N.J.A.C. 10A:4-9.17(a). New subsection (f) has been added to N.J.A.C. 10A:4-10.2 to ensure that appropriate intervention services are provided to the inmate and to ensure that the Administrator is immediately informed when mental health staff become aware of the mental decompensation of an inmate confined in Disciplinary Detention.

The references to "medical staff" and "medical person" respectively in N.J.A.C. 10A:4-10.8(a) and (b) have been amended to health care staff for consistency with language throughout the proposed amendments. New language has been added to N.J.A.C. 10A:4-10.8(c) to establish provisions for the Administrator or designee to receive documentation of evaluation findings

in a timely manner. Additionally, a new provision requires that the documentation of evaluation findings be placed in the inmate's medical/dental record.

To ensure that the appeal review process includes the consideration of the history or presence of mental illness of an inmate, new paragraph (e) has been added to N.J.A.C. 10A:4-11.4. In N.J.A.C. 10A:5-3.2, new paragraph (j)5 has been added to establish that an inmate whose mental health is decompensating should be released from Administrative Segregation.

Social Impact

The proposed amendments represent the intent of the Department of Corrections to consider the mental health needs of special needs inmates who are unable to meet the functional requirements of prison life without mental health treatment. The proposed amendments are necessary to identify inmates with mental illness who are subject to disciplinary action due to a finding of guilt to a prohibited act. This identification is necessary to ensure that special needs inmates are referred to the Mental Health Unit for appropriate care/treatment, potential mental decompensation is appropriately handled in Disciplinary Detention and Administrative Segregation Units and factors considered in an appeal review, include a history or presence of mental illness.

The Department anticipates a positive social impact as a result of the adoption of these amendments because enhanced evaluation services for early identification of mental illness and early care/treatment will enable the Department to more effectively manage and treat those inmates who suffer from mental illness.

Economic Impact

The proposed amendments should not result in any economic impact because additional funding is not necessary to implement or maintain the requirements of the amendments.

Federal Standards Statement

A Federal standards analysis is not required for the proposed amendments because the rulemaking requirements of the Department of Corrections are governed by N.J.S.A. 30:1B-6 and 30:1B-10. The proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The adoption of the amendments proposed will cause neither the generation nor the loss of any jobs.

Agriculture Industry Impact

The adoption of the amendments proposed 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 under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments affect inmates, the New Jersey Department of Corrections and governmental entities responsible for the enforcement of the rules.

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

10A:1-2.2 Definitions

The following words and terms, when used in N.J.A.C. 10A:1 through 10A:30, shall have the following meanings:

...
"Special needs inmate" means an inmate who suffers a DSM IV, axis I and/or axis II disorder which interferes with the inmate's ability to meet the functional requirements of prison life without mental health treatment.
...

10A:4-1.4 Forms

(s)-(b) (No change.)

(c) The following form related to inmate discipline shall be reproduced by each correctional facility from an original that is available by contacting the Health Services Unit:

L. HSU-010 Request for Psychological/Psychiatric Evaluation.

10A:4-5.1 Schedule of sanctions for prohibited acts committed at the Prison Complex

(a) A finding of guilt for any offense preceded by an asterisk (*) shall render the offender subject to one or more of the following sanctions:

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- 1.-3. (No change.)
 4. Loss of commutation time up to 365 days, subject to confirmation by the [Superintendent] Administrator;
 5.-8. (No change.)
 9. Up to 14 hours extra duty, to be performed within a maximum of two weeks; [and/or]
 10. Up to two weeks confinement to room or housing area; and/or
 11. Referral to the Mental Health Unit for appropriate care/treatment.
 (b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:
 1.-2. (No change.)
 3. Up to 60 days loss of commutation time, subject to confirmation by the [Superintendent] Administrator;
 4.-8. (No change.)
 9. Up to 14 hours extra duty, to be performed within a maximum of two weeks; [and/or]
 10. Up to two weeks confinement to room or housing area; and/or
 11. Referral to the Mental Health Unit for appropriate care/treatment.

- (c) (No change.)
 (d) In addition to the sanctions in (a), (b) and (c) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the [Superintendent] Administrator. Such administrative action may include, but not be limited to, the following:
 1.-8. (No change.)

10A:4-5.2 Schedule of sanctions for prohibited acts committed at the Youth Complex

(a) A finding of guilt for prohibited acts preceded by an asterisk (*) shall render the offender subject to one or more of the following sanctions:

- 1.-8. (No change.)
 9. Loss of commutation time up to 365 days, subject to confirmation by the [Superintendent] Administrator ([Inmates] inmates serving indeterminate sentences are not subject to this sanction, but inmates housed in the youth complex who are serving prison terms are subject to this sanction); and/or
 10. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days; and/or
 11. Referral to the Mental Health Unit for appropriate care/treatment.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

- 1.-2. (No change.)
 3. Up to 60 days loss of commutation time subject to confirmation by the [Superintendent] Administrator (inmates serving prison terms);
 4.-8. (No change.)
 9. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); [and/or]

10. Suspension of one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days; and/or
 11. Referral to the Mental Health Unit for appropriate care/treatment.

