

Statement of Basis and Purpose of Rules

New York City Charter § 626(e) authorizes the Board of Correction (“BOC” or “Board”) to “establish minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction” of the Department of Correction (“DOC” or the “Department”). To that end, the Board has enacted major reforms related to restrictive housing and solitary confinement practices (also known as punitive segregation or “PSEG”) through rulemaking in 2015¹ and 2021.²

On June 8, 2021, the Board approved rules, which created a new Chapter 6 and amended certain existing rules, ending the use of PSEG and most other forms of restrictive housing, including Enhanced Supervision Housing (ESH), and replacing the eliminated units with the Risk Management Accountability System (“RMAS”). RMAS is a three-level alternative disciplinary model (Level 1, Level 2, and the Restorative Rehabilitation Units) intended to separate people from general population in response to their commission of an offense. The newly enacted Chapter 6 included rules regarding immediate placement responses to violence, and the use of restraints and canines. Chapter 6 also set forth a comprehensive set of rules addressing key aspects of RMAS, including placement criteria and exclusions; time limitations, periodic reviews, and progression through restrictive housing placement; procedural due process protections; case management and individual behavior support plans; staffing, training, and programming; and out-of-cell time and other conditions. RMAS’ expected implementation date was November 1, 2021.

On September 15, 2021, former Mayor Bill de Blasio declared a state of emergency in New York City jails due to a staffing crisis. Pursuant to this state of emergency, on November 1, 2021, Mayor de Blasio issued Emergency Executive Order No. 279, suspending multiple facets of RMAS, namely:

- § 6-04 – Pre-Hearing Detention
- § 6-07 – Policy on Prohibition on the Use of Punitive Segregation
- § 6-11 – Case Management
- § 6-24 – Due Process and Procedural Justice
- § 6-27 – Restorative Rehabilitation Units (RRUs)
- § 6-28 (e-g) – Restraints (elimination of non-individualized use of restraints)

Emergency Executive Order No. 279 has been renewed every five days since November 1, 2021 and remains largely in effect, preventing RMAS’ implementation.

¹ The Board enacted the limitations on the use of PSEG and the creation of enhanced supervision housing (“ESH”) for adults in January 2015. The 2015 amendments eliminated the use of PSEG for 16 to 21-year-olds and individuals with serious mental or serious physical disabilities or conditions.

² To learn more about the history of the Board’s rulemaking related to restrictive housing and PSEG, access the [2021 restrictive housing rules’ Statement of Basis and Purpose: https://www.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2021-Restrictive-Housing/2021.03.05-Proposed-Rule.pdf](https://www.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2021-Restrictive-Housing/2021.03.05-Proposed-Rule.pdf)

At the Board's February 2022 public meeting, former Department Commissioner Louis Molina committed to the implementation of RMAS in the City's jails by July 1, 2022. However, on June 30, 2022, *Nunez* Federal Monitor Steve Martin, appointed pursuant to the consent decree in the case of *Nunez vs. City of New York*,³ issued a status report declaring that he did not approve of the Department's implementation of RMAS and recommending that the Department instead hire a correctional consultant to develop a restrictive housing model. Pursuant to this status report, the Department halted the implementation of RMAS. To date, RMAS has not been implemented.

Introduction Number ("Int.") 549-A, primarily sponsored by Public Advocate Jumaane Williams, was introduced and referred to the New York City Council ("Council") Committee on Criminal Justice on June 16, 2022. Following amendments to the originally introduced bill, the Council approved the bill on December 20, 2023.

On January 19, 2024, Mayor Eric Adams issued a message of disapproval for Int. 549-A. On January 30, 2024, the Council overrode Mayor Adams' veto and re-passed Int. 549-A.

Local Law No. 42 of 2024 takes effect on July 28, 2024. Local Law No. 42 directs the Board to take any actions necessary for the implementation of this local law, including the promulgation of rules relating to procedures and penalties prior to the effective date. These rules implement Local Law 42.

Local Law No. 42 bans the use of solitary confinement – defined to mean “placement of an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for a count not to exceed two hours in any 24-hour period” – in city jails and provides individuals in custody due process protections prior to being placed in restrictive housing or continued use of restraints. Local Law No. 42 also sets limits on how DOC can use emergency lock-ins and requires regular reporting on the Department's use of de-escalation confinement, restrictive housing, and emergency lock-ins.

The requirements of Local Law No. 42 overlap significantly with the provisions set forth in Chapter 6 of the Board's Rules, but differ from Chapter 6 in some respects. The following are some of the major variations from the 2021 RMAS Rules that are set forth in these proposed rules.

Major Amendments

- RMAS retitled Restrictive Housing

The restrictive housing model known as RMAS has been retitled **Restrictive Housing**. These new restrictive housing rules eliminate RMAS Level 1 and Level 2, consolidating the two into a single level. Only individuals who committed Grade I violent offenses are eligible for placement in restrictive housing.

³ No. 11 CIV. 5845 LTS JCF, 2013 WL 2149869 (S.D.N.Y. May 17, 2013).

- Maximum time spent in de-escalation confinement

§ 6-05 of the 2021 RMAS Rules prohibited the Department from placing a person in de-escalation confinement for more than *six (6) hours*. **Local Law No. 42** prohibits the Department from placing a person in de-escalation confinement for more than *four (4) hours*.

- Emergency lock-in duration limit

§ 6-06 of the 2021 RMAS Rules required the Department to notify the Board when emergency lock-ins extended past six (6) hours but did not limit how long emergency lock-ins could last. **Local Law No. 42** does not permit emergency lock-ins to last more than four (4) hours.

- Duration of RMAS placement limits

§ 6-13 of the 2021 RMAS Rules required individuals to progress from RMAS Level 1 to Level 2 after fifteen (15) days (unless DOC authorized an extension) and from RMAS Level 2 to RRU after fifteen (15) days (unless DOC authorized an extension). **§ 6-15 of the 2021 RMAS Rules** set forth the requirements for placement extensions. **Local Law No. 42** requires the Department to discharge incarcerated persons from restrictive housing completely within thirty (30) days after their initial placement. The local law further prohibits the Department from placing people in restrictive housing for more than a total of sixty (60) days in any twelve-month period. Lastly, the local law does not authorize placement extensions.

- Required out-of-cell time

§ 6-16 of the 2021 RMAS Rules allowed people in custody housed in RMAS Level 1 to spend at least ten (10) hours outside of their cells a day and people housed in RMAS Level 2 to spend at least twelve (12) hours out of their cells a day. **Local Law No. 42** requires that all individuals in custody be allowed to spend *at least fourteen (14) hours* outside of their cells a day, except during emergency lock-ins and in de-escalation confinement units.

- Representation by advocates at hearings

§ 6-24 of the 2021 RMAS Rules allowed people in custody to be represented by a legal representative (defined as an attorney or layperson who works under the supervision of an attorney) at restrictive housing placement hearings. **Local Law No. 42** also allows people in custody to be represented by advocates (defined as a law student, paralegal, or another incarcerated person).

- Use of restraints

Local Law No. 42 prohibits the use of restraints on people under the age of twenty-two (22) unless for transportation purposes or during escorted movement where an individualized determination is made that restraints are necessary to prevent immediate

risk of self-injury or injury to others. The local law also requires a hearing to determine if continued use of restraints is necessary in some instances, including when a person is restrained for two consecutive days.

Rules

New material is underlined.

[Deleted material is in brackets.]

“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.

§ 1. Subparagraph (i) of paragraph (1) of subdivision (b) of section 1-02 of Title 40 of the Rules of the City of New York is amended to read as follows:

(b) Categories.

(1) Sentenced individuals shall be housed separate and apart from people awaiting trial or examination, except when housed in:

(i) [RMAS] Restrictive housing units, defined in 40 RCNY § 6-03(b)(16);

§ 2. Paragraph (1) of subdivision (c) of section 1-02 of Title 40 of the Rules of the City of New York is amended to read as follows:

(1) Housing for people in custody ages 18 through 21 shall provide such people with trauma-informed, age-appropriate programming and services on a consistent, regular basis.

§ 3. Section 1-04 of Title 40 of the Rules of the City of New York is amended by adding a new subdivision (d), to read as follows:

(d) Decontamination showers. The Department shall not maintain any locked decontamination showers.

§ 4. Subdivisions (a) and (b) of section 1-05 of Title 40 of the Rules of the City of New York are amended to read as follows:

(a) *Policy.*

(1) The time spent by people confined to their cells should be kept to a minimum and required only when necessary for the safety and security of the facility. [The provisions of this section are inapplicable to people confined in RMAS housing or people confined for medical reasons in the contagious disease units.]

(2) Out-of-cell time must take place in a space outside of, and in an area away from a cell, in a group setting with other people all in the same shared space, without physical barriers separating such people, that is conducive to meaningful and regular social interaction and activity, or in any space while such incarcerated person receives medical treatment, individual one-on-one counseling, or an attorney visit or participates in a court appearance.

(3) Incarcerated persons may congregate with others and move about their housing area freely during out-of-cell time and have access to education and programming pursuant to section 9-110 of the administrative code.

(b) *Involuntary lock-in.*

(1) All incarcerated persons must have access to at least 14 out-of-cell hours every day. People shall not be required to remain confined to their cells except for the following purposes:

([1]i) At night for count or sleep, not to exceed eight hours in any 24-hour period;

([2]ii) During the day for count or required facility business that can only be carried out while people 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.]

