

NEW YORK CITY BOARD OF CORRECTION

Notice of Adoption of Rules

Notice is hereby given in accordance with section 1043(f) of the New York City Charter that the Board of Correction is adopting rules relating to enhanced supervision housing and punitive segregation in facilities operated by the New York City Department of Correction.

These rules are promulgated pursuant to sections 1043 and 626 of the New York City Charter.

On December 19, 2014, a public hearing on these rules was held by the Board of Correction at 455 1st Avenue, New York, New York. These rules were approved at the public meeting of the Board of Correction held on January 13, 2015.

Statement of Basis and Purpose

These rule revisions amend the Minimum Standards adopted by the Board of Correction (“the Board”) relating to correctional facilities, set forth in Chapters 1 and 2 of Title 40 of the Rules of the City of New York. Their purpose is to address the dramatic increase in serious inmate violence in New York City jails. Although such violence has many causes, the Department of Correction (“the Department”) has specifically identified as significant contributing factors gang-related activity and the ready availability of small, concealable blades. Further, the Department has determined that a relatively small number of inmates are disproportionately involved in these violent incidents. The rule amendments described here seek to address these serious concerns and provide the Department with the means to reasonably control the activities of its most violent inmates. Concurrently, they seek to ensure that the rights of inmates are not unduly burdened and aim to promote both rehabilitation and humane conditions in New York City jails. To those ends, the rule amendments provide for the creation of “enhanced supervision housing” (ESH) units, specify the Minimum Standards that are applicable and inapplicable in such units, and provide for procedural safeguards to protect the rights of inmates assigned to ESH. They also place certain limitations on the use of punitive segregation in Department facilities.

The purpose of ESH is to house inmates posing the most direct security threats, a category that the rule limits to inmates who have, in the five years prior to ESH placement: (1) been identified as leaders of gangs and have participated in dangerous gang-related activity; (2) organized or participated in gang-related assaults; (3) committed slashings or stabbings or who have committed repeated assaults, have seriously injured another, or have rioted or actively participated in inmate disturbances while in Department custody or otherwise incarcerated; (4) been found in possession of scalpels or weapons that pose a level of danger similar to or greater than that of a scalpels while in Department custody or otherwise incarcerated; (5) engaged in serious or persistent violence; or (6) while in Department custody or otherwise incarcerated, engaged in repeated activity or behavior presenting great danger, and such activity or behavior has a direct, identifiable and adverse impact on the safety and security of the facility.

Due to the unique characteristics of the inmate population assigned to ESH, which consists of some of the Department's most dangerous inmates, the rule revisions provide for an increased level of supervision and control in order to ensure the safety and security of inmates and staff. This may include various restrictions on time spent out of cells and in group settings, such as the law library, and allows for increased monitoring of non-privileged correspondence. However, the rule limits the restrictions placed on an inmate in ESH to those tailored to the specific security or safety threat posed by that individual inmate.

While the Board recognizes the great importance of these safety and security objectives, it further recognizes that ESH must pursue the parallel objective of promoting rehabilitation, good behavior, and the psychological and physical well-being of inmates. To that end, the rule amendments require that correction officers assigned to ESH complete forty hours of special training tailored to ESH's unique conditions and inmate population. They further require the Department to provide ESH inmates with programming aimed at facilitating rehabilitation, addressing root causes of violence, and minimizing idleness.

At the same time, these amendments revise standards applicable to punitive segregation in order to improve the effectiveness and safety of such housing. The Board believes that punitive segregation, which addresses particular infractions committed by an inmate, should be limited in certain circumstances where it does not accomplish, or very imperfectly accomplishes, its deterrent purpose. Punitive segregation fails to send a clear deterrent message when it is imposed on an inmate not for an infraction committed by that inmate in his or her present incarceration, but for an infraction committed in a previous incarceration, when the inmate was sentenced to punitive segregation but did not serve, or did not fully serve, that sentence. Punitive segregation for "time owed" from a previous incarceration is often perceived as fundamentally unfair and therefore does not achieve its intended purpose. For these reasons, the rule amendments prohibit the use of punitive segregation for inmates with "time owed" in punitive segregation from previous sentences.

