



NEW JERSEY LAW REVISION COMMISSION

Draft Tentative Report Regarding the Use of the Term “Inmate” in the New Jersey Statutes

March 07, 2022

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” N.J.S. 1:12A-8.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **May 16, 2022**

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report, or direct any related inquiries, to:

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“[M]any folks who are incarcerated aren’t guilty, aren’t criminals. I don’t like the label [“inmate”] because they are more than that, they are people, someone’s people, my people.”
- Chantá Parker, Public Defender¹

Project Summary

On August 02, 2021, the State of New York enacted comprehensive legislation to replace the word “inmate” with “incarcerated individual” in its body of statutory law.² The elimination of this term from a neighboring state’s statutes served as the impetus for an examination of whether and how the term “inmate” is used in New Jersey’s statutes.

In New Jersey, there is no uniform definition for the term inmate. A person who has been sentenced to imprisonment or ordered into pretrial or investigative detention in a State prison or county correctional facility is an “inmate.”³ A person confined in a correctional facility is an inmate.⁴ Any person who has been sentenced as an adult to a term of incarceration is an inmate.⁵

A shift to person-first language has begun in the field of criminal justice, with advocates recommending a change from terms characterized as “dehumanizing” and “stigmatizing” to those that focus on an individual’s identify and their capacity for growth.⁶ In New Jersey, the use of person-first language to refer to persons who are incarcerated can be found in the statutes, but its use in this context has not been uniform.

In light of the increased focus in recent years on descriptive terms contained in statutes, the presence of the term “inmate” in more than 250 individual statutes may support consideration of its elimination from the statutes.

Historical Background

The term *inmate* dates back to the 1589.⁷ The term is a combination of two terms, “in” and “mate.”⁸ The word “in” is defined as “to or toward the internal especially of a house or building”⁹

¹ Blair Hickman. *Inmate. Prisoner. Other. Discussed. What to Call Incarcerated People: Your feedback.* (Apr. 03, 2015), <https://www.themarshallproject.org/2015/04/03/inmate-prisoner-other-discussed>.

² S.B. 3332, 2021-22 Leg. Sess. (N.Y. 2021). Robert Harding. *New York to Replace ‘Inmate’ with Incarcerated Individual.* (Aug. 04, 2021), <https://www.governing.com/community/new-york-to-replace-inmate-with-incarcerated-individual>.

³ N.J. STAT. ANN. §§ 30:4-16.5 and 30:7E-1 (West 2022).

⁴ N.J. STAT. ANN. § 30:4-82.7 (West 2022).

⁵ N.J. STAT. ANN. 30:4-123.45b.(1) (West 2022); N.J. STAT. ANN. § 30:7C-3 (West 2022).

⁶ The Fortune Society, *Words Matter: Using Humanizing Language.* <https://fortunesociety.org/wordsmatter/> (last visited Jan. 18, 2022); Akiba Solomon. *What Words We Use – and Avoid – When Covering People and Incarceration.* (Apr. 12, 2021), <https://www.themarshallproject.org/2021/04/12/what-words-we-use-and-avoid-when-covering-people-and-incarceration>

⁷ *Inmate*, MERRIAM-WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY (9th ed. 1990) (defining inmate as “one of a group occupying a single place or residence; esp : a person confined (as in a prison or hospital). See also Jeffrey Keller, M.D., *Inmate or Convict? What’s in a Name?* (Apr. 19, 2013) <https://www.jailmedicine.com/inmate-or-convict-whats-in-a-name/#:~:text=It%20turns%20out%20that%20the,people%20in%20a%20single%20dwelling>.

⁸ *Inmate*, Online Etymology Dictionary (linking “in,” and “mate” to “inmate”).

⁹ *In*, MERRIAM-WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY (9th ed. 1990); *Inmate*, Online Etymology Dictionary (linking “in,” meaning “that is within, internal” to “inmate”).