(2) The provisions of this section apply to people confined in all housing units, except:

(i) During emergency lock-ins, subject to the requirements of 40 RCNY § 6-06;

(ii) De-escalation confinement units, subject to the requirements of 40 RCNY § 6-05.

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

(g) Recreation for people in restrictive housing. Persons confined in [RMAS] restrictive housing as defined in 40 RCNY Chapter 6 shall be permitted recreation in accordance with the provisions of subdivision (c) of this section.

§ 6. Subdivision (h) of section 1-07 of Title 40 of the Rules of the City of New York is amended to read as follows:

(h) Exercise of religious beliefs by people in restrictive housing.

(1) People confined in [RMAS] restrictive housing shall not be prohibited from exercising their religious beliefs, including the opportunities provided by subdivisions (d) through (g) of this section.

(2) Congregate religious activities by people in [Levels 1 and 2 of RMAS] restrictive housing as defined in 40 RCNY Chapter 6 shall be provided for by permitting such individuals to attend congregate religious activities with appropriate security either with each other or with other people in custody.

§ 7. Paragraphs (6) and (7) of subdivision (f) of section 1-08 of Title 40 of the Rules of the City of New York are amended to read as follows:

(6) The law library hours for people in [Levels 1 and 2 of RMAS] restrictive housing as defined in 40 RCNY Chapter 6 may be reduced or eliminated, provided that an alternative method of access to legal materials is instituted to permit effective legal research.

(7) Legal research classes for people housed in general population shall be conducted at each facility on at least a quarterly basis. Legal research training materials shall be made available upon request to people in [Levels 1 and 2 of RMAS] restrictive housing.

§ 8. 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 all people in custody and all of their visitors. Permitted physical contact shall include a brief embrace and kiss between the person in custody and visitor at both the beginning and end of the visitation period. People in custody shall be permitted to hold children in their family who are ages fourteen (14) and younger throughout the visitation period, provided that the Department may limit a person in custody to holding one child at a time. Additionally, people in custody shall be permitted to hold hands with their visitors throughout the visitation period, which the Department may limit to holding hands over a partition that is no greater than six (6) inches. The provisions of this subdivision are inapplicable to individuals housed for medical reasons in the contagious disease units. The Department may impose certain limitations on contact visits for people confined in [RMAS] restrictive housing in accordance with the procedures and guidelines set forth in 40 RCNY § [6-17(f)] 6-16(e).

§ 9. Section 6-03 of Title 40 of the Rules of the City of New York is amended to read as follows:

(a) For the purposes of this Chapter, "restrictive housing" means units where the Department houses people in custody separately from people housed in the general population[, and:

(1) The out-of-cell time offered per day in the unit is less than fourteen (14) hours; or

(2) People in the unit are subject to one or more of the following conditions:

(i) Services mandated under other Chapters of the Minimum Standards are provided in a more restricted manner than they are provided to people housed in the general population. This would include, for example, the provision of law library services other than in a facility law library or religious services other than in a facility chapel.

(ii) A person is housed alone in the unit.

(iii) The physical design of the unit cannot accommodate more than four (4) people in custody congregating in a dayroom] on the basis of security concerns or discipline, or a housing area that imposes restrictions on programs, services, interactions with other incarcerated persons or other conditions of confinement. This definition excludes housing designated for incarcerated persons who are: (1) in need of medical or mental health support as determined by the entity providing or overseeing correctional medical and mental health, including placement in a contagious disease unit, (2) transgender or gender non-conforming, (3) in need of voluntary protective custody, or (4) housed in a designated location for the purpose of school attendance.

(b) For the purposes of this Chapter, the following terms related to restrictive housing have the following meanings:

(1) **"Advocate"** means a law student, paralegal, or another incarcerated person who represents an incarcerated person at a restrictive housing placement hearing or a continued use of restraints hearing pursuant to this chapter.

(2) **"Cell"** means any room, area or space that is not a shared space conducive to meaningful, regular and congregate social interaction among many people in a group setting, where an individual is held for any purpose.

(3) **"De-escalation confinement"** means the holding of an incarcerated person in a cell immediately following an incident where the person has caused physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons.

([1]4) **"Disciplinary hearing"** means a hearing on an infraction with which a person in custody has been charged.

([2]5) **"General population"** or **"general population housing"** means all housing units that are not restrictive housing units, specialized medical units, or specialized mental health units as defined in this section.

([3]6) **"Grade I, II or III offense"** means the degree of offense defined in 39 RCNY § 1-03, the Department of Correction Inmate Rule Book. Grade I is the most serious grade of offense.

([4]7) **"Hearing Adjudicator"** is a Department employee of the rank of Captain or above who presides at disciplinary hearings or placement review hearings of people in custody.

([5]8) **"Housing area"** or **"housing unit"** means facility housing, including common areas, used to house people in custody.

([6]9) **"Infraction"** means a violation of Department rules.

([7]10) **"Intake"** or **"intake area"** is an area designated by a facility to temporarily secure a person in custody while awaiting further assessment of the person for appropriate housing placement.

([8]11) **"Legal Representative"** is an attorney or layperson who works under the supervision of an attorney.

([9]12) **"M" Designation** is a designation assigned pursuant to a settlement in *Brad H. v. City of New York*, if a person, during one incarceration event, has engaged with the mental health system at least three (3) times, has been prescribed certain classes of medication, or has otherwise been assessed by the Health Authority as needing further mental health treatment.

([10]13) **"Mandated services"** means services the Department is obligated to provide under the Board's Minimum Standards.

(14) **"Out-of-cell"** means being in a space outside of, and in an area away from a cell, in a group setting with other people all in the same shared space, without physical barriers separating such people, that is conducive to meaningful and regular social interaction and activity, or being in any space during receipt of medical treatment, individual one-on-one counseling, or an attorney visit or participation in a court appearance.

([11]15) **"Pre-hearing [detention] temporary restrictive housing"** means [the placement of a person in custody in RMAS Level 1 pending the investigation or adjudication of the person's disciplinary infraction] any restrictive housing designated for incarcerated persons who continue to pose a specific risk of imminent serious physical injury to staff, themselves, or other incarcerated persons after a period of de-escalation confinement has exceeded time limits established by paragraph (6) of subdivision (c) of section 9-167 of the Administrative Code and prior to a hearing for recommended placement in restrictive housing has taken place.

([12]16) **"PSEG" or "punitive segregation"** means the placement of a person in custody [in isolation for extended periods of time, separate and apart from the general population, pursuant to a disciplinary sanction imposed after a disciplinary hearing] in a cell for more than fourteen (14) hours in any twenty-four-hour period.

([13]17) **"Restraints"** mean [any of the following devices:] any object, device or equipment that impedes movement of hands, legs, or any other part of the body, such as handcuffs, flex cuffs, waist restraint systems (consisting of a belt or chain around the waist to which the person hands may be chained or handcuffed); leg restraints (shackles applied on the ankle area); handcuff safety covers (protective devices that cover the locking mechanism of handcuffs to prevent tampering); protective mittens (protective tube-like mittens which cover the hands and are secured with handcuffs); gurneys (wheeled stretchers); four-point restraints (restraint that secure both arms and legs); five-point restraints (four-point restraint plus the application of an additional

restraint across the chest, such as restraint chairs and the WRAP restraint device); and restraint desks (school-type desk surface and chair with ankle restraints).

[(14)]18) **"Restorative Rehabilitation Unit" or "RRU"**, pursuant to 40 RCNY § 6-~~27~~26, is a general population housing area of fifteen (15) or less people that offers enhanced programming, security, and therapeutic support for people stepping down from [RMAS] restrictive housing.

[(15)]19) **"Restrictive status"** means a status the Department assigns to people in custody who the Department determines require heightened identification, tracking, and/or monitoring for safety and security purposes.

[(16)] **"Risk Management Accountability System" or "RMAS"**, pursuant to 40 RCNY § 6-08 through § 6-26, is a progression model that separates people from general population in response to their commission of an offense and holds them accountable through a swift, certain, fair, and transparent process. RMAS promotes prosocial behavior and progression through positive incentives as well as case management services, behavior support plans, and evidence-informed programming, tailored to the person's individual needs. RMAS includes Levels 1 and 2, with Level 1 being the most restrictive.

[(17)]20) **"Specialized medical housing"** are housing units for persons with medical conditions, including but not limited to infirmaries and contagious disease units (CDUs). Entry and discharge for specialized medical housing are determined by CHA according to clinical criteria.

[(18)]21) **"Specialized mental health housing"** are housing units for persons with serious mental illness, including but not limited to Program for Accelerating Clinical Effectiveness (PACE) units, and Clinical Alternatives to Punitive Segregation (CAPS) units. Entry and discharge are determined by CHA according to clinical criteria. Mental Observation (MO) units are not specialized mental health housing for purposes of this rule.

[(19)]22) **"Steady"** staff are officers that are regularly assigned to the same post.

(23) **"Suicide Prevention Aide"** means a person in custody who has been trained to identify unusual and/or suicidal behavior.

[(20)]24) **"Young adults"** mean people in custody ages eighteen (18) through twenty-one (21).

§ 10. Section 6-04 of Title 40 of the Rules of the City of New York is amended to read as follows:

§ 6-04 Pre-Hearing [Detention] Temporary Restrictive Housing.

