

CHAPTER 91**TRANSFER OF JUVENILES TO THE DEPARTMENT OF CORRECTIONS****Authority**

N.J.S.A. 52:17B-170, 52:17B-171, and 52:17B-175.

Source and Effective Date

R.2015 d.192, effective November 10, 2015.
See: 47 N.J.R. 1306(a), 47 N.J.R. 3055(a).

Chapter Expiration Date

Chapter 91, Transfer of Juveniles to the Department of Corrections, expires on November 10, 2022.

Chapter Historical Note

Chapter 91, Transfer of Adjudicated Delinquents to the New Jersey Department of Corrections, was adopted as emergency new rules by R.1997 d.266, effective May 29, 1997 (expired July 28, 1997). See: 29 N.J.R. 2711(a). The concurrent proposal of Chapter 91, Transfer of Adjudicated Delinquents to the New Jersey Department of Corrections, was adopted without change by R.1997 d.349, effective August 18, 1997. See: 29 N.J.R. 2711(a), 29 N.J.R. 3733(b).

Chapter 91, Transfer of Adjudicated Delinquents to the New Jersey Department of Corrections, was readopted as R.2002 d.406, effective November 19, 2002. See: 34 N.J.R. 3198(a), 34 N.J.R. 4472(a).

Chapter 91, Transfer of Adjudicated Delinquents to the New Jersey Department of Corrections, was readopted as R.2008 d.153, effective May 15, 2008. See: 40 N.J.R. 97(a), 40 N.J.R. 3747(a).

Subchapter 2, Transfer, was renamed Transfer and Requirement for Transfer Hearing; and Subchapter 3, Transfer Hearing, was adopted as new rules by R.2014 d.141, effective September 2, 2014. See: 45 N.J.R. 1941(a), 46 N.J.R. 1896(b).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 91, Transfer of Adjudicated Delinquents to the New Jersey Department of Corrections, was scheduled to expire on May 15, 2015. See: 43 N.J.R. 1203(a).

Chapter 91, Transfer of Adjudicated Delinquents to the New Jersey Department of Corrections, was readopted as R.2015 d.192, effective November 10, 2015. See: Source and Effective Date. See, also, section annotations.

Chapter 91, Transfer of Adjudicated Delinquents to the New Jersey Department of Corrections, was renamed Transfer of Juveniles to the Department of Corrections by R.2016 d.133, effective October 17, 2016. See: 48 N.J.R. 567(a), 48 N.J.R. 2162(b).

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SUBCHAPTER 1. GENERAL PROVISIONS**13:91-1.1 Purpose**

This chapter sets forth the rules for the transfer of juveniles from the care and custody of the Commission to the Department, as authorized by N.J.S.A. 52:17B-175.e.

Amended by R.2014 d.141, effective September 2, 2014.
See: 45 N.J.R. 1941(a), 46 N.J.R. 1896(b).

Rewrote the section.

13:91-1.2 Scope

These rules apply to the New Jersey Juvenile Justice Commission and the New Jersey Department of Corrections and establish the regulations for transferring the custody and care of adjudicated delinquents 18 years of age or older.

13:91-1.3 Definitions

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

“Attorney General” means the Attorney General of the State of New Jersey.

“Commission” means the New Jersey Juvenile Justice Commission.

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

“Department” means the New Jersey Department of Corrections.

“Deputy Executive Director” means the Deputy Executive Director of the New Jersey Juvenile Justice Commission.

“Executive Director” means the Executive Director of the New Jersey Juvenile Justice Commission.

“Hearing officer” means an impartial hearing officer who is not an employee of the Commission, and who has been designated by the Attorney General or designee to hear requests for transfers of juveniles from the care and custody of the Commission to DOC under the provisions of N.J.A.C. 13:91-3, Transfer Hearing.

“Interested party” means:

1. A person who is related to the juvenile through blood, marriage, adoption, civil union, or domestic partnership and including a stepparent;
2. A person appearing on a list of visitors approved under the provisions of N.J.A.C. 13:95-20.4;
3. A legal or other representative; or
4. A member of the clergy.

“Juvenile” means both an individual who has been adjudicated delinquent and sentenced to a term of incarceration to be served under the custody of the Commission and an individual who has been convicted of an offense subject to waiver under the provisions of N.J.S.A. 2A:4A-46 and sentenced to serve a custodial sentence in a Commission facility, and who is residing in a juvenile facility.

