

CHAPTER 10
INTERJURISDICTIONAL AGREEMENTS
AND STATUTES

Authority

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

Source and Effective Date

R.1998 d.135, effective March 16, 1998.
See: 30 N.J.R. 5(a), 30 N.J.R. 1039(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 10, Interjurisdictional Agreements and Statutes, expires on September 12, 2003. See: 35 N.J.R. 1639(a).

Chapter Historical Note

Chapter 10, Inter-Jurisdictional Agreements and Statutes, was adopted as Subchapter 6, International Transfer, by R.1987 d.331, effective August 17, 1987. See: 19 N.J.R. 916(a), 19 N.J.R. 1650(c). Subchapter 3, Interstate Corrections Compact, was adopted as R.1991 d.586, effective December 16, 1991. See: 23 N.J.R. 2221(a), 23 N.J.R. 3756(b).

Pursuant to Executive Order No. 66(1978), Chapter 10, Inter-Jurisdictional Agreements and Statutes, was readopted as R.1992 d.310, effective July 9, 1992. See: 24 N.J.R. 1939(a), 24 N.J.R. 2731(b). Pursuant to Executive Order No. 66(1978), Chapter 10, Inter-Jurisdictional Agreements and Statutes, expired on July 9, 1997.

Chapter 10, Interjurisdictional Agreements and Statutes, was adopted as new rules by R.1998 d.135, effective March 16, 1998. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

10A:10-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish requirements for the interstate transfer of an inmate(s) for confinement in a correctional facility(ies);
2. Establish requirements for the international transfer of an inmate(s) who is a citizen of a foreign country to the country of citizenship; and
3. Establish requirements for the interstate transfer of an inmate for the purpose of disposing of charges filed against the inmate in an out-of-State jurisdiction.

Amended by R.2002 d.66, effective March 4, 2002.
See: 33 N.J.R. 3860(a), 34 N.J.R. 1030(a).
In (a), added 3.

10A:10-1.2 Scope

(a) Unless otherwise stated, N.J.A.C. 10A:10-1 and 3 shall be applicable to the New Jersey Department of Cor-

rections and State sentenced inmates transferred or being considered for a transfer.

(b) Unless otherwise stated, N.J.A.C. 10A:10-1 and 3 shall be applicable to inmates from contracting states who are transferred outside their state of conviction to the New Jersey Department of Corrections.

(c) Unless otherwise stated, N.J.A.C. 10A:10-1 and 4 shall be applicable to an inmate against whom a detainer has been filed by an out-of-State jurisdiction.

(d) Unless otherwise stated, N.J.A.C. 10A:10-1 and 6 shall be applicable to inmates having foreign citizenship who are transferred to their countries of citizenship pursuant to the treaty that exists between the United States and the foreign country.

Amended by R.2002 d.66, effective March 4, 2002. See: 33 N.J.R. 3860(a), 34 N.J.R. 1030(a).

Inserted new (c) and recodified former (c) as (d).

10A:10-1.3 Forms

(a) The following forms related to the Interstate Corrections Compact shall be reproduced by each correctional facility from originals that are available by contacting the Administrative Rules Unit:

- 1. 822-I Inmate Request for Transfer Under Interstate Corrections Compact;
- 2. 822-IIA Agreement of Waiver—Regarding Transfer of Custody;
- 3. 822-IIB Agreement of Waiver—Regarding Interstate Transfer;
- 4. 822-III Notice of Intent to Seek Non-Consensual Interstate Transfer;
- 5. 822-IV Notice of Decision Regarding Interstate Transfer;
- 6. 822-V Receipt for Inmate as an Interstate Transferee; and
- 7. 822-VI Notice of Emergency Transfer.

(b) The following forms relate to the Interstate Agreement on Detainers. Forms necessary for use by the correctional facility shall be available by contacting the Office of Interstate Services, New Jersey Department of Corrections:

- 1. Form 867-I Notice of Untried Indictment, Information or Complaint and of Right to Request Disposition;
- 2. Form 867-II Inmate’s Notice of Place of Imprisonment and Request for Disposition of Indictments, Informations or Complaints;
- 3. Form 867-III Certificate of Inmate Status;
- 4. Form 867-IV Offer to Deliver Temporary Custody;
- 5. Form 867-V Request for Temporary Custody;

6. Form 867-VI Evidence of Agent’s Authority to Act for Receiving State;

7. Form 867-VII Prosecutor’s Acceptance of Temporary Custody Offered in Connection with a Prisoner’s Request for Disposition of a Detainer;

8. Form 867-VIII Prosecutor’s Acceptance of Temporary Custody Offered in Connection with Another Prosecutor’s Request for Disposition of a Detainer; and

9. Form 867-IX Prosecutor’s Report on Disposition of Charges.

(c) The following forms related to International Transfer are available by contacting the Office of Interstate Services, New Jersey Department of Corrections:

- 1. Form I—Transfer Inquiry;
- 2. Form II—Inmate Information Provided to Treaty Nation; and
- 3. Form III—Notice Regarding International Prisoner Transfer.

Amended by R.2002 d.66, effective March 4, 2002. See: 33 N.J.R. 3860(a), 34 N.J.R. 1030(a).

Added a new (b) and recodified former (b) as (c). Administrative change. See: 35 N.J.R. 1137(a).

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. INTERSTATE CORRECTIONS COMPACT

10A:10-3.1 Statutory authority

(a) N.J.S.A. 30:7C-1 et seq. established the Interstate Corrections Compact which provides that the State of New Jersey may enter into a contract with any other signatory state of the United States whereby prisoners from contracting states may be transferred between such states and confined in correctional facilities outside the state of conviction on a reciprocal basis or as otherwise provided for by the contract or a rider.