(a) The Department may place a person in custody in pre-hearing [detention in RMAS Level 1] temporary restrictive housing if the person is under investigation for or charged with an infraction and meets the following criteria:

(1) The person is reasonably believed by the Department to have committed a Grade I violent offense within the past one (1) business day;

(2) The person's removal from general population is necessary to[:

(i) Protect] protect the safety of any person, including staff or other people in custody, prior to the person's hearing; [or

(ii) Prevent the person from intimidating or coercing other people in custody to give false testimony or to refuse to testify at the person's infraction hearing] and

(3) The person has caused serious physical injury or poses a specific and significant risk of imminent serious physical injury to staff or other incarcerated persons.

(b) Placement in pre-hearing temporary restrictive housing must be approved in writing by the Commissioner, a Deputy Commissioner, or another equivalent member of Department senior leadership over the operations of security. The written approval shall include the basis for a reasonable belief that the incarcerated person has committed a Grade I violent offense, and whether such person has caused serious physical injury or poses a specific and significant risk of imminent serious physical injury to staff or other incarcerated persons.

(c) A person in custody who qualifies for and is placed in pre-hearing [detention] temporary restrictive housing shall be afforded a disciplinary hearing as soon as reasonably practicable but no later than [seven (7)] five (5) [business] days after the person's placement in pre-hearing detention, unless such person placed in pre-hearing temporary restrictive housing seeks a postponement of such hearing. Time spent in such detention prior to the hearing shall count toward the person's sentence to [RMAS Level 1] restrictive housing and such time shall count toward the time limits in restrictive housing set forth in paragraph (1) of subdivision (h) of section 9-167 of the Administrative Code.

([c]d) If the Department does not hold an infraction hearing within [seven (7)] five (5) [business] days and the person placed in pre-hearing temporary restrictive housing has not sought a postponement of such hearing, the Department must release the person from pre-hearing [detention] temporary restrictive housing.

([d]e) If the Department determines that the person's retention in pre-hearing [detention] temporary restrictive housing is not necessary for the safety or security of that person or others, including staff and other people in custody, the Department must release the person from pre-hearing [detention] temporary restrictive housing.

(f) Pre-hearing temporary restrictive housing shall comply with all requirements for restrictive housing.

(g) During the first day of placement in pre-hearing temporary restrictive housing, Department staff must regularly monitor the person and engage in continuous crisis intervention and attempt de-escalation, work toward a person's release from pre-hearing temporary restrictive housing and determine whether it is necessary to continue to hold the person in pre-hearing temporary restrictive housing.

([e]h) The Department shall provide the Board with a semiannual report with information related to its use of prehearing [detention] temporary restrictive housing including but not limited to: (1) the number of people placed in prehearing [detention] temporary restrictive housing, (2) their placement infractions, (3) time from placement to hearing, (4) whether people placed in pre-hearing [detention] temporary restrictive housing were adjudicated for continued placement in [RMAS Level 1] restrictive housing, and (5) any other information the Department or the Board deems relevant to the Board's assessment of pre-hearing [detention] temporary restrictive housing. The report shall include data disaggregated by month.

([f]i) The Board and the Department shall jointly develop reporting templates for the report required by 40 RCNY § 6-04([e]h) for approval by the Board.

§ 11. Section 6-05 of Title 40 of the Rules of the City of New York is amended to read as follows:

§ 6-05 Confinement for De-Escalation Purposes. (a) The Department may only confine a person in custody for de-escalation purposes immediately following an incident where the person has caused physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons. The purpose of de-escalation confinement is to:

(1) Aid a person in calming behavior [that] where such person poses an immediate threat to the safety of the person or others or significantly disrupts Department activities in progress. The Department may only resort to confinement for this purpose after other less restrictive measures have been exhausted or have been or are likely to be ineffective.

(2) Temporarily place a person in custody for the person's own safety after the person has been assaulted or otherwise victimized by another person in custody and such person poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons.

[(3) Facilitate the decontamination of people in custody following exposure to chemical spray.]

(b) The Department shall immediately notify CHA of a person in custody's placement in de-escalation confinement, including the initial and any subsequent locations of such confinement, so that the person's access to medical and mental health services and medication is not interrupted.

(c) The Department shall conduct visual and aural observation of every person in de-escalation confinement every fifteen (15) minutes, shall refer any health concerns to medical or mental health staff, and shall bring any person displaying any indications of any need for medical documentation, observation, or treatment to the medical clinic.

(d) Suicide prevention aides may conduct check-ins with a person in de-escalation confinement at least every fifteen (15) minutes and refer any health concerns to department staff who will get medical or mental health staff to treat any reported immediate health needs. No suicide prevention aide shall face any retaliation or other harm for carrying out their role.

(e) Department staff must regularly monitor a person in de-escalation confinement and engage in continuous crisis intervention and de-escalation to support the person's health and well-being, attempt de-escalation, work toward a person's release from de-escalation confinement and determine whether it is necessary to continue to hold such person in such confinement.

([d]f) The Department shall only utilize individual cells for the purpose of de-escalation confinement. Such cells may not be located in intake areas or decontamination showers.

([e]g) Cells used for de-escalation confinement must have the features specified in and be maintained in accordance with the personal hygiene and space requirements set forth in 40 RCNY § 1-03 and 40 RCNY § 1-04.

(h) Throughout de-escalation confinement, a person shall have access to a tablet or device that allows such person to make phone calls outside of the facility and to medical staff in the facility.

([f]i) The Department must serve meals and snacks to people in custody while in de-escalation confinement at or about the same time as, and be of the same quality and quantity of, the meals served to people in the general population.

([g]j) The Department shall not hold someone in de-escalation confinement for longer than the minimum amount of time required for the Department to conduct an assessment and determine the person's subsequent placement. A person shall be removed from de-escalation confinement immediately following when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others. In addition, the following time limitations apply:

(1) The Department may not place a person in de-escalation confinement for more than [six (6)] four (4) hours immediately following the incident precipitating placement in such confinement in any twenty-four-hour period or more than twelve (12) hours in any seven-day period. The Department shall document every placement on a form designed for this purpose, which shall specify the reasons for the placement, why it was necessary to de-escalate an immediate conflict, and the person's length of time in de-escalation confinement.

(2) After holding a person in de-escalation confinement for [~~three (3)~~] two (2) hours, the Department must reauthorize the confinement through written approval up the Department's security chain of command. The reauthorization approval shall consider the reasons therefor, including what attempts were made by the Department to transfer the person in custody out of de-escalation confinement after [~~three (3)~~] two (2) hours.

(3) [Whenever the Department keeps a person in de-escalation confinement for more than the six (6) hour maximum, it must declare an emergency variance pursuant to 40 RCNY § 1-15(b)(3). Such declaration shall include how long someone was kept in de-escalation confinement in total, and the reasons why the person was not placed elsewhere. The Department shall include in this declaration the initial authorization and reauthorization forms and approvals specified in 40 RCNY §§ 6-05(g)(1) and (2).

(4)] For the purposes of compliance with the time limitations in this section, the calculation of the length of a person in custody's de-escalation confinement shall [be calculated from the time of initial placement in the de-escalation confinement cell or area] begin immediately following the incident precipitating such person's placement in such confinement until the individual is transported to a newly assigned housing area. This shall include the time the person spends in any other subsequent de-escalation confinement cell or area prior to rehousing.

(k) [The Department shall commence using individual cells outside of intake areas as required by 40 RCNY § 6-05(d) within six (6) months of the Effective Date. Pending such implementation:

(1) The Department shall operate intake areas used for de-escalation confinement in accordance with all other requirements set forth in this section.

(2) De-escalation confinement in an intake area must have an adequate number of working flush toilets, wash basins with drinking water, including hot and cold water, and appropriate furnishings for seating and reclining to accommodate the number of people in custody confined there. Such areas must be maintained in a clean and sanitized manner]. Pursuant to the provisions in section 6-07 of these rules and subdivision (g) of section 9-167 of the Administrative Code, the Department may transfer a person from de-escalation confinement to pre-hearing temporary restrictive housing.

([h]) The Department shall maintain an updated list of the specific areas designated to be used for de-escalation purposes at each facility. The Department shall share this list with the Board and update the Board as soon as changes are made.

([i]) The Department shall provide the Board with a quarterly public report with information related to its use of de-escalation confinement for each month in the reporting period, including but not limited to (1) the number of placements in de-escalation confinement, overall and by reason for placement, (2) the number whose placement lasted more than [~~three~~] two hours, (3) the number whose placement lasted [~~more than six~~] four hours, (4) the minimum, maximum, mean, and median time spent in de-escalation confinement, overall and by reason for placement, (5) the facility and locations

of any units used for de-escalation confinement, and (6) any other information the Department or the Board deems relevant to the Board's assessment of the use of de-escalation confinement in Department facilities. Metrics in the public report shall be reported in total and by facility, and disaggregated by month. The data used to produce the report shall be tracked at the individual placement level and provided to the Board in a manner that may be analyzed electronically by the Board.

([j]n) The Board and the Department shall jointly develop the reporting templates for the report required by 40 RCNY § 6-05([i]m), for approval by the Board.

(o) The Department shall comply with the reporting requirements set forth in section 9-167 of the Administrative Code.

§ 12. Section 6-06 of Title 40 of the Rules of the City of New York is amended to read as follows:

§ 6-06 Emergency Lock-Ins. (a) Emergency lock-ins may only be used when the Commissioner, a Deputy Commissioner, or another equivalent member of Department senior leadership with responsibility for the operations of security for a facility determines that such lock-in is necessary to de-escalate an emergency that poses a threat of specific, significant and imminent harm to incarcerated persons or staff.