For both punitive segregation and the new enhanced supervision housing unit, the board recognizes that such housing presents a serious and unacceptable threat to the physical and mental health of certain categories of inmates, namely inmates of certain ages and those who suffer from serious physical or serious mental disabilities or conditions. For these reasons, the rule amendments prohibit inmates under the age of 21 (except for those aged 18 to 21 who have committed grade 1 infractions) from being sentenced to punitive segregation (as of October 15, 2015) and enhanced supervision housing. Additionally, inmates with serious mental or serious physical disabilities or conditions may not be placed in enhanced supervision housing or punitive segregation. Notably, section 8-102 of Title 8 of the Administrative Code of the City of New York defines disability broadly. The Board has declined to set forth a list of disabilities and conditions, mental or physical, the diagnosis of which would trigger an inmate's automatic exclusion from punitive segregation and enhanced supervision housing. Rather, the Board vests in the health and mental health service the power to determine, on an individual basis, whether an inmate's disability or condition requires exclusion.

Set forth below is a section-by-section description of the rule amendments.

Section 1-02 (“Classification of Prisoners”)

This revision amends subdivisions (b) and (d) and adds a new subdivision (c) in order to modify the categories of inmates who must be housed separately and apart from one another, creating separate categories for male and female inmates ages 18 through 21. The revision further provides that housing for inmates ages 18 through 21 must provide age-appropriate programming, and requires the Department to report on its efforts to develop such programming. The revision is intended to reduce violence by segregating developmentally distinct age groups, provide age-appropriate rehabilitative opportunities, and conform the Board’s Minimum Standards with the requirements of New York State law and the federal Prison Rape Elimination Act (PREA).

Section 1-05 (“Involuntary lock-in”)

This revision amends paragraph (2) of subdivision (b) to provide that inmates confined to ESH may be locked in during the day for up to nine hours in any 24-hour period, in contrast with the two-hour limit applicable to other inmates. The revision would allow for the creation of schedules providing that no more than half of the inmates assigned to a given housing area would be permitted to enter the day room at any given time. The purpose of this revision is to enhance control of the inmate population assigned to ESH without unduly burdening the opportunity to engage in recreation or allowing for disproportionately extended periods of lock-in.

Section 1-08 (“Access to Courts and Legal Services”)

This revision amends paragraph (6) of subdivision (f) to allow for limits on library hours for inmates housed in ESH, provided that an alternative method of access to legal materials is instituted to permit effective legal research. The revision is intended to aid the Department’s efforts to control and prevent gang communications that may occur in the library setting and to minimize opportunities for negative inmate encounters.

Section 1-09 (“Visiting”)

This revision amends subdivision (f) in order to allow greater control over visits with inmates assigned to ESH by providing for the limitation of contact visits, while additionally ensuring that such restrictions are only imposed when needed to address a specific safety or security concern.

Section 1-11 (“Correspondence”)

This revision amends subparagraphs (ii) and (iii) of paragraph (6) of subdivision (c), as well as clauses (ii) and (iii) of subparagraph (a) of paragraph (1) of subdivision (2), to allow for increased monitoring of non-privileged correspondence sent to inmates assigned to ESH.

Section 1-16 (“Enhanced Supervision Housing”)

This revision adds a new section authorizing and specifying the limits on the assignment of inmates to ESH and further sets forth the procedural rights of inmates recommended for ESH assignment. ESH assignments are limited to those inmates who have, in the five years prior to ESH placement: (1) been identified as leaders of gangs and who have actively participated in the organization of dangerous gang-related activity; (2) organized or participated in gang-related assaults; (3) committed slashings or stabbings or who have committed repeated assaults, have seriously injured another while in Department custody or otherwise incarcerated, or have rioted or actively participated in inmate disturbances; (4) been found in possession of scalpels or