The word “mate” commonly refers to an associate or companion.¹⁰ Together these terms were combined to describe “one of a group occupying a single place of residence.”¹¹

By the early twentieth century, New Jersey’s common law used the term “inmate” to refer to incarcerated individuals.¹² In *State v. Jones*, the Court of Errors and Appeals of New Jersey noted that the homicide for which the defendant was charged “took place at the New Jersey State Prison... [where] the deceased and the defendant were inmates at the time....”¹³ This is one of the earliest judicial uses of the word “inmate” to refer to an individual in a custodial setting.

Definitions of “Inmate”

The word “inmate” is now used 1,310 times, in 252 New Jersey statutes that span sixteen titles. The term is only defined in Title 30, however, which encompasses “institutions and agencies.”¹⁴ Within that Title, a definition of “inmate” is found in five statutes, that define the term in four different ways.¹⁵

In 1973, the New Jersey Legislature enacted the Interstate Corrections Compact.¹⁶ The purpose of this Compact was to “fully utilize and improve... institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders....”¹⁷ The compact defined the term “inmate” as “a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.”¹⁸ The use of the term would eventually be expanded to include other incarcerated persons.

The Parole Act of 1979 also contains a definition of the word “inmate.”¹⁹ The Act includes a gender-neutral reference to incarcerated individuals and recognized that juveniles as well as adults may be lodged in correctional facilities.²⁰ Under this Act, an adult inmate, means “any person sentenced as an adult to a term of incarceration.”²¹ By contrast, a juvenile inmate is defined as “any person under commitment as a juvenile delinquent pursuant to ... [N.J.S.] 2A:4A-44.”²²

¹⁰ *Mate*, MERRIAM-WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY (9th ed. 1990).

¹¹ *Inmate*, MERRIAM-WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY (9th ed. 1990).

¹² *State v. Jones*, 71 N.J.L. 543 (1905).

¹³ *Id.*

¹⁴ *See supra* notes 3-6. *Compare* N.J. STAT. ANN. § 30:4-91.9 (West 2022) (defining the term “eligible inmate” in the context of certain private correctional facilities).

¹⁵ N.J. STAT. ANN. §§ 30:4-16.5 and 30:7E-1 (West 2022) (defining “inmate” as a person sentenced to imprisonment, or ordered to pretrial or investigative detention, in a State prison or county jail); N.J. STAT. ANN. § 30:4-82.7 (West 2022) (defining “inmate” as a person confined in a correctional facility); N.J. STAT. ANN. 30:4-123.45 (West 2022) (defining “adult inmate” as any person sentenced as an adult to a term of incarceration); and N.J. STAT. ANN. § 30:7C-3 (West 2022) (defining “inmate” as a male or female offender who is committed, under sentence to or confined in a penal or correctional institution).

¹⁶ N.J. STAT. ANN. §§ 30:7C-1 to -12 (West 2022).

¹⁷ N.J. STAT. ANN. § 30:7C-2 (West 2022).

¹⁸ N.J. STAT. ANN. § 30:7C-3d. (West 2022).

¹⁹ N.J. STAT. ANN. § 30:4-123.45a. (West 2022).

²⁰ N.J. STAT. ANN. § 30:4-123.45b.(1)-(2) (West 2022).

²¹ N.J. STAT. ANN. § 30:4-123.45b.(1) (West 2022).

²² N.J. STAT. ANN. § 30:4-123.45b.(2) (West 2022).

Regardless of age, to be considered an inmate under this Act, the individual must be sentenced by a court to a term of incarceration.

Not every individual who is incarcerated has been adjudicated and sentenced to a term of imprisonment. Some individuals are lodged in county correctional facilities while they await a pre-trial release determination or the adjudication of their case.²³ For purposes of receiving medical treatment, N.J.S. 30:7E-1 defines inmate as “a person sentenced to imprisonment.”²⁴ This definition also expands the meaning of the term inmate to include persons who are “ordered to pretrial or investigative detention, in a State or correctional facility or county jail.”²⁵

The management, control, and operation of institutions, including correctional facilities, is addressed in Title 30, Subtitle 1, Chapter 4. Beginning in June of 1996, the definition of “inmate” was incorporated into the statutes governing civil actions by persons lodged in correctional facilities.²⁶ At that time, the Legislature made clear that the definition of “inmate” means “any person sentenced to imprisonment, or ordered to pretrial or investigative detention, in a State prison or county jail.”²⁷

In 2019, the New Jersey Legislature enacted the Isolated Confinement Restriction Act.²⁸ These statutes were enacted to be “consistent with the New Jersey Constitution, the laws and public policies of this state, the mission of the correctional system, evolving medical knowledge, and human rights standards of decency.”²⁹ This Act defined the term inmate as “a person confined in a correctional facility.”³⁰

Although the term “inmate” is used in more than 250 statutes, each definition of the term is limited to the act in which it is defined.

