

NEW JERSEY REGISTER

VOLUME 41, ISSUE 14

ISSUE DATE: JULY 20, 2009

RULE PROPOSALS

**LAW AND PUBLIC SAFETY
JUVENILE JUSTICE COMMISSION**

41 N.J.R. 2772(a)

Proposed Amendments: N.J.A.C. 13:101-4.1 and 6.17

Juvenile Discipline

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable Anne Milgram, Attorney General and Chair, Shavar Jeffries, Attorney General's Designee.

Authority: N.J.S.A. 52:17B-170(e), 52:17B-171, 52:17B-176, 52:17B-178 and 52:17B-182 through 186.

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

Proposal Number: PRN 2009-218.

Submit written comments by September 18, 2009 to:

John Wolff, Administrative Practice Officer
New Jersey Juvenile Justice Commission
1001 Spruce Street - Suite 202
Trenton, New Jersey 08638

The agency proposal follows:

Summary

Chapter 101 of N.J.A.C. Title 13 establishes rules governing the discipline of juveniles who have been adjudicated delinquent and remanded to the custody of the Juvenile Justice Commission (Commission). N.J.A.C. 13:101-4.1 sets out a comprehensive list of violations that are the ba-

sis for any disciplinary charge brought against a juvenile; the Commission proposes to make a number of changes to this list of violations. In addition, the Commission proposes to make an amendment to N.J.A.C. 13:101-6.17, a provision that establishes limitations on the use of room restriction as a disciplinary sanction.

The Commission first proposes to eliminate the violation J201, Assault, defined as intentionally inflicting bodily injury on another person, and to replace it with three distinct violations reflecting different assaultive behaviors. As proposed, J201A, Assault on Juvenile, would be intentionally inflicting bodily injury on another juvenile. J201B, Assault on Staff, would be intentionally inflicting bodily injury on a staff person; and J201C, Aggravated Assault, would be defined as intentionally inflicting serious bodily injury on any person.

The Commission believes that both the violations distinguishing between assaults on staff and those on juveniles and the new aggravated assault violation accurately reflect meaningful distinctions in juvenile behavioral and will provide the Commission with an improved ability to track assaultive behavior.

In addition, the Commission proposes to add four new violations. Two of the proposed new violations are entirely new. These are J306, Lewd Conduct, defined as engaging in lewd conduct or sexual gestures in the presence of another, and J732, Refusing Classification, defined as refusing to transfer to an assigned Classification Custody Level assignment. In both cases the Commission believes these violations are necessary in order for the rules on Juvenile Discipline to proscribe behavior that threatens the orderly operation of a juvenile correctional facility, but which up to this time have not been specifically addressed by rule as a disciplinary matter.

The two other new violations being proposed by the Commission divide the existing prohibitions into separate distinct violations.

The existing J706, Property Damage, defined as damaging or altering government property or property belonging to another person, is proposed to remain as is, being renumbered as J706A

with an example of the proscribed conduct added, "writing on clothing, sneakers or furniture." The Commission proposes to add a new J706B, Property Destruction, defined as destroying or seriously damaging government property or property belonging to another person valued at more than \$ 100.00, and includes as examples "intentionally breaking a window, popping sprinkler head/flooding room."

The existing J718, Unauthorized Area, is proposed to be amended and divided into two violations. One of these will address a juvenile being in an otherwise authorized place, but at an unauthorized time and/or without required supervision; the other will address a juvenile being in a place where juveniles are never authorized to be. Accordingly, J718 is proposed to be numbered J718A and to have its definition changed from being in an unauthorized area, to being in a permissible area at an unauthorized time, without proper advance permission, and/or without required supervision. The Commission then proposes to add a new J718B, Prohibited Area, defined as being in an area where juveniles are never allowed to be.

The Commission believes the proposed amendments to the J706 and J718 violations also reflect meaningful distinctions in juvenile behavior.

Finally, the Commission proposes to make a clarifying amendment to N.J.A.C. 13:101-6.17.

Under the provisions of N.J.A.C. 13:101-6.16(b)2, one of the sanctions that may be imposed upon a juvenile after a disciplinary charges are sustained at a hearing is "[u]p to five days room restriction, subject to the provisions of N.J.A.C. 13:101-6.17." The provisions of N.J.A.C. 13:101-6.17 set forth limitations on room restriction that conform to the American Correctional Association's standards for juvenile detention facilities and that reflect the relationship between extended periods in isolation and suicide and suicide attempts on the part of incarcerated juveniles. These restrictions provide that no juvenile may spend more than five consecutive days in room restriction (N.J.A.C. 13:101-6.17(a)), that two days must separate distinct terms of room restriction (N.J.A.C.