weapons that pose a level of danger similar to or greater than that of scalpels while in Department custody or otherwise incarcerated; (5) inmates who have engaged in serious or persistent violence; or (6) while in Department custody or otherwise incarcerated, engaged in repeated activity or behavior presenting great danger, and such activity or behavior has a direct, identifiable and adverse impact on the safety and security of the facility. However, inmates under the age of 18, inmates with serious mental or serious physical disabilities or conditions, and inmates aged 18 to 21, except those who have committed or have actively participated in the planning of grade 1 infractions while in Department custody, are excluded from placement in ESH. Restrictions placed on an inmate assigned to ESH must be limited to those required to address the specific safety and security threat posed by that inmate. In addition, officers assigned to ESH must be provided with special training, and a certain number of such assignments must be permanent. The new section also requires that determinations of ESH placement include meaningful notice, including a statement of the grounds relied on to assign each inmate to ESH and the restrictions that will apply to the inmate in ESH, and informing the inmate of the right to submit a written response. The Department is further required, within three days of each ESH placement, to hold a placement review hearing, conducted by a hearing officer who did not participate in the placement decision, to determine whether the placement is warranted. If it is decided, at any time other than initial placement in ESH, to limit an ESH inmate's access to contact visits, a separate pre-deprivation hearing must be held. Each ESH placement must be reviewed every 45 days to determine whether it is still warranted. In addition, the Department is required, every 60 days, to provide the Board with specified information relating to the implementation of ESH.

Section 1-17 ("Limitations on the Use of Punitive Segregation")

This revision adds a new section which, among other things, excludes from punitive segregation inmates under the age of 18, inmates with serious mental or serious physical disabilities or conditions, and inmates aged 18 to 21, except those who have committed or have actively participated in the planning of grade 1 infractions while in Department custody. An inmate excluded from punitive segregation for any of these reasons at the time of an infraction may not be placed in punitive segregation at a later date for the same infraction, even if the inmate's age or health status have since changed. An inmate placed in punitive segregation must be afforded a hearing, upon notice, at which the Department has the burden of showing, by a preponderance of the evidence, that the inmate is guilty of the infraction which is the basis for placement in punitive segregation. This revision also establishes time limits on the placement of an inmate in punitive segregation and on cumulative placements of the same inmate in punitive segregation. Further, the revision prevents an inmate who is admitted to a Department facility from serving time in punitive segregation for "time owed" in punitive segregation from a separate and previous incarceration. In addition, the Department is required, every 60 days, to provide the Board with specified information relating to punitive segregation.

Section 2-08 ("Coordination")

This revision amends paragraph (2) of subdivision (b) to make clear that, as in the case of ESH, medical staff may determine that an inmate shall not be placed in punitive segregation at any time before or during such placement.

The Board is authorized to adopt these rule revisions by sections 626(e) and 1043(a) of the New York City Charter.

Final Rule

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of the Board of Correction, unless otherwise specified or unless the context clearly indicates otherwise.

New material is underlined.

[Material inside brackets indicates deleted material.]

Section 1. Paragraph (2) of subdivision (b) of section 1-02 of Title 40 of the Rules of the City of New York is amended, subdivisions (c), (d) and (e) are relettered as subdivisions (d), (e) and (f), a new subdivision (c) is added, and paragraph (2) of subdivision (d), as relettered by this section, is amended, to read as follows:

- (2) Within the categories set forth in paragraph (1), the following groupings shall be housed separate and apart:
 - (i) male adults, ages [19] 22 and over;
 - (ii) male [minors] young adults, ages [16 to 18] 18 to 21 inclusive;
 - (iii) [female adults, ages 19 and over] male minors, ages 16 and 17;
 - (iv) female [minors, ages 16 to 18 inclusive] adults, ages 22 and over;
 - (v) female young adults, ages 18 to 21 inclusive;
 - (vi) female minors, ages 16 and 17.

(c) *Inmates ages 18 to 21 inclusive.* (1) No later than October 15, 2015, the Department shall implement the requirement of paragraph (2) of subdivision (b) of this section that inmates ages 18 through 21 be housed separately and apart from inmates over the age of 21.

(2) Housing for inmates ages 18 through 21 shall provide such inmates with age-appropriate programming. No later than August 1, 2015, the Department shall provide the Board with a plan to develop such age-appropriate programming.