(b) Emergency lock-ins shall never be in effect longer than necessary to allow staff to investigate or avoid a serious incident, conduct searches, or restore order or safety. Emergency lock-ins may only be used when there are no less restrictive means available to address an emergency circumstance and only as a last resort after exhausting less restrictive measures.

([b]c) The Department shall limit the scope of emergency lock-ins so that only those housing areas that must be locked down are affected and they must be lifted as soon as possible. Emergency lock-ins must be confined to as narrow an area as possible and impact as limited a number of people as possible.

(d) The Commissioner, a Deputy Commissioner, or another equivalent member of Department senior leadership over the operations of security shall review such lock-ins at least every hour.

(e) Emergency lock-ins may not last more than four (4) hours.

([c]f) The Department must immediately notify the Board and CHA as soon as an emergency lock-in begins, a lock-in is extended beyond a regularly scheduled lock-in period, or a lock-in [extends beyond 6 hours] reaches four (4) hours. This notification shall be in writing and include information regarding the facilities and specific housing area locations and number of people impacted. The Department may make this notification through the Department's Incident Reporting System, or a similar system that is in place for real-time, operational reporting.

([d]g) [As soon as the Department anticipates that an emergency lock-in will require the cancellation or delay of visits, the] The Department shall immediately notify the public of all emergency lock-ins on its website or by other means with specific information about how visits, phone calls, counsel visits, or court appearances will be affected.

([e]h) The Department shall document the locations and reason(s) for each emergency lock-in (e.g., fight, slashing, use of force, missing razor) and the objectives to be accomplished during the lock-in related to those reasons (e.g., investigate use of force, conduct searches to recover contraband) in a manner that may be analyzed electronically by the Board.

([f]i) [When] As long as the emergency lock-in has not lasted more than four (4) hours, when authorizing an extension of an emergency lock-in beyond a regularly scheduled lock-in period, the Department shall re-evaluate the stated reasons and objectives for the lock-in and shall document reasons as to why the lock-in must be continued (e.g., search still underway, not enough staff on post to lock out housing area).

([g]j) [In all housing areas where emergency lock-ins have continued for more than six (6) consecutive hours, CHA staff shall complete clinical rounds to assess medical and mental health.] The Department shall conduct visual and aural observation of every person locked in every fifteen (15) minutes and shall refer any health concerns to medical or mental health staff. The Department shall bring any person displaying any indications of any need for medical documentation, observation, or treatment to the medical clinic. DOC shall ensure timely access to medical and mental health care - particularly emergency or time-urgent medical and mental health care - during any lock-in, and must provide for other delayed or missed services as quickly as possible following an emergency lock-in.

(k) Throughout an emergency lock-in, other than in a department-wide emergency lock-in or a facility emergency lock-in, each person locked in shall have access to a tablet or other device that allows the person to make phone calls both outside of the facility and to medical staff in the facility.

([h]) For lock-ins continuing for twenty-four (24) hours or more, the Department shall notify the Board in writing of the steps taken to address the emergency and lift the lock-in.

(i)(l) For the following services, the Department shall track and record, in a manner that may be analyzed electronically by the Board, whether services were impacted (i.e., cancelled, delayed, or not affected) due to an emergency lock-in and the number of housing areas and people affected:

(1) Recreation

(2) Law library

(3) Visits

(4) Religious services

(5) Educational services

(6) Sick call

(7) Other Clinic services

(8) Medication/pharmacy

(9) Scheduled Medical and Mental Health appointments (including on- and off- Island specialty appointments)

(10) Clinical rounds

(11) Programming

([j]m) If services were delayed or otherwise affected, the Department shall track and report the time each service was afforded for each housing area impacted by the emergency lock-in.

([k]n) The Department shall provide the Board with direct access to all documentation related to emergency lock-ins and lock-in extensions.

([l]o) The Department and CHA shall issue a written directive to staff regarding the requirements of this section. The directive shall include protocols for communication and coordination between the Department and CHA during and after emergency lock-ins to facilitate the triage of necessary care by CHA, minimize disruptions to patient care, and ensure the rescheduling of medical/mental health appointments.

([m]p) CHA shall provide the Board with a quarterly report including, but not limited to, the following data on reported emergency lock-ins and lock-in extensions occurring during the reporting period, disaggregated by month:

(1) Number of emergency lock-ins and lock-in extensions reported to CHA by the Department, in total and disaggregated by facility;

(2) Number of clinic closures during an emergency lock-in and reason for closure (e.g., clinic attending to staff injuries, no facility movement permitted), in total and disaggregated by facility;

(3) Number of previously scheduled appointments missed and number of previously scheduled appointments required to be rescheduled due to an emergency lock-in, in total and disaggregated by facility and service type;

(4) Number of non-scheduled CHA services (wound care, etc.) missed or delayed as a result of an emergency lock-in, in total and disaggregated by facility and service type;

(5) Number of required clinical rounds missed, in total and disaggregated by facility and restrictive housing units affected;

(6) Number of patients requesting sick call but not afforded sick call when requested, in total and disaggregated by facility;

(7) Number of patients whose medication services were missed or delayed as a result of an emergency lock-in, in total and disaggregated by facility;

(8) [Number of rounds conducted in housing areas with more than six (6) hours of non-scheduled continuous emergency lock-in, in total and disaggregated by facility; and

(9)] Any other information the CHA or the Board deems relevant to the Board's assessment of emergency lock-ins and their impact on access to health and mental health care.

([n]g) The Board and CHA shall jointly develop the reporting template for the report required by 40 RCNY § 6-06([m]p), for approval by the Board.

([o]r) On at least a quarterly basis, the Department shall provide the Board all emergency lock-in [and lock-in extension] incident-level data tracked by the Department. The Board and the Department shall jointly develop a reporting template for transmission of this data for approval by the Board.

(s) The Department shall comply with the reporting requirements set forth in section 9-167 of the Administrative Code.

§ 13. Subdivisions (b) and (c) of section 6-07 of Title 40 of the Rules of the City of New York are amended to read as follows:

(b) By [November 1, 2021] July 28, 2024, the use of all forms of punitive segregation as defined in 40 RCNY § 6-03(b)([12]16), shall be prohibited in all existing and future DOC facilities.

(c) Upon the Department's elimination of punitive segregation and commencing [November 1, 2021] July 28, 2024, the only form of restrictive housing the Department is permitted to operate will be [RMAS] restrictive housing pursuant to 40 RCNY § 6-08 through § [6-26] 6-25.

§ 14. The heading of Subchapter E of Title 40 of the Rules of the City of New York is amended to read as follows:

Subchapter E: [Risk Management and Accountability System (RMAS)] Restrictive Housing

§ 15. Subdivision (a) section 6-08 of Title 40 of the Rules of the City of New York is amended to read as follows:

(a) The purpose of [RMAS] restrictive housing is to:

(1) Separate from the general population a person in custody in response to the person's recent commission of an offense, which significantly threatens the safety and security of other people in custody and staff.

(2) Hold incarcerated individuals accountable for their misconduct through swift, certain, fair, and transparent processes.

(3) Promote prosocial behavior and progression back to general population through utilization of positive incentives, case management services, individual behavior support plans, and individualized evidence-based programming.

(4) Provide people in custody with meaningful opportunities to socially engage with others and pursue productive activities.

§ 16. Section 6-09 of Title 40 of the Rules of the City of New York is amended to read as follows:

§ 6-09 Exclusions.

(a) The following categories of people in custody shall be excluded from [RMAS] restrictive housing:

(1) People with a mental disorder that qualifies as a serious mental illness;

(2) People diagnosed with an intellectual disability;

(3) Pregnant persons, persons within eight (8) weeks of pregnancy outcome, and persons caring for a child in the Department nursery program;

(b) CHA shall determine if a person in custody meets one or more of the above exclusionary criteria in 40 RCNY § 6-09(a)(1) through (3).

(c) CHA has the authority to determine if any person, after being placed in [RMAS], restrictive housing, should be removed to a specialized medical or mental health housing unit because the person meets a criterion in 40 RCNY § 6-09(a)(1) through (3) or because the housing is medically contraindicated.

(d) People excluded from [RMAS Level 1 or Level 2] restrictive housing at the time of an infraction due to health status pursuant to 40 RCNY § 6-09(a)(1) through (3) shall not be placed in [RMAS Level 1 or Level 2] restrictive housing for the same infraction at a later date, regardless of whether their health status has changed.

§ 17. Section 6-10 of Title 40 of the Rules of the City of New York is amended to read as follows:

§ 6-10 Placement Criteria. (a) Except for pre-hearing [detention] temporary restrictive housing as set forth in 40 RCNY § 6-04, the Department may only confine a person to [RMAS Level 1] restrictive housing after a finding within the past thirty (30) days that the person is guilty of having committed a Grade I violent offense.

(b) [The Department may only confine a person to RMAS Level 2 if:

(1) The person has just exited Level 1; or

(2) After a finding within the past thirty (30) days that the person is guilty of having committed a Grade I non-violent offense or a Grade II offense.

(c)] If a person has been found guilty of an offense at a disciplinary hearing, their sentence must be proportional to the infraction charge.