“Juvenile facility” means any Commission facility that houses juveniles and employs custody personnel (N.J.S.A. 52:17B-174) to provide security.

“Juvenile’s representative” means either the Ombudsman or private counsel selected, retained, and paid for by the juvenile, as determined under the provisions of N.J.A.C. 13:91-3.7.

“Juvenile Reception Classification Committee” (JRCC) means a group of Commission staff persons that have been designated to make decisions related to the needs of adjudicated delinquents from admission to discharge.

“Ombudsman” means the individual within the Commission responsible for resolving complaints made by juveniles about the facility, the action or inaction of staff, or any other matter of concern to the juvenile.

“Secure Care Administrator” means the manager employed by the Commission who oversees the administration of the juvenile facilities.

“Superintendent” means the chief executive officer of a juvenile facility.

Amended by R.2002 d.406, effective December 16, 2002.

See: 34 N.J.R. 3198(a), 34 N.J.R. 4472(a).

Added “Deputy Executive director” and rewrote “Juvenile facility”.

Amended by R.2014 d.141, effective September 2, 2014.

See: 45 N.J.R. 1941(a), 46 N.J.R. 1896(b).

Deleted definition “Adjudicated delinquent”; added definitions “Attorney General”, “Hearing officer”, “Interested party”, “Juvenile”, “Juvenile’s representative” and “Ombudsman”; and rewrote definition “Juvenile facility”.

Amended by R.2015 d.192, effective December 7, 2015.

See: 47 N.J.R. 1306(a), 47 N.J.R. 3055(a).

In definition “Hearing officer”, inserted “who is not an employee of the Commission, and who has been”.

Amended by R.2016 d.133, effective October 17, 2016.

See: 48 N.J.R. 567(a), 48 N.J.R. 2162(b).

Substituted definition “Juvenile” for definition “Juvenile”, and rewrote the definition.

13:91-1.4 Forms

(a) The following forms related to the transfer of juveniles are available through the Juvenile Reception Classification Committee:

1. Form 101, Request to Transfer to the New Jersey Department of Corrections;
2. Form 102, Transfer Hearing Form;
3. Form 103, Voluntary Transfer Request Form; and
4. Form 104, Request of Waived Juvenile to Remain in Commission Custody.

Amended by R.2014 d.141, effective September 2, 2014.

See: 45 N.J.R. 1941(a), 46 N.J.R. 1896(b).

Rewrote the section.

Amended by R.2016 d.133, effective October 17, 2016.

See: 48 N.J.R. 567(a), 48 N.J.R. 2162(b).

In (a)2, deleted “and” from the end; in (a)3, substituted “; and” for a period; and added (a)4.

SUBCHAPTER 2. TRANSFER AND REQUIREMENT FOR TRANSFER HEARING

13:91-2.1 Transfer criteria; transfer hearing

(a) A juvenile who has reached the age of 18 may be transferred to the Department, only when the Superintendent, Secure Care Administrator, and Executive Director have approved a determination of the JRCC that the threshold criteria set forth in (b) below have been satisfied and:

1. The juvenile voluntarily requests a transfer to the Department by signing the Voluntary Transfer Request Form, Form 103; or
2. With respect to a proposed involuntary transfer, the determination has been upheld after a hearing before a hearing officer under the provisions of N.J.A.C. 13:91-3.

(b) The threshold criteria for transfer of a juvenile to the Department are:

1. The juvenile demonstrates disruptive behavior, and that his or her continued presence in the juvenile facility threatens:
 - i. The safety of the public, juvenile facility staff, or other juveniles; or
 - ii. The ability of the Commission to operate the juvenile facility in a stable, safe, and orderly manner;

2. The juvenile's maturity level and criminal sophistication makes the juvenile inappropriate for the available Commission programs; or

3. The juvenile's continued presence in the juvenile facility impedes the effective delivery of the programs, services, and sanctions developed and implemented by the Commission to meet the special needs of the juvenile-aged offenders committed to the care, custody, and control of the Commission.

Repeal and New Rule, R.2014 d.141, effective September 2, 2014.

See: 45 N.J.R. 1941(a), 46 N.J.R. 1896(b).

Section was "Criteria upon which an adjudicated delinquent 18 years of age or older may be considered for transfer".