(b) The Commissioner, New Jersey Department of Corrections, is the designated Administrator of the Interstate Corrections Compact. The Commissioner is authorized to designate a Deputy Compact Administrator who shall have full authority to act for the Interstate Compact Administrator in all matters pertaining to the Interstate Corrections Compact.

10A:10-3.2 Definitions

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

“Legal rights” means State or Federal constitutional rights.

“Receiving state” means a state compact member of the Interstate Corrections Compact receiving an inmate transferred from a sending state.

“Sending state” means a state compact member of the Interstate Corrections Compact which is transferring an inmate committed and convicted within the sending state’s jurisdiction to another state who is a compact member.

“State” (upper case “S”) means the State of New Jersey; “state” (lower case “s”) means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

“State compact member” means any state having membership in the Interstate Corrections Compact.

10A:10-3.3 Applicability of compact

(a) The Interstate Corrections Compact is applicable to inmates under the jurisdiction of the New Jersey Depart-

ment of Corrections, except those inmates sentenced under N.J.S.A. 2A:164-3 or 2C:47-1 et seq.

(b) The New Jersey Department of Corrections shall accept only adult state sentenced inmates from contracting states.

10A:10-3.4 Eligibility criteria for interstate transfer consideration

(a) Inmates considered for interstate transfer must be sentenced for a term of imprisonment such that the earliest parole or release dates are not less than one and a half years from the date of application for transfer. Exceptions to this rule shall be made on a case-by-case basis and may include:

1. Inmates in protective custody;
2. Inmates considered to be security risks;
3. Inmates who require special treatment; and/or
4. Consensual transfers.

(b) Inmates with detainers for open charges shall not be considered for interstate transfer.

(c) The types of inmates who may be considered for interstate transfers under the Interstate Corrections Compact are inmates:

1. Who are bona fide residents of the prospective receiving state to which transfer is desired;

2. Whose behavior constitutes a threat to the safety, security or orderly operation of any New Jersey correctional facility;

3. Whose continued presence in any New Jersey correctional facility poses a threat to themselves;

4. Who can demonstrate a substantial and bona fide reason for being transferred to another state; or

5. Who are residents of New Jersey and meet the classification and custody criteria of out-of-State correctional facilities where bed space is offered for lease or per diem costs by a state which is a state compact member of the Interstate Corrections Compact. Interstate transfer of inmates of this type shall be considered:

i. When an order is issued by the Commissioner, New Jersey Department of Corrections;

ii. In response to a correctional facility emergency, such as, but not limited to, overcrowding or a catastrophic occurrence; and/or

iii. In accordance with a court order.

10A:10-3.5 Riders to contracts

(a) The three types of riders which may be affixed to authorized contracts between the New Jersey Department of Corrections and another state compact member are as follows:

1. A rider to extend the duration of the contract;

2. A rider to set forth the particulars of individual transferring arrangements or special care and custody; and

3. A rider mutually agreeing to a change or amendment to the original contractual terms.

(b) Riders shall be ratified by the signatures of the Commissioner and/or Deputy Compact Administrator and the appropriate counterpart in the other state compact member.

(c) Year-to-year riders may be utilized to extend the original contract.

(d) A rider setting forth the particulars of an inmate's transfer shall contain information regarding:

1. The inmate's identification;

2. The inmate's sentence;

3. Any specialized housing or programming;

4. Paroling arrangements; and

5. The method of exchange agreed upon in the inmate's case, such as:

i. Time bank;

ii. Money;

iii. Inmate for inmate; or

iv. Any other method of exchange agreed upon.

(e) A rider shall remain in full force as long as the inmate is in the custody of the receiving state or until either state compact member desires to make a major change or amendment to the original conditions of the contract or rider(s).

10A:10-3.6 Reasons for interstate transfer

(a) Inmate interstate transfer may be considered, arranged and implemented either at the request of an inmate (consensual), or at the request of the Superintendent (non-consensual) or upon order of the Commissioner for any of the following reasons:

1. To confine an inmate in the home state when that state is other than the one in which the inmate was convicted;

2. To place an inmate in another state where special facilities exist for treating:

i. Drug abuse;

ii. Alcohol abuse;

iii. Diagnosed mental/emotional illnesses; or

iv. Medical conditions and/or specialized medical treatment.

3. To adjust prison populations via order of the Commissioner to avoid overcrowding and/or county jail backlog;

4. To provide temporary housing arrangements for inmates at times of crisis;

5. To comply with a court order;

6. To provide for the care and custody of security risk inmates;

7. To provide protective custody; or

8. At the discretion of the Commissioner.

10A:10-3.7 Processing consensual interstate transfers

(a) An inmate desiring an interstate transfer shall make such request initially to the Institutional Classification Committee (I.C.C.) on Form 822-I Inmate Request for Transfer Under Interstate Corrections Compact.

(b) The inmate's request shall be reviewed by the I.C.C. within one month of receipt of request to verify the information provided on the request.

(c) If all information provided on Form 822-I is verified and the reason for the requested transfer falls within the

reasons enumerated in N.J.A.C. 10A:10- 3.6, the I.C.C. shall submit the complete classification summary and the I.C.C.'s recommendation within three months of the inmate's initial request to the Superintendent for review and approval or disapproval (see N.J.A.C. 10A:10-3.8).