[(c)] (d) *Civil prisoners.* (1) Prisoners who are not directly involved in the criminal process as detainees or serving sentence and are confined for other reasons including civil process, civil contempt or material witness, shall be housed separate and apart from other prisoners and, if possible, located in a different structure or wing. They must be afforded at least as many of the rights, privileges and opportunities available to other prisoners.

- (2) Within this category, the following groupings shall be housed separate and apart:

- (i) male adults, ages [19] 22 and over;
- (ii) male [minors] young adults, ages [16 to 18] 18 to 21 inclusive;
- (iii) [female adults, ages 19 and over] male minors, ages 16 and 17;
- (iv) female [minors, ages 16 to 18 inclusive] adults, ages 22 and over;
- (v) female young adults, ages 18 to 21 inclusive;
- (vi) female minors, ages 16 and 17.

§2. Paragraph (2) of subdivision (b) of section 1-05 of Title 40 of the Rules of the City New York is amended to read as follows:

- (2) During the day for count or required facility business that can only be carried out while prisoners are locked in, not to exceed two hours in any 24-hour period. This time may be extended if necessary to complete an off count. This paragraph shall not apply to prisoners confined in enhanced supervision housing, who may be locked in during the day for up to nine hours in any 24-hour period.

§3. Paragraph (6) of subdivision (f) of section 1-08 of Title 40 of the Rules of the City of New York is amended to read as follows:

- (6) The law library hours for prisoners in punitive segregation or enhanced supervision housing may be reduced or eliminated, provided that an alternative method of access to legal materials is instituted to permit effective legal research.

§4. Subdivision (f) of section 1-09 of Title 40 of the Rules of the City of New York is amended to read as follows:

- (f) Contact visits. Physical contact shall be permitted between every prisoner and all of his or her visitors throughout the visiting period, including holding hands, holding young children, and kissing. The provisions of this subdivision are inapplicable to prisoners housed for medical reasons in the contagious disease units. The Department may impose certain limitations on contact visits for inmates confined in enhanced supervision housing in accordance with the procedures and guidelines set forth in section 1-16 of this chapter.

§5. Subparagraphs (ii) and (iii) of paragraph (6) of subdivision (c) of section 1-11 of Title 40 of the Rules of the City of New York are amended to read as follows:

- (ii) The affected prisoner shall be given written notification of the determination and the specific facts and reasons supporting it. The warden may delay notifying the prisoner only for so long as such notification would endanger

the safety and security of the facility, after which the warden immediately shall notify the prisoner. This requirement shall not apply to prisoners confined in enhanced supervision housing.

- (iii) A written record of correspondence read pursuant to this paragraph shall be maintained and shall include: the name of the prisoner, the name of the intended recipient, the name of the reader, the date the correspondence was read, and, with the exception of prisoners confined in enhanced supervision housing, the date that the prisoner received notification.

§6. Clauses (ii) and (iii) of subparagraph (a) of paragraph (1) of subdivision (e) of section 1-11 of Title 40 of the Rules of the City of New York are amended to read as follows:

- (ii) The affected prisoner and sender shall be given written notification of the warden's determination and the specific facts and reasons supporting it. The warden may delay notifying the prisoner and the sender only for so long as such notification would endanger the safety or security of the facility, after which the warden immediately shall notify the prisoner and sender. This requirement shall not apply to prisoners confined in enhanced supervision housing.
- (iii) A written record of correspondence read pursuant to this subdivision shall be maintained and shall include: the name of the sender, the name of the intended prisoner recipient, the name of the reader, the date that the correspondence was received and was read, and, with the exception of prisoners confined in enhanced supervision housing, the date that the prisoner and sender received notification.

§7. Chapter 1 of Title 40 of the Rules of the City of New York is amended by adding new sections 1-16 and 1-17, to read as follows:

§1-16 Enhanced Supervision Housing.

(a) Purpose. The primary objective of enhanced supervision housing (ESH) is to protect the safety and security of inmates and facilities, while promoting rehabilitation, good behavior, and the psychological and physical well-being of inmates. To accomplish these objectives, ESH is designed to separate from the general population those inmates who pose the greatest threats to the safety and security of staff and other inmates. It additionally seeks to promote the rehabilitation of ESH inmates by incentivizing good behavior and by providing necessary programs and therapeutic resources.

