



**NEW YORK CITY DEPARTMENT OF CORRECTION**  
**Joseph Ponte, Commissioner**

Office of the Commissioner  
75-20 Astoria Blvd., Suite 305  
East Elmhurst, NY 11370  
718 • 546 • 0890  
Fax 718 • 278 • 6022

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May 26, 2015

Stanley Brezenoff, Chair  
NYC Board of Correction  
51 Chambers Street, Room 923  
New York, NY 10007

Re: Petition to the NYC Board of Correction for Rulemaking Pursuant to the City Administrative Procedure Act

Dear Mr. Brezenoff:

On behalf of the Department of Correction, I write to request that the Board of Correction initiate the rulemaking process pursuant to the City Administrative Procedure Act. The New York City Charter vests the New York City Board of Correction with the authority and obligation to promulgate rules in this area and provides in relevant part as follows: “[t]he board shall establish minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction of the department...” City Charter Chapter 25 Section 626(e). The revisions we seek will amend the Minimum Standards of the Board of Correction relating to correctional facilities, set forth in Chapter 1, Sections 1-09 (Visiting), 1-12 (Packages), 1-16 (Enhanced Supervision Housing), 1-17 (Punitive Segregation). The revisions we seek will also make permanent certain continuing variances that the Department has repeatedly sought and received relating to 1-02 (Classification of Prisoners), 1-03 (Personal Hygiene), and 1-06 (Recreation). A summary and the full text of the proposed rules are enclosed.

This administration has made it a top priority to address the alarming increase in the rate of violence in the City’s jails over the past decade. During the first three months of 2015, there were 37 slashings and stabbings, which is the highest total for the first three months of the year since 1998. This datum is particularly disconcerting when coupled with the fact that the jail population in 1998 was over 17,000, compared to the current population which is fewer than 10,000, making the number of slashings and stabbings per capita in 2015 much higher. While this increase in slashings and stabbings is undoubtedly tied to the changing landscape of gang conflicts in and outside of the jails, and the proliferation of small, hard-to-detect weapons (such as scalpels and razor blades), the violence is nevertheless unacceptable. The Department of Correction has a responsibility to take immediate action.

The Department has worked with the Board of Correction to implement significant changes that address several long-term concerns, including but not limited to:

- Reform of adolescent management, including increasing staffing ratios from 33:1 to 15:1, providing enhanced programming, and improving staff training (e.g. safe crisis management).
- Elimination of punitive segregation for 16 and 17 year olds in December 2014.
- Elimination of punitive segregation for 18 to 21 year olds by January 1, 2016, and development of program and staff ratio improvements similar to those already implemented for 16 and 17 year olds.
- Institution of the following punitive segregation reform policies:
  - Reduction of the punitive segregation maximum sentence from 90 days to 30 days;
  - Creation of a punitive segregation area that allows for 7 hours out of cell time, known as “Punitive Segregation II”;
  - Release of inmates from punitive segregation for 7 days following 30 consecutive days spent in punitive segregation, as well a maximum allowance of 60 cumulative days in punitive segregation within any 6 month period; and
  - Elimination of historically-owed punitive segregation time.

The Department has also embarked on a long-term, 14-point, anti-violence and safety reform agenda to reduce violence and change the internal culture. The first initiative is geared towards reducing violence by keeping drugs and weapons out of Rikers and improving the safety of the jails. Accomplishing this initiative requires the Board’s assistance in revising the BOC Minimum Standards in order to allow the Department to effectively:

- limit the entry of weapons and contraband through visits;
- more appropriately address serious assaults on staff; and,
- provide flexibility in addressing violent infractions by our most violent inmates.

### Visits

The Department seeks to amend BOC Minimum Standard Section 1-09 (Visiting) to redefine the scope of physical contact during a contact visit and establish broader criteria for limitations on visiting rights. These changes would bring the Board’s Minimum Standards closer in line with New York State standards governing visitation, as well as with the standards in place in many other jurisdictions. DOC understands that contraband and weapons have been funneled into the jails through multiple sources: visitors, inmates and those who work in jail facilities. DOC is aggressively addressing all avenues by which contraband might get into our facilities. The Department has already increased the number of investigators within its Investigation Division (ID), including the deployment of specially designated investigator teams in three priority facilities to proactively identify and investigate staff misconduct. DOC has recently added a canine patrol unit to assist investigations and has a plan to increase canine units across all facilities. To address potential movement of contraband by staff within the facilities, facility front gate screening procedures and specialized training by ID have also been upgraded.