[(d)]c) Within 3 months of the Effective Date of the Rule, the Department shall provide the Board with a written penalty grid[:

(1) Describing each Grade I violent offense that would render a person eligible for placement in RMAS Level 1;

(2) Describing each Grade I non-violent offense and Grade II offense that would render a person eligible for placement in RMAS Level 2;]

(3) The] describing each Grade I violent offense that would render a person eligible for placement in restrictive housing and the sentence range for each offense.

§ 18. Subdivision (a) of section 6-11 of Title 40 of the Rules of the City of New York is amended to read as follows:

(a) The Department shall assign a case manager to each person in custody upon the person's placement into [RMAS] restrictive housing. To the extent practicable, the assigned case manager shall remain the person's case manager throughout the person's stay in [RMAS] restrictive housing and when they step down to a RRU.

§ 19. Section 6-12 of Title 40 of the Rules of the City of New York is amended to read as follows:

§ 6-12 Individual Behavior Support Plans. (a) The Department shall develop, in writing, an individual behavior support plan (IBSP) for each person in custody who is placed in [RMAS] restrictive housing.

(1) The plan shall be informed by an evidence-informed assessment and describe specific services and measurable, achievable goals for the person while in [RMAS] restrictive housing to facilitate the person's reintegration into housing in the general population.

(2) The plan's goals shall be tailored to the person's age, literacy, education level, and capacity to complete programming.

(3) The plan shall be current, reflecting behavior close-in-time to the periodic review required under 40 RCNY § 6-14.

(4) The plan shall include:

(i) A detailed assessment of what led the person to engage in the violent or disruptive behavior;

(ii) Whether the person will be receiving mental health services;

(iii) What programming and/or services shall be provided to address the reasons for the person's violent or disruptive behavior;

(iv) Whether the Department will arrange for special staffing to manage the person's behavior; and

(v) Whether the Department will involve family members, criminal defense counsel, and community resources to assist the person in meeting the goals of the person's IBSP.

(b) Within seventy-two (72) hours of a person's placement in [RMAS] restrictive housing, a case manager must review the IBSP with the person. At every periodic review, as required in 40 RCNY § 6-14, in the Department must review and update the person's IBSP and afford the person an opportunity to participate in the review.

(c) The Department must record in writing the date of initial and subsequent periodic reviews with a person in custody. It must also document in writing all changes to the person's IBSP.

(d) If a person in custody commits and is found guilty of a Grade I infraction while in [RMAS] restrictive housing:

(1) The Department shall review the person's IBSP and update the plan to include the strategies the Department shall employ to prevent the person from engaging in further violent or disruptive behavior. The Department shall conduct this review and update the plan accordingly within two business days of the person's being found guilty of a Grade I infraction while in [RMAS] restrictive housing.

§ 20. Section 6-13 of Title 40 of the Rules of the City of New York is amended to read as follows:

§ 6-13 [Progression] Discharge from Restrictive Housing.

(a) [All persons in Level 1 must progress to Level 2 after fifteen (15) days unless the facility head and the Chief of Department each approve a limited extension pursuant to the criteria set forth in 40 RCNY § 6-15]

The Department shall discharge an incarcerated person from restrictive housing if such person has not engaged in behavior that presents a specific, significant, and imminent threat to the safety and security of themselves or other persons during the preceding 15 days.

(b) The Department shall discharge an incarcerated person from restrictive housing within 30 days of their initial placement and shall not place an incarcerated person in restrictive housing for more than a total of 60 days in any 12-month period.

(c) All persons in [RMAS] restrictive housing must step down to a Restorative Rehabilitation Unit (RRU) after they have been in [RMAS] restrictive housing for a total of thirty (30) days[, unless the facility head and the Chief of the Department each approve a limited extension in Level 2 pursuant to 40 RCNY § 6-15].

§ 21. Section 6-14 of Title 40 of the Rules of the City of New York is amended as follows:

§ 6-14 Periodic Review of Individual Behavior Support Plans and Placement in Restrictive Housing.

(a) The Department shall meaningfully review the individual behavior support plans of a person in custody confined in [RMAS] restrictive housing at least every fifteen (15) days to determine whether they can be placed outside restrictive housing.

(b) The Department must give written notice of an upcoming periodic review to the person in custody at least twenty-four (24) hours prior to such periodic review. The notice must advise the person of their right to submit a written statement for consideration, and their right to participate in the review. The Department must provide necessary assistance to any person who is unable to read or understand such notice or prepare a written statement.

(c) Periodic review of a person's individual behavior support plan and continued placement shall be conducted by a multidisciplinary team, including but not limited to Department program staff and the person's case manager, and shall consider the following:

(1) The continued appropriateness of the individual remaining in restrictive housing, including an assessment of whether they continue to present a specific, significant, and imminent threat to the safety and security of other persons if housed outside restrictive housing;

(2) The continued appropriateness of each individual restriction on privileges and whether any such individual restrictions on privileges should be relaxed or lifted;

([2]3) Information regarding the person's subsequent behavior [and attitude] since placement in [RMAS] restrictive housing began;

([3]4) Any written statement the person submitted for consideration or any oral statement the person made at their periodic review;

([4]5) Any actions or behavioral changes that the person might undertake to further rehabilitative goals and facilitate the lifting of individual restrictions; and

([5]6) Whether the programming and therapeutic options currently offered to the person are having a positive behavioral impact, and if not, what other available programming and therapeutic options might be more successful in helping the person to further the goals of their individual behavior support plan.

(d) The conclusions reached in the multidisciplinary team's periodic review, including recommendations about continued placement, individualized programming and therapeutic options, shall be recorded in a written report. If an individual is not discharged from restrictive housing after review, the written report must also include the reasons for the determination and any corrective actions to be taken. A copy of the report shall be provided to the person in custody within one business day of the review. The Department shall provide the incarcerated person access to available individualized programming, therapeutic options, and corrective actions as recommended in the report.

§ 22. Section 6-15 of Title 40 of the Rules of the City of New York, relating to extensions of time in RMAS Level 1 or Level 2, is REPEALED, and sections 6-16, 6-17, 6-18, 6-19, 6-20, 6-21, 6-22, 6-23, 6-24, 6-25, 6-26, 6-27, 6-28, 6-29, and 6-30 are renumbered sections 6-15, 6-16, 6-17, 6-18, 6-19, 6-20, 6-21, 6-22, 6-23, 6-24, 6-25, 6-26, 6-27, 6-28, and 6-29, respectively.

§ 23. Section 6-15 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

§ 6-15 Required Out-of-Cell Time. All people in custody who are housed in [RMAS] restrictive housing must be permitted [the following out-of-cell hours per day:

(a) People in Level 1 must be permitted at least ten (10) out-of-cell hours per day.

(b) People in Level 2 must be permitted at least twelve (12) out-of-cell hours per day] at least fourteen (14) out-of-cell hours per day.

§ 24. Section 6-16 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended read as follows:

§ 6-16 Other Conditions.

(a) Security staff shall conduct visual observations of every person housed in [RMAS] restrictive housing every fifteen minutes (15) when they are locked in their cells. During such observations, security staff must look for and confirm signs of life.

(b) At the beginning of each tour, security staff in [RMAS] restrictive housing units shall confirm in the housing area logbook that they have checked which persons in the unit have serious medical conditions, as described in 40 RCNY § [6-21(a)] 6-20(a).

(c) [The Department shall provide people housed in RMAS Level 1 with the opportunity to lock out at the same time as at least one other person in custody in a setting where individuals can meaningfully engage both visually and aurally. Such lockout setting must allow for individuals to converse easily without the need to raise their voices to be heard.

(d) The Department shall provide people in custody confined in RMAS Level 2 with the opportunity to lock out at the same time as at least three (3) other people in custody in a setting where individuals can meaningfully engage both visually and aurally. Such lockout setting must allow for individuals to converse easily without the need to raise their voices to be heard. If fewer than four (4) persons are confined in RMAS Level 2 at any given time, the Department must instead guarantee that a person in custody confined in RMAS Level 2 has the opportunity to lock out at the same time as at least one other person in custody in a setting where individuals can meaningfully engage both visually and aurally, and converse easily without the need to raise their voices to be heard].

A person placed in restrictive housing must have interaction with other people and access to congregate programming and amenities comparable to those housed outside restrictive housing, including access to at least seven hours per day of out-of-cell congregate programming or activities with groups of people in a group setting all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction.

([e]d) The Department [many] may not impose any individual restrictions on a person confined in [RMAS] restrictive housing that differs from those imposed on people housed in the general population, unless the individual restriction is necessary to address a specific safety and security threat posed by that person.

([f]e) To the extent the Department seeks to limit access to contact visits of a person in custody who is confined in [RMAS] restrictive housing, a hearing shall be held, as required in 40 RCNY § [6-24(d)] 6-23(d), which shall address the criteria set forth in 40 RCNY § 1-09(h) with regard to both the incarcerated person and any individual visitors with whom the Department wishes to limit contact.

([g]f) Law library services may be provided in [RMAS Level 1 and Level 2] restrictive housing units instead of a law library. If so, the Department must ensure that:

(1) People in [each Level 1 and Level 2 unit] restrictive housing have access to electronic legal research and typing equipment;

(2) One library coordinator is assigned to every two (2) [RMAS] restrictive housing units at least five (5) times per week; and

(3) The law library coordinator will provide instruction on available legal research tools and respond to people in custody's requests for law library services.

([h]g) [To the extent the Department offers people confined in RMAS recreation in outdoor recreation pens or in vacant cells, the] The Department shall equip [these pens or cells] all recreation areas with exercise equipment such as dip bars, high bars, or pull-up bars.