Amended by R.2015 d.192, effective December 7, 2015.

See: 47 N.J.R. 1306(a), 47 N.J.R. 3055(a).

In (a)2, substituted "With respect to a proposed involuntary transfer, the" for "The", and deleted "then" following "has".

13:91-2.2 JRCC recommendation; administrative reviews

(a) When the JRCC determines that the threshold requirements of N.J.A.C. 13:91-2.1(b) have been satisfied, the chair of the JRCC shall complete Form 101, recommending transfer of the juvenile to the Department, and shall submit the form, along with a copy of a classification summary, progress notes, and a narrative report describing the reasons for the transfer request, to the Superintendent.

(b) The Superintendent shall review the form submitted and supporting documentation identified in (a) above, and within three business days of receipt shall forward his or her recommendation for or against the recommended transfer, and the reasons therefor, by completing and signing Form 101, and shall then forward the form and supporting documentation to the Secure Care Administrator.

(c) The Secure Care Administrator shall make a recommendation for or against the transfer by signing Form 101 within three business days of receipt of the transfer request.

(d) If the Secure Care Administrator agrees with the recommendation for transfer of a juvenile, the Secure Care Administrator shall submit Form 101 and the supporting documents to the Executive Director or designee.

1. If the Secure Care Administrator does not agree with the recommendation for transfer of a juvenile, the Secure Care Administrator shall provide his or her reasons for not recommending the transfer on Form 101 and shall submit it and the supporting documents to the Executive Director or designee.

(e) The Executive Director or designee shall approve or disapprove the recommended transfer by signing Form 101.

1. If the Executive Director or designee approves the proposed transfer, he or she shall indicate approval on Form 101, and then return the form through the Secure

Administrator to the Superintendent for the scheduling of a hearing under the provisions of N.J.A.C. 13:91-3, unless the juvenile agrees to the transfer and requests a transfer without a hearing by signing the Voluntary Transfer Request Form, Form 103.

2. If the Executive Director or designee disapproves of the proposed transfer, he or she shall indicate disapproval on Form 101, explaining the reasons therefor, and then return the form through the Secure Care Administrator and the Superintendent to the JRCC.

Amended by R.2002 d.406, effective December 16, 2002.

See: 34 N.J.R. 3198(a), 34 N.J.R. 4472(a).

In (g) through (i), inserted "or, if designated, the Deputy Executive Director" following "Executive Director".

Repeal and New Rule, R.2014 d.141, effective September 2, 2014.

See: 45 N.J.R. 1941(a), 46 N.J.R. 1896(b).

Section was "Recommendation for transfer of an adjudicated delinquent 18 years of age or older".

13:91-2.3 Forwarding of recommendation to Commissioner and Commissioner action for a juvenile who has been adjudicated delinquent

(a) The Executive Director or designee shall transmit Form 101 to the Commissioner together with a formal request to transfer a juvenile to the Department:

1. Upon receiving the written determination provided for in N.J.A.C. 13:91-3.14 that the hearing officer has approved the transfer of a juvenile; or

2. If a juvenile requests a transfer by signing Form 103, Voluntary Request Form.

(b) The Commissioner or designee shall approve or disapprove the recommended transfer by signing Form 101, and then forward the form indicating approval or disapproval, including reasons for disapproval, to the Executive Director or designee, who shall then submit Form 101 to the JRCC through the Secure Care Administrator and the Superintendent.

(c) Upon receiving notice that a proposed transfer has been disapproved by either the hearing officer or the Commissioner, the Executive Director or designee shall return Form 101 through the Secure Care Administrator and the Superintendent to the JRCC.

Amended by R.2002 d.406, effective December 16, 2002.

See: 34 N.J.R. 3198(a), 34 N.J.R. 4472(a).

Inserted references to the Deputy Executive Director and neutralized gender references throughout.

Repeal and New Rule, R.2014 d.141, effective September 2, 2014.

See: 45 N.J.R. 1941(a), 46 N.J.R. 1896(b).

Section was "Approval for transfer of an adjudicated delinquent 18 years of age or older".

Amended by R.2016 d.133, effective October 17, 2016.

See: 48 N.J.R. 567(a), 48 N.J.R. 2162(b).

Section was "Forwarding of recommendation to Commissioner; Commissioner action".