Notwithstanding these efforts, the Department is compelled to seek changes to the visitation policies and procedures. Visits with friends and family play an instrumental role in an inmate’s ability to maintain relationships and their successful reentry back into the community – and the

Department is committed to maintaining these strong ties. Unfortunately, visits are also a known and repeatedly used entry point for many to introduce contraband of all forms. In FY15, to date, 284 visitors were arrested across the Department. Of those, 171 were arrested for attempting to introduce drugs, 29 for weapons, 46 for tobacco, and 38 for other violations like assault or currency contraband. Additionally, weapon and drug contraband were found in the visitor area 24 and 43 times, respectively. Between January 2014 and April 2015, 442 contraband items (including 139 razors, scalpels, box cutters, or knives) were left in the amnesty box by visitors who decided at the last possible moment not to attempt to bring these items into the jails. Furthermore, in post-visit searches, 27 inmates were found with drug or weapon contraband in FY14, and 23 inmates were found with drug or weapon contraband in FY15 to date.

The Department's proposed changes to physical contact allowed during a visit will provide for better monitoring of visitor interactions, limit the opportunities to pass contraband from visitors to inmates, and establish a visitation policy that is in line with similarly situated jurisdictions. Physical contact will still occur (e.g. a brief hug and embrace at the beginning and end of a visit as well as holding young children in one's family), but the opportunity to pass contraband will be limited.

The Department requires a visitation policy that allows for the ability to deny, revoke, or limit a visit when a review of the totality of information and circumstances reveals that the safety and security of its facilities are at risk. To allow the Department to identify visitors and inmates whose purpose is to engage in dangerous activity during a visit, the Department must be permitted to consider Security Risk Group (SRG) status, visit patterns and trends, and visitor and inmate contraband history. The current rules create a reactive response policy, whereby the Department is primarily limited to imposing restrictions where a visit-related incident has already occurred. The new set of criteria proposed by the Department, and the strict limitations governing how those criteria are to be properly evaluated, would result in the optimization of resources and fact-based information gathering to proactively minimize incidents both during visits and within the facilities. These changes not only provide more effective tools for stemming the flow of dangerous contraband, but also maintain the Department's commitment to the value and necessity of quality visitation.

### Packages

The Department seeks to amend BOC Minimum Standard Section 1-12 (Packages) to set limitations on inmate packages. If inmates can only receive items from approved vendors, the potential for receipt of contraband concealed in such items is all but eliminated. In addition, this rule change is consistent with other Department initiatives, including efforts to broaden commissary offerings and provide uniforms to all inmates, which will reduce the need for families to send outside clothing and other items. This proposed rule change also adds clarity regarding the scope of permissible items that can be sent to inmates.

### Punitive Segregation - Assaults on Staff

The Department seeks to amend BOC Minimum Standard Section 1-17 (Punitive Segregation) to allow inmates infracted and sentenced for a serious assault on staff – resulting in serious injury – to receive a higher maximum sentence in punitive segregation. This rule would apply in limited circumstances, but is critical in establishing an effective deterrent to dangerous and unacceptable behavior. In FYTD 2015, 705 assaults on staff occurred across the Department, with

27 of those being of a serious and violent nature, compared to the same time period in FY 2014, when 574 assaults on staff occurred, of which 46 were of a serious and violent nature. A higher maximum sentence in punitive segregation for serious assaults on staff is a critical component of the Department's plan to improve safety and security at Rikers, and send a clear message to staff that the Department supports them, and to inmates that there are meaningful consequences for seriously assaulting a staff member.