(b) Policy. An inmate may be confined in ESH if the inmate presents a significant threat to the safety and security of the facility if housed elsewhere. Such a determination shall only be supported by a finding that one of the following has occurred in the last five (5) years: (1) the inmate has been identified as a leader of a gang and has demonstrated active involvement in the organization or perpetration of violent or dangerous gang-related activity;

(2) the inmate has demonstrated active involvement as an organizer or perpetrator of a gang-related assault;

(3) the inmate has committed a slashing or stabbing, has committed repeated assaults, has seriously injured another inmate, visitor, or employee, or has rioted or actively participated in inmate disturbances while in Department custody or otherwise incarcerated;

(4) the inmate has been found in possession of a scalpel or a weapon that poses a level of danger similar to or greater than that of a scalpel while in Department custody or otherwise incarcerated;

(5) the inmate has engaged in serious or persistent violence; or

(6) the inmate, while in Department custody or otherwise incarcerated, has engaged in repeated activity or behavior of a gravity and degree of danger similar to the acts described in paragraphs (1) through (5) of this subdivision, and such activity or behavior has a direct, identifiable and adverse impact on the safety and security of the facility, such as repeated acts of arson.

(c) Exclusions. (1) The following categories of inmates shall be excluded from ESH placement:

- (i) inmates under the age of 18;
- (ii) inmates ages 18 through 21, except those who have committed or have actively participated in the planning of grade 1 infractions while in Department custody; and
- (iii) inmates with serious mental or serious physical disabilities or conditions.

(2) Medical staff shall be permitted to review ESH placements and participate in placement review hearings. Consistent with these regulations, when ESH assignment would pose a serious threat to an inmate's physical or mental health, medical staff shall have the authority to determine that the inmate shall be barred from ESH placement or shall be moved from ESH to a more appropriate housing unit. This determination may be made at any time during the inmate's incarceration.

(3) Any inmate placed in ESH who evidences a mental or emotional disorder shall be seen by mental health services staff prior to or immediately upon ESH placement.

(4) The total number of inmates housed in ESH shall not exceed 250 at any time.

(d) Conditions, Programming and Services. (1) To the extent the Department imposes restrictions on an ESH inmate that deviate from those imposed on inmates in the general population, such restrictions must be limited to those required to address the specific safety and security threat posed by that individual inmate.

(2) To the extent the Department seeks to limit an ESH inmate's access to contact visits, a hearing shall be held, as required by subdivision (g) of this section, which shall address the

criteria set forth in subdivision (h) of section 1-09 of this chapter with regard to both the inmate and any individual visitors with whom the Department wishes to limit contact .

(3) No later than July 1, 2015, the Department shall provide ESH inmates with both voluntary and involuntary, as well as both in- and out-of-cell, programming aimed at facilitating rehabilitation, addressing root causes of violence, and minimizing idleness.

(4) All inmates in ESH shall be seen at least once each day by medical staff who shall make referrals to medical and mental health services where appropriate.

(e) Staffing. (1) Correction officers assigned to ESH shall receive forty (40) hours of special training designed to address the unique characteristics of ESH and its inmates. Such training shall include, but shall not be limited to, recognition and understanding of mental illness and distress, effective communication skills, and conflict de-escalation techniques.

(2) At least twenty-five (25) percent of correction staff assigned to ESH shall be assigned to steady posts.

(f) Notice of ESH Placement. (1) When it is determined that an inmate should be confined in ESH, that inmate shall be given written notice of such determination within twenty-four (24) hours of placement. Inmates who are unable to read or understand such notice shall be provided with necessary assistance. Such notice shall:

- (i) state the grounds relied on and the facts that support the inmate's ESH placement;
- (ii) inform the inmate of the individual restrictions the Department intends to impose during the inmate's ESH confinement;
- (iii) notify the inmate of the upcoming ESH placement review hearing; and
- (iv) inform the inmate of the right to review, prior to the placement hearing, the evidence relied upon by the Department, to appear at the hearing in person, to submit a written statement for consideration, to call witnesses, and to present evidence.