([i]h) All [RMAS] restrictive housing units shall be air conditioned during the heat season.

([j]i) All cells used to house people in [RMAS] restrictive housing shall have access to natural light.

(j) The Department shall use positive incentives to encourage good behavior in restrictive housing units and may use disciplinary sanctions only as a last resort in response to behavior presenting a serious and evident danger to oneself or others after other measures have not alleviated such behavior.

§ 25. Section 6-17 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended read as follows:

§ 6-17 Staffing. (a) Steady Posts. The Department shall endeavor to staff [RMAS] restrictive housing units with as many steady officers as possible to ensure the safety and security of incarcerated individuals and all staff during each tour. The Department shall retain records sufficient to show accurate, uniform data on the security staff transferring in and out of [RMAS] restrictive housing units and the years of experience and training of security staff assigned to and working in these units. The Department shall semi-annually report this information, in writing, to the Board, with the information disaggregated by month.

(b) Staffing Plans. The Department shall provide the Board with the Department's staffing plans developed for [RMAS] restrictive housing and regularly update the Board on any material changes to such plans.

§ 26. Section 6-18 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended read as follows:

§ 6-18 Training. (a) [Security staff assigned to RMAS units] Staff that routinely interact with incarcerated individuals in restrictive housing units shall receive training designed to address the unique characteristics and operations of these units and the people in custody who are housed in these units. Such training shall include, but not be limited to recognition and understanding of mental illness and distress, effective communication skills, use of force policies, and conflict de-escalation and resolution techniques.

(b) Security staff assigned to [RMAS] restrictive housing units housing young adults shall receive specialized training for managing and understanding young adult populations, including crisis intervention, conflict resolution, and trauma-informed training.

(c) The Department shall provide hearing adjudicators and other staff involved in [RMAS] restrictive housing placement decisions training on procedural and restorative justice principles and written policies to guide sentencing and placement decisions.

§ 27. Section 6-19 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended read as follows:

§ 6-19 Programming. (a) The Department must provide people in [RMAS] restrictive housing and people who step down from [RMAS] restrictive housing to a RRU (as set forth in 40 RCNY § [6-27] 6-26) with programming both inside and outside of the cell. The Department shall utilize programming that addresses the unique needs of those in restrictive housing. The [programing] programming must be informed by research evidence, be age-appropriate, individualized, trauma-informed, including positive

incentive behavior modification models, and be tailored to each person's individual behavior support plan. The programming must also be designed to facilitate rehabilitation, address the root causes of violence, follow best practices for violence interruption, and minimize idleness. In addition, the Department must also provide people confined in [RMAS] restrictive housing with productive activities inside and outside of the cell, core educational and other programming comparable to core programs in the general population.

(b) The Department shall make at least [five (5)] seven (7) hours of daily out-of-cell congregate programming available to people confined in [RMAS] restrictive housing, in addition to one (1) hour of daily recreation. Meals, showers, and sick call shall not count towards the [five (5)] seven (7) hour daily out-of-cell congregate programming requirement.

(c) [Programming offered by the Department may be provided by entities or persons outside the Department.] All programming to fulfill the seven (7) hour daily out-of-cell congregate programming requirement shall be led by staff or external providers with expertise in providing programming and therapeutic services.

(d) [In RMAS Level 1, the] The Department shall offer each person at least one (1) hour of in-person therapeutic programming per day, led by therapeutic programming staff in a separate shared space not adjacent to a cell.

(e) [In RMAS Level 2, the Department shall offer each person least two (2) hours of in-person therapeutic programming per day, led by therapeutic programming staff in a separate shared space not used for regular lock-out.

(f)] In-person therapeutic programming shall only be offered in physical spaces that ensure privacy from non-participating staff and others in custody.

([g]f) For young adults confined in [RMAS] restrictive housing, the [5-hours] 7 hours of daily out-of-cell congregate programming may include[,] activities and/or services provided during school hours by entities or persons other than the Department. For young adults in [RMAS] restrictive housing who are eligible for educational services provided by or through the New York City Department of Education" ("DOE") pursuant to N.Y. Education Law 3202(7) and implementing state regulation, the Department shall offer such young adults access to DOE-provided educational services each school day that DOE's school program is in session during the 10-month school year (or extended school year, if set forth on the student's special education plan), provided that the young adult indicates in writing that they wish to attend and demonstrates their eligibility for such services.

([h]g) The Department shall provide and regularly update the Board with information on program offerings in [RMAS] restrictive housing and to people who step down from [RMAS] restrictive housing to the RRU. The Department shall maintain accurate and up-to-date programming schedules in each [RMAS] restrictive housing and RRU unit.

((i)h) If a person voluntarily chooses not to participate in congregate out-of-cell programming, they shall be offered access to comparable individual programming. The Department shall document by date and videotape each individual's participation in each program session offered and any refusals to participate in [RMAS] congregate or individual programming and the reasons therefor.

((j)i) The Department shall provide the Board with quarterly public reports on [RMAS] restrictive housing programming and programming to people who have stepped down from [RMAS] restrictive housing to a RRU, including but not limited to the following information for adults and young adults by [RMAS level] restrictive housing or RRU status, disaggregated by month:

(1) the name, description, and type of program offered and staff delivering each program offered;

(2) the number of sessions of each program offered;

(3) where and how each program was offered (e.g., in-cell or in-dayroom by tablet, out-of-cell in separate programming space led by staff, etc.);

(4) whether each program offered was individual or congregate;

(5) the average number of participants per session and the number of unique individuals in [RMAS] restrictive housing overall and the number of unique individuals participating in each program during the reporting period;

(6) the number of programming hours received per day (minimum, maximum, mean, median) by individuals in [RMAS] restrictive housing during the reporting period;

(7) the number of programming hours received per day in a separate programming space not adjacent to cell (minimum, maximum, mean, median) by individuals in [RMAS] restrictive housing during the reporting period;

(8) Any other information the Department or the Board deems relevant to the assessment of programming in [RMAS] restrictive housing.

((k)i) The Department shall provide the Board with the individually identified data used to create the public reports required in this section.

((l)k) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY § 6-[20(j)]19(i), which shall be subject to approval by the Board.

§ 28. Section 6-20 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

§ 6-20 Access to Health Services. (a) Upon intake and in subsequent clinical encounters, CHA shall identify individuals with serious medical conditions, as defined by

CHA. Without disclosing specific diagnoses, CHA shall maintain a current list of all such individuals in DOC custody and make that list available to the Department. The Department shall then ensure that staff in [RMAS] restrictive housing units are aware of all people in the unit who have been identified by CHA as having a serious medical condition.

(b) CHA shall provide daily clinical rounds to all people in custody in [RMAS] restrictive housing to assess medical and mental health. Such rounds must be documented in writing. The Department shall immediately notify CHA of each placement of a person in custody into [RMAS] restrictive housing. Such notification shall be in writing.

(d) Clinical treatment shall never occur cell-side. The Department shall ensure that every person who is placed into [RMAS] restrictive housing is brought to the facility clinic for all scheduled appointments they wish to attend. The Department may not use force to compel clinic visits.

(e) Each time CHA determines removal of a person from [RMAS] restrictive housing to an alternate housing unit is appropriate, CHA shall notify the Board in writing of the circumstances related to the determination (e.g., medical concern, mental health concern, disability);

(f) CHA shall provide the Board with a monthly, public report. The report shall include but not be limited to:

(1) Number of notifications of placement in [RMAS] restrictive housing received by CHA during the reporting period, in total and disaggregated by [type of restrictive housing and] facility;

(2) Number of notifications of placement in de-escalation confinement received by CHA during the reporting period, in total and disaggregated by facility;

(3) Number of CHA determinations of removal from [RMAS] restrictive housing to an alternate housing unit during the reporting period, in total and disaggregated by [RMAS level and] facility;

(4) Number and percent of scheduled services by service type and outcome for people housed in [RMAS] restrictive housing during the reporting period, in total and disaggregated by [RMAS level and] facility; and

(5) Any other information CHA or the Board deems relevant to understanding access to health services in [RMAS] restrictive housing.

(g) CHA shall provide the Board with the data used to prepare the report required in 40 RCNY § [6-21(f)] 6-20(f) and any other information CHA or the Board deems relevant to understanding access to health services in [RMAS] restrictive housing.

(h) The Board and CHA shall jointly develop the reporting templates for the public report required by 40 RCNY § [6-21(f)] 6-20(f), subject to approval by the Board.

§ 29. Subdivision (a) and paragraph (1) of subdivision (b) of section 6-22 of Title 40 of the Rules of the City of New York, as renumbered by this rule, are amended to read as follows:

(a) Within three (3) months of the Effective Date of this Rule, the Department shall submit to the Board a written plan for a disciplinary process ("plan"), one for young adults and one for adults, that addresses:

(1) Grade II offenses,

(2) Grade III offenses ("violations"), and

([2]3) People subject to the exclusions in 40 RCNY § 6-09.

(b) Each plan shall include:

(1) Mechanisms for addressing violations without resort to [RMAS] restrictive housing placement or limitations on individual movement or social interaction. Such mechanisms may include, e.g., positive behavioral incentives and privileges, targeted programming to address problematic behavior; and conflict resolution approaches in response to interpersonal conflict within the jails;

§ 30. Paragraph (8) of subdivision (b) of section 6-22 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

(8) Potential housing options for people excluded from [RMAS] restrictive housing.