#### Punitive Segregation- Exception to 7 day release period for dangerous and violent behavior

The Department seeks to amend BOC Minimum Standard Section 1-17 (Punitive Segregation) to establish exceptions to the required 7-day period out of punitive segregation for a limited number of particularly violent and dangerous inmates and clarify the meaning of the 60-day limit on punitive segregation. This proposed rule change is intended to reduce specific incidents of violence occurring during the required minimum 7-day period of release from punitive segregation following 30 consecutive days there. The Department is committed to overall punitive segregation reform that serves the best interests of both the inmates and the staff. However, while most inmates released from punitive segregation have been returned to general population housing and remain there without incident, a small number of inmates have been involved in violent incidents that have endangered the safety of inmates and staff immediately following their release from punitive segregation. If an inmate commits a violent act within the seven days that they are released, DOC is seeking reasonable flexibility to remove that individual from a general population setting in order to maintain the safety of the jails. This circumstance would likely apply to less than 10 percent of the total number of inmates released from punitive segregation at 30 days.

The current override permitted in the case of the rule establishing 60-day maximum within 6 months allows for an extension of an inmate's punitive segregation stay, and acknowledges that there will be inmates who pose sufficient threat as to require punitive segregation beyond that time frame. In keeping with that logic, the Department asks that an override option be implemented to allow inmates to remain in punitive segregation beyond 30 consecutive days based on similar safety concerns. In the current environment, it is especially urgent that the Department be able to immediately respond to violent acts and prevent additional incidents.

#### Enhanced Supervision Housing Due Process

The Department seeks to amend BOC Minimum Standard Section 1-16 (Enhanced Supervision Housing ("ESH")) to establish an exception to the ESH due process requirements for those who are removed from ESH and returned to ESH within 45 days. This change will provide the Department with flexibility to determine appropriate housing placement and incentivize good behavior through step-down programs to transition inmates out of ESH.

#### Permanent Application of Continuing Variances

The Department further seeks to amend BOC Minimum Standards Sections 1-02 (Classification of Prisoners), 1-03 (Personal Hygiene), and 1-06 (Recreation) to make permanent certain continuing variances that it has repeatedly sought and received. Specifically, the Department seeks to commingle city sentenced and detainees within adolescents housing, housing for 18-21 year olds and housing for pregnant inmates, as well as to restrict certain personal hygiene items to suicide watch inmates and enable in-cell recreation to inmates confined for medical reasons.

This commingling allows for programs and services to be targeted to these unique populations and to be provided as needed, regardless of sentence status. Furthermore, commingling adolescent male inmates allows the Department to house them in cell housing areas in Robert N. Davoren Center instead of dorm housing areas in Eric M. Taylor Center. This variance has been granted since March 1989. Commingling pregnant inmates facilitates medical monitoring of the inmates and reduces their exposure to the contagions of the rest of the Rose M. Singer Center population. This variance has been granted since May 2009.

The restricted items for suicide watch inmates limits them to clothing and bedding that are tear resistant and difficult to manipulate, preventing suicide watch inmates from creating nooses to use to commit suicide. These suicide resistant articles are commonly used for suicide watch inmates in jails and prisons in the United States. These variances have been granted since September 2003.

The recreation rule would enable the Department to provide meaningful indoor recreation activities for inmates who are unable to participate in outdoor recreation for medical reasons. This variance has been granted since May 1992.

We all agree that safety is paramount, for inmates and staff alike; the proposed rules changes are key to achieving safety which is critical to comprehensive institutional reform.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Ponte". The signature is written in a cursive style with a large, looped initial "J".

Joseph Ponte

## Summary of Proposed Rule Changes

### §1-02 Classification of Prisoners

Makes permanent a long-standing variance that enables the Department to comingle city-sentenced inmates and detainees within the following housing areas: (1) adolescent cell housing areas, (2) housing areas designated for inmates ages 18 to 21, and (3) housing areas for pregnant inmates.

### §1-03 Personal Hygiene

Makes permanent a long-standing variance that enables the Department, with the approval of mental health providers, to deny use of certain personal hygiene items to inmates placed on suicide watch, require that suicide watch inmates wear suicide-resistant clothing, and issue suicide watch inmates suicide-resistant bedding materials.

### §1-06 Recreation

Makes permanent a long-standing variance that enables the Department to provide in-cell recreation to inmates confined for medical reasons in the contagious disease units and requires the Department to provide such inmates with various recreation materials.