(g) Placement Review Hearing. (1) Within three (3) business days of service of notice on an inmate of initial ESH placement and related restrictions, the Department shall conduct a hearing to adjudicate the inmate's ESH placement and the individual restrictions proposed. The hearing may not be adjourned except, in extenuating circumstances, by the inmate's documented request and may in no event be adjourned for longer than five (5) days.

(2) One or more hearing officers shall conduct the placement review hearing. Department staff who initially recommended the inmate for ESH placement or otherwise provided evidence to support the inmate's ESH placement shall not be eligible to serve as hearing officers at the inmate's placement review hearing.

(3) The placement review hearing shall consist of following:

- (i) a review of the facts upon which the Department relies to place the inmate in ESH pursuant to subdivision (b) of this section, and a determination of

whether such facts exist and whether they support, by a preponderance of the evidence, the conclusion that the inmate presents a current significant threat to the safety and security of the facility such that ESH is appropriate;

- (ii) consideration of the time that has elapsed since the occurrence of the activity or behavior relied on by the Department to support ESH placement;
- (iii) a review of the individual restrictions proposed by the Department and a determination of whether each is supported by evidence of the legitimate safety and security concerns related to that individual inmate;
- (iv) consideration of any relevant information provided by medical staff;
- (v) consideration of any credible and relevant evidence submitted or statements made by the inmate at the hearing; and
- (vi) consideration of any other evidence deemed relevant to the ESH status determination or imposition of individual restrictions.

(4) The inmate shall be permitted to appear at the hearing in person, submit a written statement, call witnesses, and present evidence.

(5) In the following circumstances, the inmate shall be entitled to the assistance of a hearing facilitator, who shall assist the inmate by clarifying the charges, explaining the hearing process, and assisting the inmate in gathering evidence:

- (i) the inmate is illiterate or otherwise unable to prepare for or understand the hearing process; or
- (ii) the inmate has otherwise been unable to obtain witnesses or material evidence.

(6) If it is determined that the ESH placement and each related restriction are supported by a preponderance of the evidence, the placement and each supported restriction may be continued. Written notice shall be provided to the inmate outlining the bases for such determinations. If it is determined that ESH placement or imposition of any individual restrictions is unsupported by a preponderance of the evidence, ESH status or unsupported individual restrictions shall be terminated immediately.

(h) Periodic Review of Placement. (1) The placement of an inmate in ESH shall be reviewed every forty-five (45) days to determine whether the inmate continues to present a significant threat to the safety and security of the facility if housed outside ESH such that continued ESH placement is appropriate.

(2) At least twenty-four (24) hours prior to such periodic review, inmates shall be notified of the pending review in writing and of the right to submit a written statement for consideration. Inmates who are unable to read or understand such notice shall be provided with necessary assistance.

(3) Periodic review of an inmate's ESH status shall consider the following, with conclusions recorded in a written report made available to the inmate within seven (7) days of the review:

- (i) the justifications for continued ESH placement;

- (ii) the continued appropriateness of each individual ESH restriction and whether any such individual restrictions should be relaxed or lifted;
- (iii) information regarding the inmate's subsequent behavior and attitude since ESH placement began, including participation in and availability of programming;
- (iv) information regarding the effect of ESH placement or of individual ESH restrictions on the inmate's mental and physical health;
- (v) any written statement submitted by the inmate for consideration;
- (vi) any other factors that may favor retaining the inmate in or releasing the inmate from ESH or any other factors that may favor the lifting of individual ESH restrictions or continuing to impose individual ESH restrictions; and
- (vii) if the inmate's ESH placement is to continue, any actions or behavioral changes that the inmate might undertake to further rehabilitative goals and facilitate the lifting of individual ESH restrictions or ESH release.

(4) At any time when deemed appropriate, an inmate may be evaluated and recommended for placement in a more appropriate housing unit outside ESH.