§ 31. Subdivision (a) of section 6-23 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

(a) *Purpose*.

(1) The following minimum standards in this section are intended to ensure that people in custody are placed into [RMAS] restrictive housing with due process and procedural justice principles.

(2) The requirements in this section apply to people in custody who are charged with violating Department rules and may be placed in [RMAS Level 1 or directly into RMAS Level 2,] restrictive housing if they are found guilty of violating such rules.

§ 32. Paragraph (1) of subdivision (c) of section 6-23 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read follows:

(1) Prior to the disciplinary hearing provided in 40 RCNY § [6-24(d)] 6-23(d), people in custody must receive written notice detailing the charges against them. The notice must be legible, detailed, and specific and must include, at a minimum:

(i) Details as to the time and place of the rule violations charged;

(ii) A description of the person's actions and behavior that gave rise to the alleged violations;

§ 33. Subdivision (c) of section 6-23 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

(c) Notice of Infraction.

(1) Prior to the disciplinary hearing provided in 40 RCNY § [6-24(d) 6-23(d)], people in custody and their legal representative or advocate must receive written notice detailing the charges against them, their rights to legal representation and to attend the disciplinary hearing, the reason for the proposed placement in restrictive housing, and any supporting evidence as soon as practicable, and no later than forty-eight (48) hours prior to the hearing. The notice must be legible, detailed, and specific and must include, at a minimum:

(i) Details as to the time and place of the rule violations charged; and

(ii) A description of the person's actions and behavior that gave rise to the alleged violations[;].

(2) The Department must provide necessary assistance to any person in custody who is unable to read or understand the notice.

(3) Whenever the Department places a person into pre-hearing [detention] temporary restrictive housing, the Department must serve them notice of the infraction within twenty-four (24) hours. If extenuating circumstances prevent the possibility of service within this time frame, the Department must serve notice as soon as possible and document each reason for delay.

(4) When the Department has charged a person with an infraction and has not placed them in pre-hearing [detention] temporary restrictive housing, the Department must serve [them] the person charged and their legal representative or advocate, if any, written notice of the infraction, the reason for the proposed placement in restrictive housing, and any supporting evidence as soon as practicable, and no later than [two (2) business days] forty-eight (48) hours prior to the hearing. Failure to do so shall constitute a due process violation warranting dismissal [, unless the Department can demonstrate through documentation that extenuating circumstances beyond the Department's control prevented timely service] of the matter that led to the hearing.

(5) Any member of DOC staff may serve the person charged with the notice of infraction, except those who participated in the incident. The person will be asked to sign the notice as proof of receipt and to verbally indicate whether they would like to have a legal representative or advocate at their hearing. If the person does not sign the notice, a staff member other than the person serving the notice must note the person's refusal on the notice. Staff members who serve the notice, including staff members who note a person's refusal to sign the notice, shall indicate their name and shield number legibly on the notice.

(6) All refusals to sign a notice of infraction and waivers of legal representation shall be videotaped with audio. In such cases where the Department maintains that someone has refused to sign, the Department must produce the videotaped refusal and make it part of the hearing record. Failure to do so shall constitute a due process violation warranting dismissal.

(7) The Department must send the notice of infraction to the charged person's defense counsel of record and the designated contact for each law office providing such defense.

(8) In the event that the person charged with an infraction is unable to secure legal representation for the hearing through their counsel of record, the Department shall provide the contact information for one or more law offices providing criminal or civil defense services for people who are financially unable to obtain counsel. The Department shall regularly update the list of such contact information.

§ 34. Paragraphs (5) through (9) of subdivision (d) of section 6-23 of Title 40 of the Rules of the City of New York, as renumbered by this rule, are amended to read as follows:

(5) *Refusal to Attend or Participate*. The refusal of people in custody to attend or participate in their hearing or waiver of legal representation or advocacy must be videotaped [or audiotaped] with audio and made a part of the hearing record.

(6) *Rights of the Person Charged*. The Hearing Adjudicator shall advise the person charged of the following rights at the hearing, which must also be set forth in the notice of infraction:

(i) The right to legal representation: People charged with any infraction that could result in a placement in [RMAS Level 1 or 2] restrictive housing have the right to legal representation at their disciplinary hearing. If a person eligible for legal representation appears at a hearing unrepresented, the Department shall inform the person that they have the right to adjourn the hearing so they can engage a legal representative.

(ii) The right to appear: The person charged has the right to appear personally unless the right is waived in writing or the person refused to attend the hearing.

(A) If the person charged is excluded or removed from a restrictive housing hearing because it is determined that such person's presence will jeopardize the safety of themselves or others or security of the facility, the basis for such exclusion must be documented in the hearing record.

(B) The Department shall grant reasonable requests for adjournments, including where such request facilitates the person appearing with their legal representative or advocate. The Department must establish that a person who does not appear knowingly and voluntarily waived their right to appear. Failure to establish such voluntary waiver may lead to the dismissal of the charges.

(C) A virtual hearing option shall be made available upon request of the legal representative or advocate of the person charged. In both the in-person and virtual options, the legal representative or advocate shall be provided the ability to privately confer with their client both before and during the hearing.

(iii) The right to make statements or remain silent: The person charged has the right to make statements. In cases where the infraction in question could lead to a subsequent criminal prosecution, the Hearing Adjudicator must inform the person that while the proceeding is not a criminal one, the person's statements may be used against the person in a subsequent criminal proceeding. The Adjudicator must also inform the person of the right to remain silent and that silence will not be used against the person at the hearing.

(iv) The right to present evidence and call witnesses: The person charged has the right to present evidence [and], call witnesses, and cross-examine witnesses.

(A) Witnesses shall testify in person at the hearing unless the witnesses' presence would jeopardize the safety of themselves or others or security of the facility. If a witness is excluded from testifying in person, the basis for the exclusion shall be documented in the hearing record.

(B) If a witness refuses to provide testimony at the hearing, the department must provide the basis for the witness's refusal, videotape such refusal, or obtain a signed refusal form, to be included as part of the hearing record.

(v) The right to review the Department's evidence:

(A) The person charged and their legal representative or advocate have the right to review[,] the evidence [relied upon by the Department] supporting the proposed placement in restrictive housing prior to the infraction hearing. The Department shall provide such evidence as soon as practicable but no later than forty-eight (48) hours prior to the hearing.

(B) Such evidence or information may, as applicable, include but is not limited to:

(a) surveillance footage video or stills;

(b) body-worn camera footage;

(c) notices of infraction;

(d) facility and staff reports;

(e) use of force reports;

(f) injury reports;

(g) medical documentation (subject to local, state, and federal medical information privacy laws);

(h) witness list;

(i) all statements (written, recorded or summarized) in any writing or recording made by persons who have evidence or information relevant to the allegations; and

(j) any evidence of alleged refusals, including body-worn camera footage and any evidence that the charged individual knowingly and voluntarily waived their right to appear or right to access legal representation.

(C) Specific documented intelligence may be redacted in limited instances where the Department determines that disclosing such information would present a serious safety risk to specific individuals. In such cases, the Department shall inform the person in writing that the information is being redacted due to a specific security risk. The Department shall maintain records of both redacted and unredacted evidence.

(D) Where the Department fails to comply with paragraph (v) of subdivision (6) of this section or an order imposed or issued pursuant to this rule, the Hearing Adjudicator may make a further order for discovery, grant a continuance, order that a witness be called or recalled, draw an adverse inference regarding the non-compliance, preclude or strike a witness's testimony or a portion of a witness's testimony, admit or exclude evidence, order the dismissal of all or some of the charges, or make such other order as it deems appropriate under the circumstances.

(E) For purposes of placement in pre-hearing temporary restrictive housing, any adjournment sought by the person charged or their legal representative or advocate due to the Department's failure to provide evidence as required by paragraph (v) of subdivision (6) of this section will not extend a person's placement in pre-hearing temporary restrictive housing beyond five (5) business days pursuant to 40 RCNY § 6-04(d).

([B]F) Should the Department provide any evidence to the person for the first time at the hearing, the Department shall inform the person or their legal representative or advocate at the hearing that they have the right to adjourn the hearing so they can review and prepare their defense.

(G) Where evidence is lost or destroyed, or unavailable due to the failure or inability of the Department to preserve such evidence, the Hearing Adjudicator shall impose a remedy that is appropriate and proportionate to the prejudice suffered by the person charged with the infraction. If relevant body-worn camera footage is lost or destroyed, or correctional staff fails to turn on body-worn camera when required by DOC policy, the Hearing Adjudicator may dismiss the charges.

(vi) The right to an interpreter. The Department shall ensure that every person charged is aware they are entitled to [request] an interpreter in their native language if

they do not understand or are not able to communicate in English well enough to conduct the hearing in English. The Department shall take reasonable steps to provide an interpreter. If after taking reasonable steps the Department cannot provide an interpreter, the Hearing Adjudicator shall review all Department efforts to determine if the charges shall be dismissed due to failure to guarantee the right to an interpreter.

(vii) The right to an appeal. A person who is found guilty at a disciplinary hearing has the right to appeal an adverse decision as provided in 40 RCNY § [6-24(h)] 6-23(h).

(7) *Burden of Proof.* The Department has the burden of proof in all disciplinary proceedings. A person's guilt must be shown by a preponderance of the evidence to justify [RMAS] restrictive housing placement.

(8) *Hearing Time Frame.*

(i) Once the hearing has begun, the Hearing Adjudicator shall make reasonable efforts to conclude the hearing in one session.