Incarcerated Person or Individual

Research revealed that the word “inmate” is not the only term in the New Jersey statutes to describe a person in a custodial setting. Twelve statutes, in seven titles, use either “incarcerated person” or “incarcerated individual” when referring to current or former residents of a correctional facility.³¹

²³ See New Jersey Rules of Court, R. 3:4-1 (providing that if a Complaint-Warrant has been prepared and no later than twelve hours after arrest, the matter must be presented to a judge to determine whether a warrant or summons or summons will issue. If a warrant is issued, the person who has been arrested is then remanded to the county correctional facility pending a determination of conditions of pretrial release).

²⁴ N.J. STAT. ANN. § 30:7E-1f. (West 2022).

²⁵ *Id.*

²⁶ N.J. STAT. ANN. § 30:4-16.5 (West 2022). Compare N.J. STAT. ANN. § 30:7E-1 (West 2022).

²⁷ *Id.*

²⁸ N.J. STAT. ANN. § 30:4-82.6 (West 2022).

²⁹ *Id.*

³⁰ N.J. STAT. ANN. § 30:4-82.7 (West 2022).

³¹ N.J. STAT. ANN. § 2A:12-13 (West 2022) (requiring the judiciary to develop guidelines to ensure appropriate arrangements are made for care of incarcerated person’s child by a responsible adult); N.J. STAT. ANN. § 2A:156A-35 (West 2022) (defining law enforcement activity to include the transportation of incarcerated persons); N.J. STAT. ANN. § 5:12-89.1 (West 2022) (requiring the Casino Commission to coordinate with non-profit prisoner reentry

The New Jersey Department of Corrections was created in 1976.³² The legislative findings and declarations for the Act creating the Department provide that “the environment for incarcerated persons should encourage the possibilities of rehabilitation and reintegration into the community.”³³ The term “incarcerated person,” however, was not defined as part of this Act. A definition was provided in 1996 when the Legislature defined it in the statute that provides medications to those in custody of the Department of Corrections with preexisting chronic conditions.³⁴ That definition of “incarcerated person” is limited to N.J.S. 30:4-16.6.

Proposed Modifications

In the New Jersey statutes, the term “inmate” is used in both the criminal and non-criminal context. In the criminal context, the term is used to describe a person who is incarcerated in county correctional facility – either pre-trial or having been sentenced – or a person in a State correctional facility who is serving a sentence.³⁵ Consistent with the intent of the Legislature to provide an environment that encourages the possibility of rehabilitation and ultimately the reintegration of persons who are incarcerated into society, the New Jersey Law Revision Commission recommends the removal of the term “inmate” from the New Jersey statutes.³⁶ In the Appendix, the term “inmate” has been replaced in almost every instance with the person-first terms “person” or “person who is incarcerated,” where appropriate.³⁷

In the New Jersey statutes, the term “inmate” is not used exclusively in the criminal justice context to refer to persons who are incarcerated. In several statutes, the term “inmate” denotes a