(d) If the inmate's request is approved by the Superintendent, the Superintendent or designee shall forward to the appropriate Assistant Commissioner a complete set of documents along with the application and a cover letter which shall explicitly state the reason(s) the Superintendent is supporting the requested transfer.

(e) If the appropriate Assistant Commissioner approves the inmate's request, all documents shall then be forwarded to the Deputy Compact Administrator who shall determine whether the application and proposed transfer complies with the terms of the Interstate Corrections Compact, N.J.S.A. 30:7C-1 and this subchapter.

(f) Subsequent to an affirmative determination, the Deputy Compact Administrator shall seek acceptance of the inmate by a receiving state.

(g) The inmate requesting transfer shall be notified in writing by the Superintendent or designee of the decision of the New Jersey Department of Corrections regarding the inmate's request and the reason(s) if the request is rejected.

(h) If a subsequent acceptance or rejection is received, the Deputy Compact Administrator shall notify the Superintendent who, in turn, shall notify the inmate of the Deputy Compact Administrator's decision regarding the inmate's request for an interstate transfer.

(i) If another state compact member is agreeable to the desired transfer, the following steps shall be taken:

1. The existence of a current contract with the state or agency where the transfer is being contemplated must be verified;
2. A contract may either be initiated or renewed if there is no current contract with the state or agency where the contract is contemplated;
3. If necessary, a rider to the current contract may be completed and ratified;
4. Assistance shall be provided by the correctional facility, if the inmate requires assistance in understanding the terms and conditions of the transfer;
5. The appropriate Form (either 822-IIA or 822-IIB) shall be completed, signed and then authorized by the Deputy Compact Administrator of the Interstate Corrections Compact;
6. Contracts and amendments and renewals to contracts that are approved must be in writing and executed by both the sending and receiving states;

7. When the transfer is approved, authorized escort officers, carrying appropriate credentials identifying themselves and the inmate, shall transport the inmate to the receiving state;

8. Form 822-IIA or Form 822-IIB Agreement of Waiver and any materials not previously transferred to the receiving state, shall accompany the transportation officers and the inmate to the receiving state; and

9. A receipt for the inmate, Form 822-V Receipt for Inmate as an Interstate Transferee, shall be obtained from the receiving state and copies of the receipt shall be forwarded to the New Jersey Deputy Compact Administrator and to the Superintendent of the sending correctional facility.

10A:10-3.8 Classification summary

(a) Pursuant to the requirements of N.J.A.C. 10A:10-3.7, the Classification Department Supervisor or designee of the correctional facility where the inmate is housed shall prepare a classification summary to be forwarded to the Superintendent which contains current information concerning the inmate in the areas of:

1. Particular needs;
2. Age;
3. Family status;
4. Social contacts with family and friends;
5. The objective classifications score;
6. Correctional facility adjustment;
7. Educational needs and history;
8. Vocational needs and history;
9. Treatment program needs and history;
10. Military history;
11. The judgment of conviction;
12. The nature and circumstances of the present offense;
13. Parole eligibility information and current time calculation;
14. Prior convictions record;
15. Records from previous confinements regarding adjustment;
16. Detainers on file or pending disposition(s);
17. Drug dependency or involvement;
18. Sexual offenses;
19. Escape history;
20. Current psychological and psychiatric reports;
21. Keep separate status;

- 22. A photograph;
- 23. Fingerprints;
- 24. Medical history and recommendations which shall include:
 - i. A report on the results of a general physical examination; and
 - ii. Known medical problems of the inmate within three months prior to the review of the inmate's request for interstate transfer; and
- 25. Any other factor(s) pertinent to the inmate's case.

(b) The classification summary may then be forwarded to a state contemplating approval of the inmate's request to be transferred to that state.

10A:10-3.9 Written notice of nonconsensual transfers

(a) Prior to out-of-State transfer, the inmate shall receive written notice on Form 822-III, Notice of Intent to Seek Non-Consensual Interstate Transfer, informing the inmate that he or she has been referred for out-of-State transfer and that a hearing is scheduled before a Hearing Officer, New Jersey Department of Corrections.

(b) The notice shall be personally served upon the inmate at least 48 hours prior to the scheduled hearing and shall contain a summary of information which will be considered by the Hearing Officer.

(c) Confidential materials may be withheld from the inmate, but the information shall be made part of a confidential correctional facility record for the out-of-State transfer proceedings.

(d) The inmate shall also be given a copy of this subchapter along with Form 822-III.

10A:10-3.10 Investigation of nonconsensual transfers other than emergency transfer prompted by order of the Commissioner

(a) At least 24 hours before the scheduled hearing, an investigator assigned by the Superintendent shall visit the inmate to obtain the names of prospective witnesses.

(b) The investigator shall obtain written statements from the named witnesses and such statements shall be included in the Hearing Officer's final record of the proceedings.

(c) The Hearing Officer may exercise discretion to limit the number of written statements obtained to avoid the collection of evidence which is merely repetitive or is not necessary for an adequate understanding of the case.

(d) When the Hearing Officer determines that the inmate is either illiterate or cannot adequately collect and present evidence on the inmate's own behalf, the inmate may choose an inmate to provide assistance. Such choice may be made

from a list of available inmate paralegals who are authorized by the Superintendent to assist inmates with legal services.

10A:10-3.11 Hearing on nonconsensual transfers

(a) A hearing shall be conducted and the inmate may appear in-person or the hearing may be arranged and provided through video teleconferencing (VTC), unless the inmate refuses to appear without the use of force, or where the Hearing Officer determines that the hearing cannot be held at the inmate's cell because of the inmate's disruptive behavior.