- (c) (No change.)
 (d) In addition to the sanctions in (a), (b) and (c) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the [Superintendent] Administrator. Such administrative action may include, but not be limited to, the following:
 1.-6. (No change.)
 7. Disposal of an item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.3 and 6.4(b)2, 3 and 4).

- 10A:4-9.5 Investigation
 (a) (No change.)
 (b) The [Superintendent] Administrator shall appoint a coordinator of investigations who shall be an employee of supervisory level. The

[Superintendent] Administrator may also appoint one or more investigating officers who shall ordinarily be employees of supervisory level who have not been involved in the particular incident to be investigated.

(c) The coordinator shall be responsible for [all]:
 1. All investigations of disciplinary charges. The coordinator may assign individual investigations to an investigating officer who shall be responsible to the coordinator for completing the assignments[.];

2. Forwarding a list of all inmates who have a pending disciplinary infraction to the Mental Health Unit for a determination as to which inmates should be considered special needs inmates; and
 3. Ensuring that the Mental Health Unit provides said determination and providing this information to the investigator and Disciplinary Hearing Officer/Adjustment Committee.

(d) The Disciplinary Hearing Officer/Adjustment Committee shall determine the need to obtain a psychological/psychiatric evaluation based upon the nature of the infraction, the determination from the Mental Health Unit regarding whether the inmate is a special needs inmate and/or any other relevant information.

1. In those cases where a psychological/psychiatric evaluation is necessary, the Disciplinary Hearing Officer/Adjustment Committee shall forward Form HSU-010, Request for Psychological/Psychiatric Evaluation to the Lead Psychologist.

2. Upon completion and receipt of the evaluation report from the Lead Psychologist, the Disciplinary Hearing Officer/Adjustment Committee shall consider the information provided in the evaluation report along with any other information gathered during the investigation.

Recodify existing (d)-(g) as (e)-(h) (No change in text.)

10A:4-9.17 Disciplinary sanctions

(a) The disciplinary action may be individualized [in keeping with] by considering such factors as the:

- 1.-3. (No change.)
 4. Underlying reasons for noncompliance with regulations; [and]
 5. Correctional goals set for the inmate[.]; and
 6. The inmate's history or presence of mental illness.
 (b)-(c) (No change.)

10A:4-10.2 Placement in Disciplinary Detention

(a)-(e) (No change.)

(f) If at any time during the inmate's confinement in Disciplinary Detention, the mental health staff become aware of the mental decompensation of an inmate, the health care staff shall immediately provide appropriate intervention services and refer the matter to the correctional facility Administrator or designee.

10A:4-10.8 Medical and psychiatric services

(a) Inmates in Disciplinary Detention shall receive a daily visit by a member of the [medical] health care staff which can be a nurse, paramedic, doctor or other authorized health care personnel.

(b) Medical and psychiatric emergencies shall be attended to immediately. Requests for medical attention for inmates in nonemergency situations shall be responded to by the physician, or a [medical person] health care staff member designated by the physician within 24 hours.

(c) Whenever it shall appear that an inmate is suffering from an emotional or psychiatric disturbance, arrangements shall be made for a psychiatric or psychological evaluation. Documentation of the evaluation findings shall be forwarded to the Administrator or designee by the health care staff member who conducted the evaluation prior to completion of the shift of the health care staff member on the day the evaluation is conducted. A copy of the evaluation findings documentation shall be placed in the inmate's medical/dental record.

10A:4-11.4 Investigation of appeal

(a) The [Superintendent or his or her] Administrator or designee may order an independent investigation of the charge and proceedings of the disciplinary hearing in those instances in which the inmate's appeal and information furnished after the initial disciplinary hearing appear to warrant such action.

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(b) The [Superintendent] Administrator shall have the option to request a total or partial reinvestigation of the charge or proceedings of the hearing. The reinvestigation may be conducted by any person or unit designated by the [Superintendent] Administrator, provided, however, that the individual shall have had no contact with the issuance of the first investigation of the charge.

(c) (No change.)

(d) If on the basis of new evidence, the [Superintendent] Administrator may also request a polygraph examination as part of the reinvestigation. Such requests shall be in accordance with N.J.A.C. 10A:3-7, Polygraph Examinations.

(e) In reviewing an appeal the following factors shall be considered:

1.-2. (No change.)

3. Whether the sanction imposed was proportionate to the offense in view of the inmate's recent disciplinary history and present custody status except in the case of a termination of contact visits sanction as established in N.J.A.C. 10A:4-5.1(c) or 5.2(c); [and/or]

4. Whether the inmate has a history or presence of mental illness; and/or

[4.]5. Whether extenuating circumstances were considered.

