

CHAPTER 91**TRANSFER OF ADJUDICATED DELINQUENTS
TO THE NEW JERSEY 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 Adjudicated Delinquents to the New Jersey 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.

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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,” for the purpose of transfers to DOC under this chapter, means an individual who has been adjudicated delinquent and sentenced to a term of incarceration to be served under the custody of the Commission 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”.

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; and
3. Form 103, Voluntary Transfer Request Form.

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.

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 Care 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; Commissioner action

(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".

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.

(b) Pending the hearing and any subsequent transfer to the Department, the juvenile shall be separated from the general population and referred to the juvenile facility's Behavior Accountability Unit under the provisions of N.J.A.C. 13:95-7.

13:91-3.4 Requiring further investigation of proposed transfer

The hearing officer may direct a further investigation in any case where he or she is of the opinion that additional information is necessary in order to either approve or reject the determination of the JRCC.

13:91-3.5 Scheduling transfer hearings

(a) Transfer hearings shall be convened at such times as are appropriate to carry out the work of the hearing officer.

(b) The juvenile shall be entitled to a hearing within six days of being served with Form 101, including weekends and legal holidays, unless the hearing is prevented by exceptional circumstances, unavoidable delays, or reasonable postponements. Should the sixth day fall on a Saturday, Sunday, or legal holiday, the last day for the hearing shall be the weekday immediately following the weekend or legal holiday.

(c) Requests for reasonable and necessary adjournments for an adequate presentation of the evidence shall be granted if the request is communicated to the office of the Superintendent at any time prior to the hearing time scheduled under (a) above by either the juvenile or the juvenile's representative.

(d) A request for a postponement made by a juvenile may be directed to any facility staff member, who shall immediately forward the request to the Office of the Superintendent. A request for a postponement made by the juvenile's representative shall be submitted by fax or by email.

(e) No delays in hearing a proposed transfer shall be permitted for the purpose of punishment or discipline.

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

13:91-3.6 Failure to adhere to time limits

The failure to adhere to any of the time limits prescribed by this subchapter shall not by itself mandate the denial of a proposed transfer.

13:91-3.7 Representation; interested party statements

(a) A juvenile shall be represented at a transfer hearing, including an in absentia hearing held under the provisions of N.J.A.C. 13:91-3.9, either by the Ombudsman or by

private counsel, selected, retained, and paid for by the juvenile.

1. The juvenile shall have 48 hours from the time of receiving notice of the proposed transfer, under the provisions of N.J.A.C. 13:91-3.3, to choose representation by either the Ombudsman or by private counsel.

2. The juvenile's representative shall be permitted reasonable time to speak to the juvenile and shall be given at least 48 hours to prepare a challenge to the proposed transfer, and may request additional time to prepare by requesting a postponement with the consent of the juvenile under the provisions of N.J.A.C. 13:91-3.5(c).

3. An interested party, as defined in N.J.A.C. 13:91-1.3, may submit a written statement for consideration by the hearing officer by mail or by fax.

(b) All written statements and accompanying explanations must be recorded on the Transfer Hearing Form, Form 102.

(c) The juvenile shall be allowed to present his or her case through an interpreter, if necessary.

13:91-3.8 Right of juvenile to appear at transfer hearing

(a) A juvenile shall be permitted to be present throughout the transfer hearing except during the necessary deliberations of the hearing officer, and except in instances where facility security would be jeopardized by the juvenile's presence.

(b) The reasons for excluding a juvenile from the hearing shall be documented on the Transfer Hearing Form, Form 102.

13:91-3.9 In absentia hearings

(a) A full in absentia hearing shall be conducted if the juvenile refuses to appear at the transfer hearing.

(b) The following procedures shall apply at all transfer hearings conducted in absentia that will enable the hearing officer to ensure that the juvenile has been given every opportunity to be present for the hearing.

1. The escorting staff member shall report the juvenile's refusal to appear before the hearing officer.

2. A staff member shall deliver to the juvenile who refuses to appear a Refusal to Attend Hearing Notice that includes the following statement: "I voluntarily refuse to appear at this hearing. I understand that the hearing will be held in my absence."

3. The staff member shall advise the juvenile that the refusal to appear at the transfer hearing may result in an incomplete understanding by the hearing officer of the circumstances surrounding the proposed transfer. If the juvenile still refuses to appear at the transfer hearing, the juvenile shall be requested to sign a Refusal to Attend

Hearing Notice immediately after the statement noted in (b)2 above.