(i) Board Review of ESH Implementation. (1) No later than sixty (60) days after ESH implementation and every sixty (60) days thereafter, the Department shall submit to the Board information related to implementation of ESH and the inmates housed there. This information shall include, but shall not be limited to:

- (i) the number of inmates housed in ESH, both currently and since implementation;
- (ii) the frequency with which each of the criteria set forth in subdivision (b) of this section is used to support ESH placement;
- (iii) rates of violence in both ESH and the general population since implementation of ESH and rates of violence for comparable time periods prior to ESH implementation;
- (iv) rates of use of force in both ESH and the general population since implementation of ESH;
- (v) programming and mental health resources available to ESH inmates and the extent of inmate participation in each program and resource;
- (vi) training received by correction officers assigned to ESH and the number of steady posts created in ESH;
- (vii) the number of inmates initially assigned to ESH but whose ESH status was terminated in a placement review hearing;
- (viii) the number of inmates released from ESH into the general population through periodic review or other ESH status review mechanisms; and
- (ix) any other data the Department or the Board deems relevant to the Board's assessment of ESH.

(2) The Board shall review the information provided by the Department and any other information it deems relevant to the assessment of ESH. Eighteen (18) months after implementation of ESH and no later than two (2) years after implementation of ESH, the Board shall meet to discuss the effectiveness and continued appropriateness of ESH.

§1-17 Limitations on the Use of Punitive Segregation.

(a) Policy. As implemented by the Department, punitive segregation is a severe penalty that should not be used under certain circumstances in the Department's facilities. In particular, punitive segregation represents a serious threat to the physical and psychological health of adolescents, with respect to whom it should not be imposed. Moreover, punitive segregation is intended to address a particular offense committed in the course of an inmate's incarceration and should not be imposed in connection with an offense committed by the same inmate during a separate and previous incarceration.

(b) Exclusions. (1) The following categories of inmates shall be excluded from punitive segregation:

- (i) inmates under the age of 18;
- (ii) as of October 15, 2015, inmates ages 18 through 21, except those inmates confined to punitive segregation as punishment for grade 1 infractions; and
- (iii) inmates with serious mental or serious physical disabilities or conditions.

(2) Consistent with these regulations, when assignment to punitive segregation would pose a serious threat to an inmate's physical or mental health, medical staff shall have the authority to determine that the inmate shall be barred from punitive segregation placement or shall be moved from punitive segregation to a more appropriate housing unit.

(3) An inmate who is excluded from punitive segregation at the time of an infraction due to age or health status shall not be placed in punitive segregation for the same infraction at a later date, regardless of whether the inmate's age or health status has since changed.

(4) Inmates shall not be confined to punitive segregation as punishment for grade 3 offenses.

(c) Due Process. (1) Prior to the infraction hearing provided for in paragraph (2) of this subdivision, the inmate shall receive written notice detailing the charges against the inmate and a description of the inmate's behavior that gave rise to the charges. Inmates who are unable to read or understand such notice shall be provided with necessary assistance. Notice shall be served no later than twenty-four (24) hours prior to commencement of the infraction hearing unless the inmate consents to a shorter time period in writing.

(2) All inmates, except those who qualify for and are placed in pre-hearing detention (PHD), shall be afforded an infraction hearing prior to placement in punitive segregation housing. Inmates who qualify for and are placed in PHD shall be afforded an infraction hearing no later than seven (7) business days after PHD placement, and time spent in PHD prior to the infraction hearing shall count toward the inmate's punitive segregation sentence.

(3) Inmates shall be permitted to appear in person, make statements, present material evidence, and call witnesses at infraction hearings.

(4) In the following circumstances, an inmate shall be entitled to the assistance of a hearing facilitator, who shall assist the inmate by clarifying the charges, explaining the hearing process, and assisting the inmate in gathering evidence:

- (i) the inmate is illiterate or otherwise unable to prepare for or understand the hearing process; or
- (ii) the inmate has otherwise been unable to obtain witnesses or material evidence.

(5) The Department has the burden of proof in all inmate disciplinary proceedings. An inmate's guilt must be shown by a preponderance of the evidence to justify punitive segregation placement.

(d) Time limitations on punitive segregation. (1) In no event may an inmate be held in punitive segregation longer than thirty (30) consecutive days.

(2) An inmate who has served thirty (30) consecutive days in punitive segregation must be released from punitive segregation for at least seven (7) days before the inmate may be returned to punitive segregation.