(b) The Hearing Officer shall review the correctional facility reports, witnesses' statements and other material(s) offered as relevant and necessary for a proper understanding of the circumstances upon which the recommendation for out-of-State transfer is based.

(c) Witnesses' statements shall be read to the inmate, unless disclosure would subject the witnesses or other persons to threat of harm and/or the statements or reports are marked confidential. Where the Hearing Officer determines that clarification is desirable, the Hearing Officer may call the witnesses to appear in-person or through VTC.

(d) The inmate shall be permitted to speak on his or her own behalf and offer evidence to contest the referral for out-of-State transfer, or to provide the Hearing Officer with reasons for rejecting said recommendation.

(e) The Hearing Officer shall not grant a postponement of a hearing unless there are exceptional circumstances, such as, sudden serious illness, security problems or a lockdown.

10A:10-3.12 Decision on nonconsensual transfers

(a) The inmate shall be provided with the Hearing Officer's decision in writing on Form 822-IV Notice of Decision Regarding Interstate Transfer within 15 working days after the hearing, due to the time and distance considerations involved in interstate information exchange.

(b) The decision shall summarize the information relied upon and, if approved, the reason for the out-of-State transfer.

(c) Confidential information shall be strictly safeguarded and appropriately marked for the inmate's classification file.

(d) In instances when the Hearing Officer approves the nonconsensual transfer, a copy of the Hearing Officer's decision and appropriate classification data shall be forwarded to the Office of Interstate Services, Department of Corrections.

10A:10-3.13 Interstate transfer by order of the Commissioner

(a) Upon issuance of an order by the Commissioner, New Jersey Department of Corrections, Form 822-VI Notice of Emergency Transfer shall be served upon the selected inmate(s) meeting the classification and custody criteria of contracting states offering bed space for lease and/or per diem cost reimbursement. When feasible, Form 822-VI shall be served on the inmate 24 hours prior to the intended transfer, and the notice shall include:

1. The conditions upon which the order by the Commissioner was predicated;
2. The name of the state and the correctional facility to which the inmate shall be transferred;
3. The address of the correctional facility;
4. The security designation of the correctional facility;
5. The custody level of the inmate;
6. The date of transfer;
7. The listing of personal property which may be transferred to the receiving correctional facility;
8. The arrangement(s) for personal property which cannot be transferred to the receiving correctional facility; and
9. Any additional pertinent information.

(b) In emergency situations when time does not permit Form 822-VI Notice of Emergency Transfer to be served upon the inmate 24 hours prior to transfer, Form 822-VI shall be served upon the inmate within 30 days of the transfer.

10A:10-3.14 Review of requests from other state compact members for transfer of inmates to New Jersey

(a) Any request from another state or jurisdiction for incarceration of out-of-state inmates in New Jersey shall be forwarded to the Deputy Compact Administrator.

(b) The Deputy Compact Administrator shall ensure that the request contains minimally the information outlined in N.J.A.C. 10A:10-3.8.

(c) The request shall then be forwarded to the appropriate Assistant Commissioner for approval or disapproval.

(d) Upon receipt of the determination of the appropriate Assistant Commissioner, the Deputy Compact Administrator shall determine whether the application and transfer comply with the Interstate Corrections Compact and this subchapter. The requesting state shall then be notified of the decision by the Deputy Compact Administrator.

10A:10-3.15 Receiving state acting as agent for sending state

(a) Whenever the duly constituted authorities in a state compact member have entered into a contract with another state compact member and decide that confinement in, or transfer of an inmate to, a correctional facility within the territory of another state compact member is necessary or desirable, said officials may direct the confinement be within a correctional facility within the territory of that state compact member. The receiving state shall act as agent for the sending state.

(b) Inmates confined in a correctional facility pursuant to the terms of the Interstate Corrections Compact shall be, at all times, subject to the legal jurisdiction of the sending state and may, at any time, be removed therefrom for any of the following reasons:

1. Transfer to a prison or other correctional facility within the sending state;
2. Transfer to another correctional facility in a third party compact state in which the sending state may have a contractual or other right to confine inmates;
3. Release on probation or parole;
4. Discharge; or
5. Any other purposes permitted by the Interstate Corrections Compact or this subchapter, provided that the sending state continues to be obligated to such reimbursements as may be required pursuant to the terms of any contract.

(c) Each receiving state shall provide to the sending state regular reports on the inmate(s) that the sending state has in correctional facilities of the receiving state pursuant to the Interstate Corrections Compact.

(d) The regular report shall include a conduct and work record of each inmate and shall be certified to the official designated by the sending state, in order that:

1. Each inmate's record may be reviewed by the designated official in determining and altering the disposition of said sending state; and
2. The report may be a source of information for the sending state.

(e) Any decision of the sending state pertaining to the administration of the terms of the inmate's sentence for which the sending state retains jurisdiction pursuant to the Interstate Corrections Compact shall be conclusive upon and not reviewable within the receiving state.

(f) If, however, at the time the sending state seeks to remove an inmate from a correctional facility in the receiving state and there is a pending criminal charge(s) against the inmate within such state or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment or detention for such offense.

10A:10-3.16 Administration of conditions of confinement, hearings and administrative proceedings to which inmates are entitled

(a) All inmates who may be confined to a correctional facility pursuant to the provisions of the Interstate Corrections Compact shall be treated in a reasonable and humane manner and shall be treated equally to similarly situated inmates under the jurisdiction of the receiving state with regard to:

1. The terms and conditions of confinement;
2. Custody status;
3. Program eligibility and participation (with the exception that provisions may be made for the approval of the sending state to certain program assignments, such as work release);
4. Medical services; and
5. Psychiatric services.