### §1-09(f) Contact Visits

Redefines the scope of the type of physical contact that the Department must allow during contact visits by conforming the Board's definition of "permitted contact" to the definition provided under New York State law, but additionally provides that inmates must be permitted to hold young children in their families throughout visits.

### §1-09(h) Limitations on Visiting Rights

Conforms the Board's rules to New York State rules regarding how and when visitation may be limited. Establishes broader criteria for limitations on visitation by allowing the Department to consider factors such as criminal record and relationship between the inmate and the visitor, but additionally provides strict limitations on how the Department is permitted to consider such factors. Reforms the procedure by which inmates and visitors may appeal visitation limitations imposed by the Department.

### §1-12 Packages

Allows the Department to set stricter limitations on the contents, senders, and recipients of inmate packages. Extends the amount of time in which the Department is permitted to deliver packages to inmates.

### §1-16 Enhanced Supervision Housing

Provides the Department with increased flexibility to move inmates out of ESH to alternative placements for brief periods of time where appropriate and to provide ESH inmates with incentives for good behavior by allowing the Department to remove inmates from ESH for a short period of time without being required to hold a new Due Process hearing in situations where the inmate must be returned to ESH, provided that the inmate's placement will still need to be reviewed under the periodic review procedure.

### §1-17 Punitive Segregation

In certain highly exceptional circumstances presenting safety and security concerns, allows the Department to waive the requirement that inmates be immediately released from punitive segregation for seven days after they have been held in punitive segregation for thirty consecutive days.

Clarifies the meaning of the provision that allows the Department to keep inmates in punitive segregation for longer than sixty cumulative days within a six month period.

Requires that inmates held longer than thirty consecutive days in punitive segregation be provided with documented, daily mental health rounds.

Allows the Department to sentence inmates who have committed a serious assault on staff to sixty days in punitive segregation and exempts such inmates from the requirement that they be released from punitive segregation after thirty consecutive days.

In June of 2016, requires the Department to research and report on solutions to the persistent violence in punitive segregation using tools other than extending inmates' punitive segregation confinement and requires the Board to consider whether the Department should continue to be allowed to extend punitive segregation confinement beyond thirty consecutive days and sixty cumulative days in six months for violent inmates.

## Proposed 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 (1) of subdivision (b) of section 1-02 of Title 40 of the Rules of the City of New York is amended and new subparagraphs (vi), (vii), and (viii) are added, to read as follows:

- (1) [Prisoners] Inmates serving sentences shall be housed separate and apart from [prisoners] inmates awaiting trial or examination, except when housed in:
  - (i) punitive segregation;
  - (ii) medical housing areas;
  - (iii) mental health centers and mental observation cell housing areas;
  - (iv) close custody housing areas; [and]
  - (v) nursery[.];
  - (vi) adolescent cell housing areas, provided that sentenced inmates housed in such areas shall be treated as inmates awaiting trial or examination for all purposes other than housing;
  - (vii) housing areas designated for inmates ages 18 to 21 inclusive; and
  - (viii) pregnant housing areas.

§2. Subdivision (f) of section 1-03 of Title 40 of the Rules of the City of New York is amended by adding a new paragraph (4), to read as follows:

- (4) Unless prohibited by a mental health provider in writing, inmates placed on suicide watch shall be permitted use of the personal health care items provided in paragraphs (1) and (2) of this subdivision.

§3. Subdivision (g) of section 1-03 of Title 40 of the Rules of the City of New York is amended by adding a new paragraph (7), to read as follows:

- (7) The Department, with the approval of a mental health provider, may require inmates placed on suicide watch to wear suicide-resistant uniforms, including suicide-resistant smocks and undergarments, inside housing areas. The Department, with the approval of a mental health provider, may additionally require inmates on suicide watch to wear such uniforms whenever outside housing areas, except that such inmates shall be permitted to wear personal clothing for on-trial court appearances. Inmates wearing suicide-resistant uniforms shall be provided with daily exchanges of clean smocks and undergarments. Disposable undergarments must be provided whenever inmates wearing suicide-resistant uniforms leave their cells.



§4. Subdivision (i) of section 1-03 of Title 40 of the Rules of the City of New York is amended by adding a new paragraph (6), to read as follows:

(6) The Department may, with the approval of a mental health provider, issue inmates placed on suicide watch suicide-resistant bedding, provided at the Department's expense.