organizations to provide formerly incarcerated individuals with information about casino key employee license eligibility); N.J. STAT. ANN. § 9:6-8.10c (West 2022) (requiring the Division of Child Protective Services to evaluate whether or not an incarcerated person’s minor child may be at risk for abuse or neglect during the period of incarceration); N.J. STAT. ANN. § 30:1B-3b. (West 2022) (declaring that the environment for incarcerated persons should encourage the possibilities of rehabilitation and reintegration into the community); N.J. STAT. ANN. § 30:1B-10.1 (West 2022) (requiring the Commissioner of Corrections to provide or arrange for mental health services to State-sentenced incarcerated persons who suffer from mental illness); N.J. STAT. ANN. § 30:4-16.6 (West 2022) (defining incarcerated person as a person in the custody of the Department of Corrections); N.J. STAT. ANN. § 30:8-16.13 (West 2022) (providing for the provision of medications to incarcerated persons with preexisting chronic conditions); N.J. STAT. ANN. § 46:8-59 (West 2022) (encouraging landlords to provide housing opportunities to formerly **incarcerated individuals**); N.J. STAT. ANN. § 52:4-1.2 (West 2022) (enumerating **incarcerated individuals** as residents of correctional facilities for purposes of the decennial census); N.J. STAT. ANN. § 52:4-1.4 (West 2022) (enumerating incarcerated persons as residents of the geographic units in which the correctional facilities are located); N.J. STAT. ANN. § 52:27EE-28.6 (West 2022) (requiring that a family member of an inmate or a formerly incarcerated person hold a position on the advisory board to the Office of the Corrections Ombudsperson).

³² N.J. STAT. ANN. § 30:1B-2 (West 2022). State of New Jersey, Department of Corrections, *History*, <https://www.nj.gov/deptcor/about/history/> (last visited Feb. 01, 2022)

³³ N.J. STAT. ANN. § 30:1B-3b. (West 2022).

³⁴ N.J. STAT. ANN. § 30:4-16.6a. (West 2022).

³⁵ See discussion *supra*.

³⁶ See discussion of the term “incarcerated person” *supra* at 4-5; and n. 32.

³⁷ Compare N.J. STAT. ANN. § 30:4-91.9 (West 2022) (defining the term “eligible inmate”); N.J. STAT. ANN. § 30:4-91.10 (West 2022) (authorizing the confinement of “eligible inmates” in private facilities); N.J. STAT. ANN. § 30:4-91.11 (West 2022); (requiring the Commissioner of Corrections to prepare and transmit a summary of the “eligible inmate’s” criminal history and background to the private facility to which the “eligible inmate” transferred). The term “eligible inmate” is a term of art. The modification of this term of art risks impairing the readability of this statute. The term has therefore been left in its original form.

group of persons occupying a single place of residence. For example, in N.J.S. 2C:34-1 subsection a.(4)(b) the definition of “promoting prostitution” includes “procuring an **inmate** for a house of prostitution or place in a house of prostitution for one who would be an **inmate**.”³⁸ In these cases, the Commission recommends that the term “inmate” be replaced with language that reflects the nature of the persons described in the statute to avoid any confusion that may result from the differing uses of this term.

Pending Legislation

In the 2022-2023 legislative session, newly introduced S1111 requires the establishment of processes to identify Medicaid eligible incarcerated individuals who are awaiting pre-trial release determinations, are being released following a period of incarceration, or are undergoing inpatient hospital treatment.³⁹

There is currently no legislation that would modify the use of the term “inmate” in the New Jersey statutes.

Conclusion

The Commission recommends the removal the term “inmate” from the New Jersey statutes and its replacement with a uniform, person-first reference to those lodged in correctional facilities, as appropriate.

³⁸ N.J. STAT. ANN. § 2C:34-1(a)(4)(b) (West 2022) (emphasis added). *See also*, N.J. STAT. ANN. § 4:3.11(c) (West 2022) (defining “institutional customer” in the context agricultural and poultry regulation to mean any “restaurant, hotel, boarding house, or any other business, facility or place in which eggs are prepared or offered as food for the use by its patrons, residents, inmates or patients”; N.J. STAT. ANN. § 19:32-5 (West 2022) (conferring upon the superintendent of elections the “authority to visit and inspect any house, dwelling, building, inn, lodging, house or hotel and interrogate any inmate, house-dweller, keeper, caretaker owner, proprietor or landlord thereof or therein;” N.J. STAT. ANN. § 44:1-29 (West 2022) (conferring upon the superintendent of welfare the “general superintendence and management of the welfare-house, the grounds, the buildings and the inmates thereof.”)

³⁹ S.B. 1111, 220th Leg., 2022 Sess. (N.J. 2022).