(b) The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate correctional facility of the sending state.

(c) An inmate confined pursuant to the Interstate Corrections Compact may be entitled to any hearing(s) in accordance with the statutes of the sending state. The hearing(s) may be conducted by the appropriate authorities of the sending state or by appropriate authorities of the receiving state who are acting as agents of the sending state.

(d) The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state.

(e) In the event such hearing or hearings are held before officials of the receiving state, the governing statute providing for the hearing is that of the sending state. The nature and character of the hearing process is governed by the regulations and procedures administering such hearings in the receiving state.

(f) Inmates in the receiving state, pursuant to the Interstate Corrections Compact, shall be subject to the receiving state's rules and regulations governing discipline and disciplinary sanctions except that any sanction providing for the loss of commutation credits shall not affect the terms and conditions of the sending state's sentence in excess of the amount provided for by the laws and regulations governing disciplinary sanctions in the sending state.

(g) The record of the hearing or hearings, as requested by the sending state, will be made. Said record, together with any recommendations of the receiving state's hearing official(s), shall be transmitted forthwith to the sending state's official(s) before whom the hearing would have been

held if it had taken place in the sending state. A final determination shall be made by the sending state.

(h) In any and all proceedings conducted pursuant to the provisions of this subchapter, the officials of the receiving state act solely as agents of the sending state and no final determination shall be made in any matter pertaining to the administration of the imposed sentence except by the appropriate officials of the sending state.

10A:10-3.17 Release/return of transferred inmate

(a) Except as established in (b) below, a transferred inmate from New Jersey shall be returned to New Jersey for a court appearance in which the inmate is named as a defendant or plaintiff or when subpoenaed, and for the opportunity for a reasonable amount of consultation with counsel in connection with such court proceedings.

(b) Court appearances may be arranged and provided through video teleconferencing (VTC) when equipment is available and operational and when the court is amenable to the use of VTC.

(c) Any inmate confined pursuant to the Interstate Corrections Compact shall be released within the sending state, unless the inmate and the sending and receiving states agree that the inmate will be paroled to a party who will provide supervision for the parolee under the Adult Compact for the Supervision of Parolees and Probationers.

(d) An inmate may be returned to the sending state at the request of the receiving state due to behavior which poses a threat to the safe, secure, and orderly operation of the correctional facility in the receiving state. In such cases where the inmate is not charged with a prohibited act by the receiving state due to the expedited nature of the inmate's return, the sending state may charge the inmate based on such written reports and/or affidavits as are forwarded by the receiving state.

(e) A disciplinary report shall be prepared by the Office of Interstate Services as soon as possible after the return, but in any case, within no more than five business days of the inmate's return.

(f) All disciplinary procedures as stated in N.J.A.C. 10A:4 shall be followed with the exception that appeals shall be forwarded to the Office of the appropriate Assistant Commissioner, New Jersey Department of Corrections.

10A:10-3.18 Rights of parents or guardians

The parents, guardian, trustee or other person or persons entitled under the statutes of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in exercising any power with respect to any inmate confined pursuant to the terms of the Interstate Corrections Compact.

10A:10-3.19 Escapees and transportation

(a) An inmate who escapes from a correctional facility in which the inmate is confined pursuant to the Interstate Corrections Compact shall be deemed a fugitive from the sending state and from the state in which the correctional facility is located.

(b) In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for initiating extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

(c) Authorized transportation officers of the sending state shall be permitted to transport inmates pursuant to the Interstate Corrections Compact through any and all United States territories or states without interference.

SUBCHAPTER 4. AGREEMENT ON DETAINERS**Authority**

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

Source and Effective Date

R.2002 d.66, effective March 4, 2002.

See: 33 N.J.R. 3860(a), 34 N.J.R. 1030(a), 34 N.J.R. 1431(a).

10A:10-4.1 Statutory authority

(a) N.J.S.A. 2A:159A-1 et seq. sets forth the Interstate Agreement on Detainers (IAD). The Interstate Agreement on Detainers is intended to:

1. Encourage the orderly, expeditious disposition of an untried indictment, information or complaint, which has been lodged against a prisoner by any other state that is a party to the Agreement; and
2. Provide cooperative procedures for securing the transfer of an inmate to or from a receiving state.

(b) The Commissioner, New Jersey Department of Corrections, is the designated Agreement Administrator for the Interstate Agreement on Detainers. The Commissioner may delegate the responsibility and authority to administer the IAD to a Deputy Agreement Administrator.

10A:10-4.2 Definitions

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

“Detainer” means a notification filed with the correctional facility in which the prisoner is serving a sentence, advising that he or she is wanted to face a pending criminal charge in another jurisdiction. The detainer must be based upon an untried indictment, information or complaint, and must charge the individual with commission of a criminal offense. “Detainer” shall not include a charge for probation or parole violation, any matter related to the Immigration and Naturalization Service, or any warrant to return an inmate to another jurisdiction solely for sentencing purposes.

“IAD” means the Interstate Agreement on Detainers.

“Receiving state” is the state in which the untried criminal charge(s) is pending. The receiving state may be the United States of America, the District of Columbia, or any State or territory that has codified the Agreement on Detainers Act into its statutes.

“Sending state” is the state in which the inmate is incarcerated at the time either the inmate initiates a request for final disposition of a detainer filed by a receiving state or the request for custody of the inmate is initiated by the prosecuting authority in the receiving state. All references to “sending state” in this subchapter shall mean the State of New Jersey.

