

**To: New Jersey Law Revision Commission**  
**From: Samuel M. Silver, Deputy Director**  
**Re: Use of the Term “Inmate” in New Jersey Statutes**  
**Date: February 07, 2022**

“[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 Defender<sup>1</sup>

## MEMORANDUM

### 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.<sup>2</sup> The elimination of this term from the statutes of a neighboring state served as the impetus for an examination of the manner in which “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 jail is an “inmate.”<sup>3</sup> A person confined in a correctional facility is an inmate.<sup>4</sup> Any person who has been sentenced as an adult to a term of incarceration is an inmate.<sup>5</sup>

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 identity and their capacity for growth.<sup>6</sup> 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.

### Historical Background

The term *inmate* dates back to the 1589.<sup>7</sup> The term is a combination of two terms, “in” and

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<sup>1</sup> 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>.

<sup>2</sup> 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>.

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

<sup>4</sup> N.J. STAT. ANN. § 30:4-82.7 (West 2022).

<sup>5</sup> N.J. STAT. ANN. 30:4-123.45b.(1) (West 2022) and N.J. STAT. ANN. § 30:7C-3 (West 2022).

<sup>6</sup> 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>

<sup>7</sup> *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).

“mate.”<sup>8</sup> The word “in” is defined as “to or toward the internal especially of a house or building”<sup>9</sup> The word “mate” commonly refers to an associate or companion.<sup>10</sup> Together these terms were combined to describe “one of a group occupying a single place of residence.”<sup>11</sup>

By the early twentieth century, New Jersey’s common law used the term “inmate” to refer to incarcerated individuals.<sup>12</sup> 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....”<sup>13</sup> This is one of the earliest judicial uses of the word “inmate” to refer to an individual in a custodial setting.

### Definitions of “Inmate”

Now, the word “inmate,” is found in 250 New Jersey statutes that span sixteen titles. The term is, however, only defined in Title 30, which encompasses “institutions and agencies.”<sup>14</sup> Within Title 30, a definition of the term inmate is found in five statutes, which define the term in four different ways.<sup>15</sup>

In 1973, the New Jersey Legislature enacted the Interstate Corrections Compact.<sup>16</sup> 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....”<sup>17</sup> 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.”<sup>18</sup> The term would eventually be expanded to include other incarcerated persons.

The Parole Act of 1979 also contains a definition of the word “inmate.”<sup>19</sup> The Act includes a gender-neutral reference to incarcerated individuals and recognized that juveniles as well as adults may be lodged in correctional facilities.<sup>20</sup> Under this Act, an adult inmate, means “any

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<sup>8</sup> *Inmate*, Online Etymology Dictionary (linking “in,” and “mate” to “inmate”), <https://www.etymonline.com/word/inmate>.

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

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

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

<sup>12</sup> *State v. Jones*, 71 N.J.L. 543 (1905).

<sup>13</sup> *Id.*

<sup>14</sup> *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).

<sup>15</sup> 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).

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

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

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

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

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

person sentenced as an adult to a term of incarceration.”<sup>21</sup> By contrast, a juvenile inmate is defined as “any person under commitment as a juvenile delinquent pursuant to ... [N.J.S.] 2A:4A-44.”<sup>22</sup> 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 the adjudication of their case. For purposes of receiving medical treatment, N.J.S. 30:7E-1 defines inmate as “a person sentenced to imprisonment.”<sup>23</sup> This definition 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.”<sup>24</sup>

The management, control, and operation of institutions, including correctional facilities, is set forth 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.<sup>25</sup> 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.”<sup>26</sup>

In 2019, the New Jersey Legislature enacted the Isolated Confinement Restriction Act.<sup>27</sup> 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.”<sup>28</sup> This Act defined “inmate” as “a person confined in a correctional facility.”<sup>29</sup>

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

### **Incarcerated Person or Individual**

Finally, 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.<sup>30</sup>

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

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

<sup>23</sup> N.J. STAT. ANN. § 30:7E-1f. (West 2022).

<sup>24</sup> *Id.*

<sup>25</sup> N.J. STAT. ANN. § 30:4-16.5 (West 2022). *Compare* N.J. STAT. ANN. § 30:7E-1 (West 2022).

<sup>26</sup> *Id.*

<sup>27</sup> N.J. STAT. ANN. § 30:4-82.6 (West 2022).

<sup>28</sup> *Id.*

<sup>29</sup> N.J. STAT. ANN. § 30:4-82.7 (West 2022).

<sup>30</sup> 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 organizations to provide formerly incarcerated individuals with information about casino key employee license

The New Jersey Department of Corrections was created in 1976.<sup>31</sup> 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.”<sup>32</sup> 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 the custody of the Department of Corrections with preexisting chronic conditions.<sup>33</sup> This definition of “incarcerated person” is limited to N.J.S. 30:4-16.6.

### 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.<sup>34</sup>

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

### Conclusion

Staff seeks authorization to conduct additional research and outreach to ascertain whether it would be appropriate to recommend removing the term inmate from New Jersey’s statutes and providing a uniform reference for persons lodged in correctional facilities.

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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).

<sup>31</sup> 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)

<sup>32</sup> N.J. STAT. ANN. § 30:1B-3b. (West 2022). *See also* N.J. STAT. ANN. § 30:1B-3c. (West 2022) (legislative determination that the “incarcerated offender” should be protected from victimization within the institution).

<sup>33</sup> N.J. STAT. ANN. § 30:4-16.6a. (West 2022).

<sup>34</sup> S.B. 1111, 220th Leg., 2022 Sess. (N.J. 2022).