10A:3-3.2 Special Administrative Segregation Review Committee (S.A.S.R.C.)

(a)-(h) (No change.)

(i) Upon review of the inmate's behavior, the S.A.S.R.C. may determine that the inmate should be released from the Administrative Segregation Unit. The S.A.S.R.C. shall determine that an inmate should be released from the Administrative Segregation Unit when it concludes that:

1.-2. (No change.)

3. The inmate's presence in the general population will not pose a threat to the safe, secure and orderly operations of a correctional facility; [and]

4. The inmate's presence in the general population prior to completion of the sanction as specified by the Disciplinary Hearing Officer/ Adjustment Committee would not adversely affect the goals of a correctional facility; and/or

5. The inmate has a history or presence of mental illness and continued confinement in Administrative Segregation is likely to add to the inmate's mental decompensation.

(j)-(p) (No change.)

(a)

THE COMMISSIONER

Mail, Visits and Telephone

Scope; Correspondence To or From Other Inmates; Limitation on Source of Publications; Publications To or From Other Inmates; Limitation on Packages; and Inspection of Incoming Packages

Proposed Amendments: N.J.A.C. 10A:18-1.2, 2.5, 4.2, 5.2 and 5.3

Proposed Repeal: N.J.A.C. 10A:18-4.4

Authorized By: Jack Lehman, Commissioner, Department of Corrections.

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

Proposal Number: PRM 1999-93.

Submit comments by May 5, 1999 to:
Kathleen C. Whelan, Special Assistant
Office of the Commissioner
Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863

The agency proposal follows:

Summary

The provisions regarding packages established in subchapter 5 apply to inmates housed in facilities, other than county jails in accordance with contractual agreements with the Department of Corrections; therefore, the scope of the chapter has been amended and reformatated at N.J.A.C. 10A:18-1.2.

N.J.A.C. 10A:18-2.5 regulates correspondence to or from other inmates and has been reformatated into two subsections. For security purposes, new subsection (b) has been added to stipulate correspondence to or from other inmates may be limited as authorized by designated administrative staff.

N.J.A.C. 10A:18-4.2 establishes the limitations on sources of publications. N.J.A.C. 10A:18-4.2(a) has been amended to state an inmate shall be permitted to receive hardcover books, paperback books, magazines and other softcover publications from the publisher or source of sale only. Subsection (b) has been deleted. These proposed amendments are necessary for consistency with N.J.A.C. 10A:18-5.2. The words "by the inmate" have been deleted from existing subsection (c), reclassified as (d), because the intent of the rule is to require prepayment rather than stipulating by whom.

N.J.A.C. 10A:18-4.4 has been deleted to comply with the proposed amendments at N.J.A.C. 10A:18-4.2 that stipulate publications shall be permitted from the publisher or source of sale only.

To help ensure proper inmate notification, language has been added to N.J.A.C. 10A:18-5.2(a) to require the promulgation of correctional facility internal management procedures regarding the limitations on packages. Since all packages must now be received from source of sale only, the unnecessary statement "received from source of sale" has been deleted from subsection (d). N.J.A.C. 10A:18-5.3(a) has been amended to include an exception for those packages that shall be returned to the sender unopened. Subsection (c) has been amended for purposes of clarification.

Social Impact

The proposed amendments and repeal to limit inmate-to-inmate correspondence, the source of publications and permissible items for inmate receipt in packages are necessary for security purposes.

The limitations set forth in these amendments should help reduce instances of contraband being concealed and introduced into correctional facilities while allowing inmates to receive certain beneficial items. The Department of Corrections is aware that whenever privileges are limited there will be opposition. However, the interest of the Department is to provide an environment for incarcerated persons which encourages rehabilitation while ensuring the safe, secure and orderly operation of correctional facilities. The privilege of permitting inmates to receive packages from any source has been problematic and costly to the Department and the State because there have been many instances of contraband being concealed in packages. Therefore, the Department believes it is in the best interest of the State to implement the proposed limitations on the source from which publications and packages can be received.

Economic Impact

The proposed amendments and repeal should not result in any increased economic impact because additional funding will not be necessary to implement or maintain the proposed amendments. The Department of Corrections believes that the proposed amendments will have a positive economic impact because the ability to deter the introduction of contraband into correctional facilities reduces the possibility for destructive behavior associated with contraband items. Such behavior can result in injury to persons and destruction or damage to property where State funds must then be utilized.

Federal Standards Statement

A Federal standards analysis is not required for the proposed amendments and repeal because the rulemaking requirements of the Department of Corrections are governed by N.J.S.A. 30:1B-6 and 30:1B-10. The proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The adoption of the amendments and repeal proposed will cause neither the generation nor the loss of any jobs.

Agriculture Industry Impact

The adoption of the amendments and repeal proposed will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments and repeal do not impose reporting, recordkeeping or other