4. In the event the juvenile refuses to sign his or her name where designated on the Refusal to Attend Hearing Notice and still refuses to appear, the notice shall be returned to the hearing officer and the following statement on the notice shall be acknowledged by the signature of the escorting staff member:

"Juvenile refuses to sign _____."
Signature of Staff Member, Date

5. The refusal of a juvenile to attend a transfer hearing should be noted on the Transfer Hearing Form, Form 102, and the completed Refusal to Attend Hearing Notice shall be forwarded to the hearing officer and attached to the Transfer Hearing Form, Form 102.

13:91-3.10 Opportunity to call witnesses and present evidence

(a) Juveniles shall be allowed to call witnesses and present documentary evidence in support of their challenge to a proposed transfer, unless the hearing officer determines that permitting such witnesses or evidence would pose a threat to the safety of either the juvenile, other juveniles, staff, or to the orderly and safe operation of the facility.

(b) All permitted witnesses and documentary evidence accepted shall be recorded on the Transfer Hearing Form, Form 102.

(c) The hearing officer shall review the evidence offered as reasonably available and necessary for proper understanding of the circumstances surrounding the proposed transfer, and shall have discretion to keep the hearing within reasonable limits and to refuse to call repetitive witnesses and witnesses who may create a risk of reprisal. For purposes of this subsection, "repetitive witnesses" are witnesses who provide the same account as a previous witness. "Repetitive witnesses" are not intended to refer to the calling of a witness who previously provided written documentary evidence. Unavailable witnesses may be asked to submit written statements. If the hearing officer refuses to permit one or more witnesses or accept any evidence, the reasons for each such refusal shall be documented on the Transfer Hearing Form, Form 102.

(d) The hearing officer, the juvenile, and the juvenile's representative may question witnesses called at the request of the juvenile. The juvenile or the juvenile's representative may request that specific questions be directed by the hearing officer to a witness. The hearing officer may take testimony in any manner or form necessary to protect facility safety. Such manner or form shall include, but shall not be limited to, the consideration of confidential reports.

1. If confidential reports are considered and relied upon by the hearing officer, a non-confidential summary must be

provided to the juvenile and the Ombudsman and attached to the Transfer Hearing Form, Form 102.

13:91-3.11 Confrontation and cross-examination

(a) The opportunity for confrontation and cross-examination shall be provided to the juvenile in such instances where the hearing officer deems it necessary for an adequate presentation of the evidence, particularly when serious issues of credibility are involved. The confrontation and cross-examination of all adverse witnesses must be noted on the Transfer Hearing Form, Form 102.

(b) The hearing officer may refuse confrontation and cross-examination when such confrontation and cross-examination would be unduly hazardous to facility safety. If the hearing officer refuses to permit cross-examination or confrontation, the reasons for each such refusal shall be documented on the Transfer Hearing Form, Form 102.

13:91-3.12 Hearing officer recommendation; standard for recommendation and written findings

(a) At the conclusion of the hearing, the hearing officer shall prepare written findings and a recommendation whether the proposed transfer should proceed.

1. A proposed transfer shall be recommended by the hearing officer only upon comprehensive and detailed findings, signed by the hearing officer and supported by clear and convincing evidence that one or more of the threshold standards set forth in N.J.A.C. 13:91-2.1(b) have been satisfied.

i. Evidence relied upon in making the recommendation shall be clearly set forth in the written findings, which findings shall be attached to and made part of the Transfer Hearing Form, Form 102.

2. When the hearing officer's recommendations and findings are based on evidence from a confidential informant, the recommendations and findings shall not disclose the identity of the confidential informant and shall contain:

i. A concise summary of the facts on which the hearing officer concluded that the informant was credible or his or her information reliable; and

ii. The informant's statement, either in writing or as reported, in language that is factual rather than a conclusion, and based on the informant's personal knowledge of the matters contained in such statement.

3. In any case in which the hearing officer's recommendations and findings are based on evidence that includes confidential information, the findings shall contain a concise summary in language that is factual rather than a conclusion.

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)1, substituted "clear and convincing" for "substantial credible"; and added (a)2 and (a)3.

13:91-3.13 Referral to Executive Director for final agency action and notice to juvenile

(a) Within 48 hours after the hearing has been completed, the hearing officer shall submit his or her recommendation and findings, including the Transfer Hearing Form, Form 102, to the Executive Director.

(b) Within 48 hours of receipt of the hearing officer's recommendation and findings, the Executive Director shall issue a written determination whether the juvenile shall be referred for transfer to the Department, which determination shall constitute final agency action.

1. Copies of the hearing officer's recommendation and Executive Director's determination shall be given to the juvenile and forwarded to the Superintendent and Secure Care Administrator.

2. The juvenile shall be given copies of all evidence relied upon by the hearing officer in making the written recommendations and findings, except for evidence that, if released, would pose a threat to the safety of either the juvenile, other juveniles, staff, any witness or informant, or to the orderly and safe operation of the facility.

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

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

Added (b)2.