10A:10-4.3 Eligibility criteria for the Interstate Agreement on Detainers

(a) The Interstate Agreement on Detainers may be utilized by an inmate in the sending state, or a prosecuting authority in a receiving state, provided the following criteria has been established:

1. A detainer from the receiving state has been filed with the correctional facility in which the inmate is incarcerated;
2. The inmate against whom the detainer has been filed is serving a term of imprisonment for a criminal conviction;
3. The inmate against whom the detainer has been filed is not adjudged to be mentally ill; and
4. The detainer is based on an untried indictment, information or complaint that charges the inmate with the commission of a criminal offense.

10A:10-4.4 Receipt of detainer

(a) The following action shall be taken by the correctional facility upon receipt of a detainer filed by a receiving state:

1. The Administrator or designee shall advise the inmate of the right to dispose of the detainer(s) under the IAD, and shall ensure that an original and two copies of Form I Notice of Untried Indictment, Information or Complaint and of Right to Request Disposition, are provided to the inmate. A separate Form I shall be completed for each receiving state that has filed a detainer against the inmate;

2. The inmate shall sign Form I and indicate whether he or she wishes to dispose of the charge(s); and

3. The classification officer shall ensure that Form I is copied and distributed in accordance with the instructions printed on the form.

10A:10-4.5 Inmate request for transfer

(a) In accordance with the provisions of the IAD, an inmate may request disposition of a detainer which has been lodged against the inmate by a receiving state.

(b) The following action shall be taken if the inmate indicates a desire to dispose of the detainer(s):

1. The inmate shall complete Form II Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Informations and Complaints;

2. Staff designated by the Administrator shall complete Form III Certificate of Inmate Status and Form IV Offer to Deliver Temporary Custody; and

3. The classification officer shall ensure that Forms II, III and IV are copied, distributed and promptly transmitted in accordance with the instructions printed on the form and as follows:

i. Form II shall be sent to the receiving state's prosecuting official and the clerk of the court having jurisdiction over the matter by registered or certified mail, return receipt requested; and

ii. Form III shall be sent to any other prosecutor in the receiving state who has lodged a detainer against the inmate.

4. The classification officer and the receiving state's prosecuting authority shall determine a date and time for transfer of the inmate to the receiving state; and

5. The classification officer shall ensure that completed Forms VI Evidence of Agent's Authority to Act for Receiving State and Form VII Prosecutor's Acceptance of Temporary Custody offered in Connection with a Prisoner's Request for Disposition of a Detainer, have been obtained from the receiving state's prosecuting authority prior to the transfer of the inmate to the receiving state.

(c) Upon the return of the inmate to a New Jersey Department of Corrections' facility, the appropriate classification officer shall ensure that a completed Form IX Prosecutor's Report on Disposition of Charges is received from the prosecuting authority in the receiving state.

10A:10-4.6 Request for temporary custody of an inmate

(a) In accordance with the provisions of the IAD, a prosecuting authority in a receiving state may request temporary custody of a New Jersey State prison inmate for the purpose of bringing the inmate to trial.

(b) The request for temporary custody shall be initiated when the prosecuting authority in the receiving state serves a completed Form V Request for Temporary Custody on the Administrator of the facility in which the inmate is confined.

(c) If the inmate's parole date is imminent at the time Form V is received by the Administrator, the classification officer shall contact the prosecutor who filed Form V and request that transfer of the inmate be postponed and/or that the prosecutor proceed under other authority, for example, the Uniform Criminal Extradition Act, to obtain custody of the inmate. A parole date is imminent if, at the time Form V is received by the Administrator, there is insufficient time to reasonably complete the trial prior to the inmate's parole date.

(d) If the prosecutor does not withdraw the request to obtain temporary custody of the inmate under the IAD on the basis of an imminent parole date, the classification officer shall:

1. Ensure that certified copies of the inmate's fingerprint card, photograph and physical description, and complaint and arrest warrant related to the detainer(s), are received from the prosecutor;

2. Ensure that the inmate has received a copy of Form V;

3. Provide a copy of Form V to the Office of the Governor;

4. Provide a copy of Form III to the prosecutor who initiated the request for temporary custody; and

5. Provide a copy of Form III to any other prosecuting authority in the receiving state that has lodged a detainer against the inmate.

(e) Prior to the transfer of an inmate to a receiving state in accordance with this section:

1. A period of 30 days must elapse after receipt of Form V by the Administrator, during which the inmate may object to the receiving state's request for temporary custody;

i. An objection from the inmate shall be in writing; and

ii. An objection from the inmate shall be submitted to the Governor through the classification officer; and

2. The inmate shall receive a pre-transfer hearing before a court of competent jurisdiction in this State, which shall provide the inmate with an opportunity to challenge the receiving state's request for temporary custody of the inmate.

(f) Upon expiration of the 30 day time period under (c)1 above, the classification officer shall complete, distribute

and promptly transmit Form IV in accordance with the printed instructions on the form, provided:

1. The Governor has not objected to the transfer; and
2. Temporary custody to the receiving state has been granted by the court as a result of the pre-transfer hearing.

(g) The Administrator or designee shall ensure that Form VI is obtained from the appropriate authorities in the receiving state prior to the transfer of the inmate to the receiving state.

(h) Upon the return of the inmate to a New Jersey Department of Corrections' facility, the appropriate classification officer shall ensure that a completed Form IX Prosecutor's Report on Disposition of Charges is received from the prosecuting authority in the receiving state.