§5. Subdivision (f) of section 1-06 of Title 40 of the Rules of the City of New York is amended to read as follows:

(f) *Recreation for prisoners in the contagious disease units.*

[The Department shall not be required to provide an indoor recreation area for use during inclement weather by prisoners confined for medical reasons in the contagious disease units] In lieu of out-of-cell recreation, the Department, in consultation with medical providers, may provide inmates confined for medical reasons in the contagious disease units with appropriate recreation equipment and materials for in-cell recreation. The Department must provide such inmates with daily newspapers, books, and magazines in English or Spanish, as appropriate.

§6. 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] inmate and all of [his or her] the inmate's visitors] throughout the visiting period, including holding hands, holding young children, and kissing]. Permitted physical contact shall include a brief embrace and kiss between the inmate and visitor at both the beginning and end of the visitation period, as well as holding young children in the inmate's family throughout the visitation period. The provisions of this subdivision are inapplicable to [prisoners] inmates 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.

§7. Paragraph (1) of subdivision (h) of section 1-09 of Title 40 of the Rules of the City of New York is amended, paragraphs (2), (3), (4) and (5) are renumbered as paragraphs (3), (4), (5) and (6) and amended, and a new paragraph (2) is added, to read as follows:

(1) [Visiting] Visitation rights shall not be denied, revoked, limited or interfered with based upon [a prisoner's] an inmate's or a prospective visitor's:

- (i) sex;
- (ii) sexual orientation;
- (iii) race;
- (iv) age, except as otherwise provided in this section;
- (v) nationality;
- (vi) political beliefs;

- (vii) religion;
- (viii) criminal record, except as provided by paragraph (2) of this subdivision;
- (ix) pending criminal or civil case, except as provided by paragraph (2) of this subdivision;
- (x) lack of family relationship, except as provided by paragraph (2) of this subdivision;
- (xi) gender; or
- (xii) disability.

(2) When making a determination to deny, revoke or limit an inmate's or a prospective visitor's visitation rights pursuant to paragraphs (3) and (4) of this subdivision, the Department may consider the following factors, provided that such factors alone shall not form the sole basis for the Department's final determination:

- (i) The lack of a family or otherwise close or intimate relationship between the inmate and the prospective visitor;
- (ii) The prospective visitor's current probation or parole status;
- (iii) The nature of the inmate's or the prospective visitor's felony convictions or persistent narcotics- or weapons-related misdemeanor convictions, if any, within the past seven (7) years;
- (iv) The nature of any conviction for which the prospective visitor has been released from incarceration within the past year; and
- (v) The inmate's or the prospective visitor's pending criminal charges involving narcotics, weapons, gang activity, or violations of correction facility rules, if any.

[(2)] (3) The [visiting] visitation rights of [a prisoner] an inmate with a particular visitor may be denied, revoked or limited only when it is determined that [the exercise of those rights constitutes] such visitation would cause a [serious] threat to the safety[ or], security, or good order of [a] the facility, [provided that visiting rights with a particular visitor may be denied only if revoking the right to contact visits would not suffice to reduce the serious threat] or the safety, security or health of inmates.

[This determination must be based on specific acts committed by the visitor during a prior visit to a facility that demonstrate his or her threat to the safety and security of a facility, or on specific information received and verified that the visitor plans to engage in acts during the next visit that will be a threat to the safety or security of the facility. Prior to any determination, the visitor must be provided with written notification of the specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond. The name of an informant may be withheld if necessary to protect his or her safety.]

[(3)] (4) [A prisoner's] An inmate's right to contact visits as provided in subdivision (f) of this section may be denied, revoked, or limited only when it is determined that such visits constitute a [serious ]threat to the safety, [or ]security or good order of a facility. Should a determination be made to deny, revoke or limit [a prisoner's right to] an inmate's contact

visits[ in the usual manner], alternative arrangements for affording the[ prisoner the requisite number of] inmate visits shall be made, including, but not limited to, non-contact visits.