13:101-6.17(b)) and that no more than 10 days may be served in room restriction in any 30-day period (N.J.A.C. 13:101-6.17(c)).

The purpose of two-day limitation of N.J.A.C. 13:101-6.17(b) is to ensure that a substantial period out of room restriction is provided, once a juvenile has reached the five-day maximum provided for in N.J.A.C. 13:101-6.17(a), before he or she can be made to serve a succeeding term of room restriction. However, as written, N.J.A.C. 13:101-6.17(b) can be read to require that two days be spent out of room restriction even after initial terms of less than five days. This was never the intent of the rule and the Commission is proposing to amend N.J.A.C. 13:101-6.17(b) to clarify that the two-day limitation applies only after the five-day maximum has been reached.

Because the Commission has provided for a 60 day comment period on the Notice of Proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

N.J.S.A. 52:17B-169 et seq., includes among the goals of the Juvenile Justice Commission, protecting the public, holding juvenile offenders accountable for their delinquent behavior and providing rehabilitation to juvenile offenders. The proposed amendments to N.J.A.C. 13:101 promote these goals by providing a discipline system, which carefully balances security against the primary objective of the Commission, which is the rehabilitation of troubled youth. The proposed amendments will assist in this balancing of interests by refining and recognizing important distinctions among conduct that is subject to disciplinary sanctions.

Economic Impact

The costs associated with the N.J.A.C. 13:101 are met through the established budget process with funds allocated by the State. The Commission anticipates that the amended rules will not have

an economic impact on the Commission or any other department or agency of the State government.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not being adopted under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Jobs Impact

The Commission does not anticipate that any jobs either will be generated or lost if the proposed amendments are adopted.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The proposed amendments will impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments affect employees and juveniles under the supervision of the Juvenile Justice Commission and will have no effect on small businesses. Therefore, a regulatory flexibility analysis is not required.

Smart Growth Impact

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

Housing Affordability Impact

The proposed amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed rules concern only the discipline of juveniles at juvenile correctional institutions.

Smart Growth Development Impact

The proposed amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan [page=2774] in New Jersey because the proposed rules concern only the discipline of juveniles at juvenile correctional institutions.

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

SUBCHAPTER 4. VIOLATIONS

13:101-4.1 Violations

(a) A juvenile who commits one or more of the following numbered violations shall be subject to disciplinary action:

...

Number	Violation	Description
--------	-----------	-------------

...

SECTION J2: ASSAULTIVE, AGGRESSIVE, AND RELATED BEHAVIORS

J201A	Assault on Juvenile	Intentionally inflicting bodily injury on another [person] juvenile.
J201B	Assault on Staff	Intentionally inflicting bodily injury on a staff person.
J201C	Aggravated Assault	Intentionally inflicting serious bodily injury on any person.

...

SECTION J3: SEXUAL ASSAULT, PROHIBITED SEXUAL ACTS, AND RELATED BEHAVIORS

...

J306	Lewd Conduct	Engaging in lewd conduct or gestures in the presence of another.
------	--------------	--

...

SECTION J7: CONDUCT WHICH DISRUPTS THE SECURITY OR ORDER OF A FACILITY

...

J706A	Property Damage	Damaging or altering government property or property belonging to another person. Examples: Writing on clothing, sneakers or furniture.
J706B	Property Destruction	Destroying or seriously damaging government property or property belonging to another person valued at more than \$100.00. Examples: Intentionally breaking a window, popping sprinkler head/flooding room

...

J718A	Unauthorized Area	Being in [an unauthorized] a permissible area at an unauthorized time, without proper advance permission, and/or without required supervision.
J718B	Prohibited Area	Being in any area where juveniles are never allowed to be.
. . .		
J732	Refusing Classification Assignment	Refusing to transfer to an assigned Classification Custody Level assignment.

SUBCHAPTER 6. DISCIPLINARY PROCEEDINGS

13:101-6.17 Limitations on room restriction as a disciplinary sanction

(a) (No change.)

(b) [A period of no less than] **At least two [full] consecutive days out of room restriction** must [separate distinct terms] **follow a period of five consecutive days served in room restriction before any succeeding term of room restriction may be imposed.**

(c)-(e) (No change.)