10A:10-4.7 Time for trial

(a) The provisions of the IAD require that trials be conducted in the receiving state in accordance with the following:

1. An inmate who has requested transfer to the receiving state to dispose of a detainer(s) shall be brought to trial within 180 days of the receipt of Form II by the prosecuting authority, unless an extension of time has been granted by the court having jurisdiction over the pending charges, for good cause shown.
2. A prosecuting authority that has requested and received temporary custody of an inmate shall bring the inmate to trial on the charge(s) within 120 days of the inmate's arrival in the receiving state, unless an extension of time has been granted by the court having jurisdiction over the pending charges, for good cause shown.

(b) The provisions of the IAD require that all detainees that have been lodged against an inmate by a receiving state shall be disposed of prior to the return of the inmate to the sending state.

10A:10-4.8 Service of sentence

An inmate's New Jersey State prison sentence continues to be served during the time he or she is in the temporary custody of a receiving state pursuant to the IAD. Any good time earned by the inmate shall be in accordance with the laws of the State of New Jersey.

10A:10-4.9 Failure to comply with the terms of the IAD

If the receiving state does not resolve the detainer(s) which it has filed against the inmate within the time periods set forth in the IAD, and no continuance has been granted by the court, the detainer(s) shall not operate to bar the inmate from obtaining reduced custody status upon the inmate's return to a New Jersey Department of Corrections' facility. See N.J.A.C. 10A:9-4.6.

10A:10-4.10 Escape from custody

(a) An inmate's escape from custody subsequent to his or her execution of a Form II in accordance with N.J.A.C. 10A:10-4.5(b) shall void the request for disposition of the detainer.

(b) Upon return to custody, an inmate who wishes to dispose of a detainer in accordance with N.J.A.C. 10A:10-4.5 shall execute a new Form II.

10A:10-4.11 Written procedures

The Administrator or designee of each correctional facility shall develop internal management procedures consistent with this subchapter and shall review these procedures on an annual basis to ensure continued compliance with the IAD.

SUBCHAPTER 5. (RESERVED)

SUBCHAPTER 6. INTERNATIONAL TRANSFER

10A:10-6.1 Definitions

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

"Assurance" means a special condition concerning the confinement and/or release of an offender which must be met prior to the release of the offender.

"Offender" means a person convicted of a criminal offense pursuant to the laws of New Jersey.

"Receiving state" means the jurisdiction to which the offender is to be transferred.

"Sending state" means the jurisdiction from which the offender is to be transferred.

10A:10-6.2 Commissioner's authority

N.J.S.A. 30:7D-1 authorizes the Commissioner, Department of Corrections, to transfer offenders having foreign citizenship status to countries of citizenship, provided that a treaty exists between the United States and the foreign country.

10A:10-6.3 Eligibility criteria for international transfer

(a) Offenders must meet all of the following criteria before they may be considered for an international transfer:

1. The offender must be a citizen of the receiving state;

2. The offender must consent to transfer to the receiving state;

3. The offense of the offender must constitute a criminal offense under the laws of the receiving state;

4. The offender shall not have, at the time of the application, less than 12 months remaining on the sentence;

5. The offender shall not be under a sentence of death;

6. The offender shall not have collateral attacks or appeals on the sentence and/or conviction pending;

7. All other provisions of the imposed sentence such as fines, restitution and penalties shall be paid in full;

8. The offender shall not have detainers, wanted notices based on criminal convictions, indictments, informations, complaints and/or parole or probation violation allegations pending; and

9. The offender must meet all of the eligibility requirements of the treaty with the receiving state.

(b) The offender may be excluded from international transfer should the Immigration and Naturalization Service (INS) have an interest regarding the deportation proceedings.

(c) Offenders who have previously applied for international transfer and were not approved shall not be permitted to reapply for a period of two years from the date of disapproval.

1. The two-year period of time shall not preclude an inmate from submitting another application for international transfer if there is a substantial change in the material submitted with the prior application pursuant to N.J.A.C. 10A:10-6.4 and 6.6.

i. The Office of Interstate Services shall determine whether a substantial change in the material exists during its review of the application for compliance with general eligibility criteria.

Amended by R.1988 d.29, effective January 19, 1988.

See: 19 N.J.R. 1620(a), 20 N.J.R. 194(c).

Amended by R.1992 d.310, effective August 3, 1992.

See: 24 N.J.R. 1939(a), 24 N.J.R. 2731(b).

Amended by R.2001 d.456, effective December 3, 2001.

See: 33 N.J.R. 2943(a), 33 N.J.R. 4108(a).

Added (c).

10A:10-6.4 Role of the classification officer

(a) The classification officer of each correctional facility shall be provided with the eligibility requirements of each Prisoner Transfer Treaty.

(b) The classification officer shall forward Form I—Transfer Inquiry, to all offenders identified as having national or citizenship status in a party nation.

(c) When the offender receives Form I—Transfer Inquiry, the offender shall:

1. Indicate that the offender is interested in pursuing a transfer by signing Form I and returning it to the classification officer along with proof of citizenship; or

2. Indicate that the offender is not interested in pursuing a transfer by returning Form I to the classification officer without proof of citizenship.

(d) If the offender indicates on Form I—Transfer Inquiry, that he or she is interested in pursuing a transfer, the correctional facility classification officer shall review the inmate's classification file to verify that a period of two years has elapsed from the date of any previous disapproval for international transfer prior to processing the international transfer documents for the inmate. Upon such verification, or if the inmate has not previously been disapproved for international transfer, the classification officer shall complete Form II—Inmate Information Provided to Treaty Nation and Form III—Notice Regarding International Prisoner Transfer.