[This determination must be based on specific acts committed by the prisoner while in custody under the present charge or sentence that demonstrate his or her threat to the safety and security of a facility, or on specific information received and verified that the prisoner plans to engage in acts during the next visit that will be a threat to the safety or security of the facility. Prior to any determination, the prisoner must be provided with written notification of the specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond. The name of an informant may be withheld if necessary to protect his or her safety.]

[(4)] (5) Any determination to deny, revoke or limit [a prisoner's] an inmate's [visiting] visitation rights pursuant to paragraphs [(2)] (3) and [(3)] (4) of this subdivision shall be in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

[(5)] (6) Any person affected by a determination made pursuant to paragraphs [(2)] (3) and [(3)] (4) of this subdivision may appeal such determination to the [Board] Department. The Department shall issue a written decision upon the appeal within fourteen (14) business days. Upon receipt of the Department's written appeal decision or fourteen (14) business days after submission of the appeal to the Department, the visitation determination may be appealed to the Board.

(i) The person affected by the determination shall give notice in writing to the Board and the Department of his or her intent to appeal the determination, both upon appeal of the Department's initial determination and, if applicable, upon any subsequent appeal of the determination to the Board.

(ii) Where a visitation determination is appealed to the Board, [T]the Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) Where a visitation determination is appealed to the Board, [T]the Board or its designee shall issue a written decision upon the appeal within five (5) business days after receiving notice of the requested review. Where there exists good cause to extend the time period in which the Board or its designee may issue a written decision beyond five (5) business days, the Board or designee may issue an extension not to exceed fourteen (14) business days.

§8. Subdivision (a) of section 1-12 of Title 40 of the Rules of the City of New York is amended to read as follows:

(a) *Policy.*

[Prisoners shall be permitted to receive packages from, and send packages to, any person, except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security] Consistent with the requirements of this section, inmates shall be permitted to send and receive packages.

§9. Subdivision (c) of section 1-12 of Title 40 of the Rules of the City of New York is amended to read as follows:

(b) *Outgoing packages.*

Inmates shall be permitted to send packages to any person, except when there is a reasonable belief that limitation is necessary to protect public safety or maintain facility order and security. The costs incurred in sending outgoing packages shall be borne by the [prisoner] inmate.

§10. Paragraphs (1), (2), and (3) of subdivision (d) of section 1-12 of Title 40 of the Rules of the City of New York are amended, and a new paragraph (4) is added, to read as follows:

- (1) Incoming packages shall be delivered within [48 hours] three (3) business days of receipt by the Department, unless the intended [prisoner] inmate is no longer in custody of the Department.
- (2) [Packages]Clothing for court appearances may be personally delivered to a facility during visiting hours and shall be made available to recipient inmates prior to court appearances.
- (3) Upon admission to a facility, [prisoners] inmates shall be provided with a copy of a list of items that may be received in packages or this list [or it] shall be posted in each housing area.
- (4) Inmates shall be permitted to receive packages mailed by and containing items purchased from a pre-approved company whose ordinary business includes sale and shipping of such items. Inmates may, subject to a search, receive packages containing clothing for court appearances mailed by any individual, the contents of which shall be made available to the inmates prior to court appearances.

§11. Paragraph (1) of subdivision (g) of section 1-16 of Title 40 of the Rules of the City of New York is amended, and a new paragraph (7) is added, to read as follows:

- (1) [Within three (3) business days of service of notice on an inmate of initial ESH placement and related restrictions]Except as provided by paragraph (7) of this subdivision, the Department shall conduct a hearing to adjudicate [the] an inmate's ESH placement and the individual restrictions proposed. Such hearing shall be conducted within three (3) business days of service of notice on the inmate of initial ESH placement and related restrictions. 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.

(7) Where an inmate is removed from ESH and that inmate's ESH status and related restrictions have been approved following a placement review hearing described in paragraphs (1) through (6) of this subdivision, the Department shall not be required to provide an additional placement review hearing upon returning the inmate to ESH, provided that the inmate is returned to ESH within forty-five (45) days of removal. When the inmate is returned to ESH, the inmate's ESH status shall be reviewed in accordance with the requirements of subdivision (h) of this section no later than forty-five (45) days after the inmate's last such status review.