13:91-2.3A Transfer of a juvenile waived under the provisions of N.J.S.A. 2A:4A-46

(a) The Executive Director or designee has the discretion to transfer a juvenile under the age of 21 who has been convicted of a crime and who is serving a custodial sentence in a Commission facility under the provisions of N.J.S.A. 2A:4A-46:

1. Upon receiving the written determination provided for in N.J.A.C. 13:91-3.14 that the hearing officer has approved the transfer of a juvenile; or

2. If a juvenile requests a transfer by signing Form 103, Voluntary Request Form.

(b) Upon reaching the age of 21, a juvenile who has been convicted of a crime and who is serving a custodial sentence in a Commission facility under the provisions of N.J.S.A. 2A:4A-46, shall be transferred to the Department of Corrections, unless:

1. The juvenile has completed Form 104, Request of Waived Juvenile to Remain in Commission Custody; and

2. The Form 104 request has been approved by the Executive Director or designee.

(c) In any event, upon reaching the age of 25, the juvenile shall be transferred to the Department of Corrections.

New Rule, R.2016 d.133, effective October 17, 2016.
See: 48 N.J.R. 567(a), 48 N.J.R. 2162(b).

13:91-2.4 Procedures for transfer

(a) Upon approval of a requested transfer by the Commissioner or designee, the JRCC shall arrange for the transfer of the juvenile.

(b) The JRCC shall coordinate the date and time of the transfer of the juvenile, along with his or her records and property, with administrative staff of the receiving correctional facility of the Department.

(c) The Department shall provide transportation of the juvenile.

Amended by R.2002 d.406, effective December 16, 2002.
See: 34 N.J.R. 3198(a), 34 N.J.R. 4472(a).

In (a), deleted "by the Executive Director and Commissioner" following "approval".

Amended by R.2014 d.141, effective September 2, 2014.
See: 45 N.J.R. 1941(a), 46 N.J.R. 1896(b).

Rewrote (a); in (b), deleted "then" following "shall"; and in (b) and (c), substituted "juvenile" for "adjudicated delinquent 18 years of age or older".

13:91-2.5 Confidentiality of information and records

(a) Commission and Department staff shall not discuss or disclose information to any unauthorized person or agency regarding a specific juvenile approved, being considered, or recommended for transfer.

(b) The records of a juvenile are designated confidential and shall not be disclosed to unauthorized persons or agencies in accordance with N.J.S.A. 2A:4A-60 et seq.

Amended by R.2014 d.141, effective September 2, 2014.
See: 45 N.J.R. 1941(a), 46 N.J.R. 1896(b).

In (a), substituted "juvenile" for "adjudicated delinquent 18 years of age or older"; and in (b), substituted "a juvenile" for "an adjudicated delinquent 18 years of age or older".

SUBCHAPTER 3. TRANSFER HEARING

13:91-3.1 Applicability

The requirement for a transfer hearing and the provisions of this subchapter shall apply to all proposed involuntary transfers of a juvenile.

Amended by R.2015 d.192, effective December 7, 2015.
See: 47 N.J.R. 1306(a), 47 N.J.R. 3055(a).

Inserted "involuntary".

13:91-3.2 Designation and authority of the hearing officer

(a) All hearings on proposed transfers of juveniles to the Department shall be conducted at a secure facility by a hearing officer designated by the Attorney General or designee.

(b) The hearing officer shall have the authority to summon witnesses, take testimony, receive documentary evidence, and have access to all facility records that are relevant and necessary to the adjudication of a proposed transfer.

(c) The hearing officer shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence that is not necessary for an adequate understanding of the case. The hearing officer shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse, or repetitiveness.

13:91-3.3 Service of JRCC determination; segregation of the juvenile

(a) Form 101 and accompanying narrative reports shall be served upon the juvenile by the Superintendent or designee within 24 hours of the Executive Director's approval under N.J.A.C. 13:91-2.2(c), shall be signed by the person delivering it, and the date and time of delivery shall be noted. The juvenile shall have at least 96 hours to prepare his or her objections to the transfer, and may request additional time to prepare by requesting a postponement under the provisions of N.J.A.C. 13:91-3.5(c).

1. At the time Form 101 and accompanying narrative reports are served on the juvenile, the juvenile shall be informed in writing and verbally of his or her right to retain counsel, as is provided for in N.J.A.C. 13:91-3.7.