(e) The following material shall be forwarded, in triplicate, by the classification officer to the Administrator of the correctional facility:

1. Form I—Transfer Inquiry;

2. Form II—Inmate Information Provided to Treaty Nation;

3. Form III—Notice Regarding International Prisoner Transfer;

4. Proof of citizenship;

5. A statement of offender's eligibility;

6. The presentence investigation report;

7. Classification materials;

8. Current psychological and medical reports;

9. A signed release of confidential information forms;

10. The criminal history sheet(s);

11. Judgments of conviction or adjudication of delinquency; and

12. Any statement of interest regarding deportation proceedings from the Immigration and Naturalization Service (INS).

Amended by R.2001 d.456, effective December 3, 2001.

See: 33 N.J.R. 2943(a), 33 N.J.R. 4108(a).

Rewrote (d); in the introductory paragraph of (e), substituted "Administrator" for "Superintendent".

10A:10-6.5 Role of the Administrator of the correctional facility

The Administrator shall sign Form III—Notice Regarding International Prisoner Transfer, and forward the application

and the material required in N.J.A.C. 10A:10-6.4(e), in triplicate, to the Office of Interstate Services, New Jersey Department of Corrections.

Amended by R.2001 d.456, effective December 3, 2001.
See: 33 N.J.R. 2943(a), 33 N.J.R. 4108(a).

Substituted "Administrator" for "Superintendent".

10A:10-6.6 Role of Office of Interstate Services

(a) The Office of Interstate Services shall:

1. Investigate the request to ensure that all eligibility requirements are met;
2. Request a records check to verify records listed in N.J.A.C. 10A:10-6.3(a)8;
3. Review application and materials for completeness and compliance with treaty terms;
4. Develop and recommend assurances, where indicated; and
5. Provide written notification of the transfer request to the:
 - i. Attorney General's Office;
 - ii. State Police;
 - iii. Prosecutor; and
 - iv. Sentencing court.
6. Receive objections or other comments on the transfer request from persons and agencies listed in (a)5 above for 30 days following notification.

(b) If the investigation of the Office of Interstate Services determines that the inmate is ineligible, or the application and materials are incomplete or do not comply with the terms of the treaty, the application shall be rejected and returned to the correctional facility in which the inmate is housed and the inmate shall be notified by the Administrator or designee.

(c) If the investigation of the Office of Interstate Services determines that the inmate is eligible, the application and materials are complete and are in compliance with the terms of the treaty, the application and materials shall be forwarded to the Commissioner, New Jersey Department of Corrections, through the appropriate Assistant Commissioner.

Amended by R.1988 d.29, effective January 19, 1988.
See: 19 N.J.R. 1620(a), 20 N.J.R. 194(c).
Amended by R.2001 d.456, effective December 3, 2001.
See: 33 N.J.R. 2943(a), 33 N.J.R. 4108(a).

In (b), substituted "investigation of the Office of Interstate Service" for "Office of Interstate Services' investigation", inserted "inmate is ineligible, or the" preceding "application and" and substituted "Administrator" for "Superintendent" preceding "or designee"; in (c), inserted "inmate is eligible, the" preceding "application and".

10A:10-6.7 Role of the Commissioner, New Jersey Department of Corrections

(a) The Commissioner, Department of Corrections, shall review the application and materials and if approved, the application and materials shall be forwarded to the Office of the Governor for authorization to transfer.

(b) Applications which are not approved by the Commissioner will be returned to the sending correctional facility and the inmate shall be notified by the Administrator or designee.

(c) An inmate may appeal a decision of the Commissioner to disapprove an application for international transfer provided one of the following criteria is met:

1. The Commissioner was presented with inaccurate information, and such information substantially affected the decision being appealed; or
2. Significant information which was not considered warrants review of the decision being appealed.

(d) A decision to disapprove an application for international transfer may be appealed to the Commissioner. The appeal shall be filed in writing within 45 calendar days of the inmate's receipt of the Commissioner's decision.

(e) The Commissioner shall consider an appeal filed pursuant to this section, and provide the inmate with a written decision within 45 calendar days of the receipt of the appeal.

Amended by R.2001 d.456, effective December 3, 2001.
See: 33 N.J.R. 2943(a), 33 N.J.R. 4108(a).

In (b), substituted "Administrator" for "Superintendent" preceding "or designee"; added (c) through (e).

10A:10-6.8 Referral to the United States Department of Justice, Office of International Affairs

(a) Upon receipt of the Governor's authorization for international transfer, the application and materials shall be forwarded to the United States Department of Justice, Office of International Affairs, by the New Jersey Department of Corrections, Office of Interstate Services.

(b) The Office of Interstate Services shall notify the inmate, the sending Administrator and the Office of the Governor of the decision on the application for international transfer.

(c) All arrangements relative to the treaty process and proposed assurances shall be negotiated between the Office of Interstate Services and the United States Department of Justice, Office of International Affairs. The Office of Interstate Services shall notify the Office of the Governor of the results of the negotiated arrangements.

Amended by R.2001 d.456, effective December 3, 2001.
See: 33 N.J.R. 2943(a), 33 N.J.R. 4108(a).

In (b), substituted "Administrator" for "Superintendent".

10A:10-6.9 Transfer of offender

(a) If the inmate is accepted for international transfer by the United States Department of Justice, Office of International Affairs, the offender shall be transported by the Department of Corrections to the Federal District Court for

purposes of a verification hearing to ensure that the offender consents to the international transfer.

(b) Jurisdiction over the offender shall thereafter be relinquished to the United States Department of Justice.