§12. Paragraphs (1) and (2) of subdivision (d) of section 1-17 of Title 40 of the Rules of the City of New York are amended, paragraph (3) is renumbered as paragraph (4) and amended, and new paragraphs (3), (5) and (6) are added, to read as follows:

- (1) [No] Except as provided in paragraph (6) of this subdivision, no inmate may be sentenced to punitive segregation for more than thirty (30) days for any single infraction. [In] Except as provided in paragraphs (3) and (6) of this subdivision, in no event may an inmate be held in punitive segregation longer than thirty (30) consecutive days.
- (2) [An] Except as provided in paragraphs (3) and (6) of this subdivision, an inmate who has served thirty (30) consecutive days in punitive segregation [must] shall be released from punitive segregation for at least seven (7) days before that inmate may be returned to punitive segregation.
- (3) In the highly exceptional circumstances described in subparagraphs (i) and (ii) of this paragraph, the Department may waive the requirement set forth in paragraph (2) of this subdivision, provided that such waiver and its basis shall be recorded in writing and the waiver shall expire thirty (30) days after its issuance. Upon expiration of the waiver, the inmate must be released from punitive segregation for at least seven (7) days before the inmate may be returned to punitive segregation, unless a new waiver is issued. The Department shall issue no more than three (3) waivers for a single inmate within any four (4) month period.
  - (i) The inmate, while confined in punitive segregation, commits a violent infraction or multiple infractions that endanger inmates or staff, such that release from punitive segregation for seven (7) days 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 written notification containing an explanation of why retaining the inmate in punitive segregation is necessary to ensure the safety of inmates or staff; or
  - (ii) The inmate, at any point during the seven (7) days of release from punitive segregation, commits a violent infraction or multiple infractions that endanger inmates or staff. In such instances, the inmate may be returned to punitive

segregation prior to completion of the seven (7) days, provided that the Department shall not impose additional time on the inmate's punitive segregation sentence for any new infraction without complying with the requirements set forth in subdivision (c) of this section. 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 written notification containing an explanation of why returning the inmate to punitive segregation is necessary to ensure the safety of inmates or staff.

- [(3)] (4) 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] throughout [of ]the sixty (60) day[s] period, the inmate has continue[s]d 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 Department shall not be required to release the inmate from punitive segregation after sixty (60) days have elapsed, provided that 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.
- (5) Daily mental health rounds must be provided to inmates who have been held in punitive segregation longer than thirty (30) consecutive days or have served more than sixty (60) days within a six (6) month period[,] [and s]. Such rounds must be documented in writing.
- (6) The requirements set forth in paragraphs (1) and (2) of this subdivision shall not apply to inmates sentenced to punitive segregation for an assault on staff that causes staff to suffer one or more serious injuries, which shall be limited to injuries listed under the Department's definition of "A" Use of Force Incidents. When an inmate is sentenced for such an assault, the inmate may receive a punitive segregation term of up to sixty (60) days for that single infraction. While the inmate is serving a punitive segregation sentence for such an infraction, the Department shall not be required to release the inmate from punitive segregation housing after thirty (30) consecutive days.

§13. Subdivision (h) of section 1-17 of Title 40 of the Rules of the City of New York is amended, and new paragraphs (1) and (2) are added, to read as follows:

(h) *Reports on punitive segregation.*

- (1) 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.
- (2) No later than June 1, 2016, the Department shall submit to the Board a report analyzing options for addressing persistent violence committed by inmates housed in punitive segregation using means other than extending punitive segregation confinement for such inmates beyond thirty (30) consecutive days and sixty (60) cumulative days in any six (6) month period in order to support the goals of protecting the safety and wellbeing of staff and inmates, promoting the security of Department facilities, and facilitating the rehabilitation of inmates. Such report shall include options the Department has implement or planned, as well as options it has considered, its assessment of the pros and cons of such options, the potential impact of implementing such options, including any resources that may be needed, and recommendations to the Board based on that analysis.

Based upon the information contained in the Department's report, the Board shall consider whether the waiver procedures described in paragraph (3) of subdivision (d) of this section remain necessary to ensure the safety of the facility or whether alternative options exist to address persistent violence without extending stays in punitive segregation beyond thirty (30) consecutive days and sixty (60) cumulative days in six (6) months.