(3) An inmate may not be held in punitive segregation for more than a total of sixty (60) days within any six (6) month period, unless, upon completion of the sixty (60) days, the inmate continues to engage in persistent acts of violence, other than self-harm, such that placement in enhanced supervision housing, provided for in section 1-16 of this chapter, would endanger inmates or staff. In such instances, the Chief of Department must approve extension of the inmate's punitive segregation placement, and the Department must provide the Board and the Department of Health and Mental Hygiene with immediate notification containing an explanation of the security concerns presented by the inmate. Daily mental health rounds must be provided to inmates who serve more than sixty (60) days within a six (6) month period, and such rounds must be documented in writing.

(e) Required out-of-cell time. Inmates confined to punitive segregation as punishment for non-violent or grade 2 offenses must be permitted at least seven (7) out-of-cell hours per day.

(f) Staffing. (1) Correction officers assigned to punitive segregation housing shall receive forty (40) hours of special training designed to address the unique characteristics of punitive segregation and its inmates. Such training shall include, but shall not be limited to, recognition and understanding of mental illness and distress, effective communication skills, and conflict de-escalation techniques.

(2) At least twenty-five (25) percent of correction staff assigned to punitive segregation housing shall be assigned to steady posts.

(g) Time in punitive segregation owed from a previous incarceration. As of the effective date of this section, no inmate shall be assigned to or held in punitive segregation

for any time from a separate and previous incarceration for which such inmate was sentenced to but did not serve in punitive segregation.

(h) Reports. No later than sixty (60) days after implementation of enhanced supervision housing provided for in section 1-16 of this chapter and every sixty (60) days thereafter, the Department shall submit to the Board information related to implementation of required changes to punitive segregation. This information shall include, but shall not be limited to:

- (i) the number of inmates held in punitive segregation and the number of inmates waiting to be held in punitive segregation;
- (ii) data related to the length of punitive segregation sentences and the frequency of the types of offences resulting in punitive segregation sentences;
- (iii) the status of the reduction of punitive segregation sentences from ninety (90) to thirty (30) days;
- (iv) the status of implementation of the Department's planned policy to require that an inmate be released from punitive segregation for a minimum of seven (7) days before returning to punitive segregation;
- (v) a plan and timeline detailing steps necessary to reduce the length of punitive segregation sentences and to reduce the number of inmates housed in punitive segregation;
- (vi) data related to the amount of recreation and out-of-cell time provided to inmates housed in punitive segregation; and
- (vii) any other information the Department or the Board deems relevant to the Board's assessment of punitive segregation in Department facilities.

§8. Paragraph (2) of subdivision (b) of section 2-08 of Title 40 of the Rules of the City of New York is amended to read as follows:

(2) [Any inmate to be placed in punitive segregation who has a history of mental or emotional disorders shall be seen by mental health services staff before being moved to punitive segregation.] When placement in punitive segregation would pose a serious threat to an inmate's physical or mental health, medical staff shall have the authority to determine that the inmate shall be barred from such placement or shall be moved from punitive segregation to a more appropriate housing unit. This determination may be made at any time during the inmate's placement in punitive segregation. All inmates in punitive segregation shall be seen at least once each day by medical staff who shall make referrals to medical and mental health services where appropriate.

Statement of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043(f)(1)(c) of the New York City Charter, and hereby represent to the Mayor, that there is substantial need for the implementation of the amendments to chapters 1 and 2 of Title 40 of the Rules of the City of New York, regarding the establishment of Enhanced Supervision Housing and reform of Punitive Segregation in facilities operated by the Department of Correction, upon the publication in the City Record of its Notice of Adoption.

The Department of Correction is facing an urgent problem of increased inmate violence in its facilities, and the establishment of Enhanced Supervision Housing is a necessary means of coping with this problem. At the same time, Punitive Segregation, though it continues to be a necessary instrument of discipline in the Department's facilities, must be implemented in a way that limits its negative impact on inmates. This rule authorizes the establishment of Enhanced Supervision Housing and mandates the reform of Punitive Segregation. Implementation of this rule upon publication will allow the Department to proceed immediately with these necessary programs.

GORDON CAMPELL
Chair
Board of Correction

APPROVED: _____
Bill de Blasio
Mayor

DATE: _____