(ii) Adjournments may be granted if [the person charged or their legal representative requests additional time to locate witnesses, obtain the assistance of an interpreter, or prepare a defense] requested by the person charged or their legal representative or advocate. The Department shall provide the person charged and their legal representative or advocate adequate time to prepare for such hearings and shall grant reasonable requests for adjournments. In determining what constitutes a reasonable request for adjournment, factors that must be considered include but are not limited to:

(A) Additional time to locate witnesses;

(B) Additional time to obtain the assistance of an interpreter;

(C) Additional time to prepare a defense;

(D) A reasonable time for both the legal representative or advocate and client to be notified;

(E) A reasonable time for the legal representative or advocate to review discovery;

(F) A reasonable time for the legal representative or advocate to confer with their client; or

(G) Any other basis justifying the need for an adjournment.

(iii) Hearing Adjudicators may also adjourn a hearing to question additional witnesses not available at the time of the hearing, gather further information, refer the person charged to mental health staff, or if issues are raised that require further investigation or clarification to reach a decision.

(iv) Notwithstanding any adjournments, hearings must be completed within five (5) days, absent extenuating circumstances or unless the person charged waives this time frame in writing or on the record.

(9) *Legal Representation.* People charged with any infraction that could result in a sentence to [RMAS Level 1 or 2] restrictive housing shall be permitted to have a legal representative or advocate represent them at their disciplinary hearing and in any [in] related appeal. People entitled to such representation shall be permitted to choose their legal representative or advocate.

§ 35. Subdivisions (e), (f), and (g) of section 6-23 of Title 40 of the Rules of the City of New York, as renumbered by this rule, are amended to read as follows:

(e) *Determination.*

(1) [Absent extenuating circumstances, the] The Hearing Adjudicator shall reach a determination within five (5) business days of the conclusion of the hearing. The person charged and their legal representative or advocate shall be served with a copy of the determination within [two (2) business days of the conclusion of the disciplinary hearing] twenty-four (24) hours of the determination.

(2) The determination shall be in writing, legible, and contain the following:

- (i) A finding of "guilty," "not guilty," or "dismissed" on each charge in the infraction;
- (ii) A detailed description of the evidence relied upon by the Hearing Adjudicator in reaching such finding;
- (iii) The sanction imposed, if any; and

([3] iv) A summary of each witness's testimony, including whether the testimony was credited or rejected, with a statement of the reasons therefor. If the witness's testimony contains specific documented intelligence, that intelligence may be redacted on the copy of the determination provided to the person in custody and their representative if the Department determines that disclosing such information would present a serious safety risk to specific individuals. In such cases, the Department shall inform the person and their legal representative in writing that the information is being redacted due to a specific security risk. The Department shall maintain records of both redacted and unredacted determinations.

([4]3) Records generated pursuant to a disciplinary hearing in which a person is found not guilty of the charges, after either the disciplinary hearing or appeal, shall be kept confidential and shall not be considered in making decisions pertaining to the person's access to programs, services, or in the granting of or withholding of "good time" credit for sentenced people, as defined in 39 RCNY § 1-03.

(f) Hearing adjudicators shall impose sanctions that are fair and proportionate to the infraction of which a person was found guilty. Failure to comply with the requirements

described in subdivisions (a) through (e) of this section shall constitute a due process violation warranting dismissal of the matter that led to the hearing.

(g) People in custody must be placed in [RMAS] restrictive housing within thirty (30) days of adjudication of guilt. If the Department does not place a person into [RMAS] restrictive housing within this thirty (30) day period, the Department may not place the person in [RMAS] restrictive housing for that infraction at a later time.

§ 36. Paragraph (3) of subdivision (h) of section 6-23 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

(3) People charged with infractions that could result in placement in [RMAS Levels 1 and 2] restrictive housing are entitled to a legal [representation] representative or an advocate for purposes of filing an appeal.

§ 37. Paragraph (1) of subdivision (i) of section 6-23 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

(1) Within one year of the Effective Date, the Department shall develop the system(s) necessary to collect accurate, uniform data on the due process requirements of 40 RCNY § [6-24] 6-23, and to centrally store related documentation, in a manner that may be analyzed electronically by the Board.

§ 38. Subparagraphs (iv) and (vi) of paragraph (2) of subdivision (i) of section 6-23 of Title 40 of the Rules of the City of New York, as renumbered by this rule, are amended to read as follows:

(iv) Disciplinary sanctions, including the number and percent of guilty determinations by top infraction charge Grade (i.e., Grade I violent, Grade I non-violent, Grade II, Grade III), by whether the individual was placed in restrictive housing[, including RMAS], and by the reasons not placed (e.g., discharged from custody, excluded due to health contraindication, or placement did not occur within 30 days of adjudication).

* * *

(vi) Any other information the Department or the Board deems relevant to assessment of [RMAS] restrictive housing Due Process.

§ 39. Paragraph (4) of subdivision (i) of section 6-23 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

(4) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY § [6-24(i)(2)] 6-23(i)(2), which shall be subject to the Board's approval.

§ 40. Section 6-24 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

§ 6-24 [RMAS] Restrictive Housing Data Collection and Review.

(a) The Department shall maintain and update as necessary a list of the type and specific location of all [RMAS] restrictive housing units. The list shall include the opening and closing dates of all such units. The Department shall provide this list to the Board on at least a monthly basis and notify the Board in writing when any new [RMAS] restrictive housing units open, close, or change level.

(b) The Department shall maintain and develop the system(s) necessary to collect accurate, uniform data on [RMAS] restrictive housing and the requirements of 40 RCNY Subchapter E, and to centrally store related documentation, in a manner that may be analyzed electronically by the Board.

(c) The Department shall provide the Board with a monthly public report with information on [RMAS] restrictive housing, including but not limited to the following information for the Adult and Young adult populations[, overall and by each RMAS Level]:

(1) Number of sentences to [RMAS] restrictive housing by top offense (Rule Violation Grade Level, Rule Number, Rule Description) and length of sentence;

(2) The mean, median, minimum, and maximum time from qualifying incident or violation to placement and from adjudication to placement for all placements in [RMAS] restrictive housing in the reporting period;

(3) The total number of placements and unique people placed during the reporting period; the number and percent of people placed by age, race, ethnicity, gender, and "M" designation status, Security Risk Group, Red ID, and Enhanced Restraint status at time of placement; the average daily population; and the number of adults and young adults currently housed in [RMAS] restrictive housing as of the last day of the reporting period;

(4) [Number of determinations to extend a person's time in RMAS Level 1 or Level 2 pursuant to 40 RCNY § 6-15(a) during the reporting period by whether the extension was approved and whether it was appealed, and number of people for whom extensions and appeals were granted, in total and by number of extensions and appeals received;

(5)] Number of exits of people from [RMAS] restrictive housing during the reporting period and their cumulative and consecutive days in [RMAS] restrictive housing during current incarceration (i.e., minimum, maximum, mean, median days) and, for each exit, the date of exit, the reason for exit (e.g. time served, discharged from custody, medical transfer, mental health transfer, etc.), and the facility, housing unit, and housing category in which the person was housed prior to and upon exit;

[(6)]5) Number of people in [RMAS] restrictive housing as of the last day of the reporting period and their cumulative and consecutive days in [RMAS] restrictive housing (i.e., minimum, maximum, mean, median days);

([7]6) The number of periodic reviews required and conducted by whether people attended their review, and whether any modifications were made to a person's individual behavior support plan.

([8]7) Average number of out-of-cell hours received per day; and average rate of participation in daily recreation.

([9]8) Numbers and rates of: person-in-custody on person-in-custody fights, slashings / stabbings, assaults on staff, and uses of force, compared to the comparable age group in the general population;

([10]9) Facility and housing unit locations for each [RMAS] restrictive housing unit, indicating [RMAS level and] whether the unit houses young adults or adults;

([11]10) Any other information the Department or the Board deems relevant to understanding the Department's use of [RMAS] restrictive housing.

(d) The Department shall produce monthly public reports of time spent out of cell; times spent in separate programming space that is not adjacent to cell or in regular lock-out space; access to law library; access to showers; participation in recreation; and time spent participating in programming for each individual in [RMAS] restrictive housing. Reports shall include the number, length of, and reasons for late lockouts in [RMAS] restrictive housing units and recommendations or corrective action(s) taken to address report findings related to improving access to and participation in mandated services. Reports shall indicate whether access to each type of mandated service or programming required a routine strip search. Information gathering to prepare this report shall not be conducted by staff regularly assigned to the facilities or units. At least four (4) dates per month shall be selected at random and shall not be previously disclosed to staff with responsibilities related to the units reviewed.

(e) On a monthly basis, the Department shall provide the Board with the individually identified data used to create the public reports required by 40 RCNY §§ 6-2[5]4(c) and (d) and all supporting documentation including but not limited to [RMAS] restrictive housing placement, review, and IBSP documentation.

(f) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY § 6-2[5]4(c) and (d). Such templates shall be subject to the Board's approval. Upon submission and review of the Department's disciplinary system plan submitted pursuant to 40 RCNY § 6-2[3]2, the reporting provisions outlined in 40 RCNY § 6-2[5]4(c) and associated templates shall be reviewed and revised as necessary.

(g) The Department shall comply with regular reporting requirements pursuant to section 9-167 of the Administrative Code.

(h) The Board shall review the information provided by the Department and any other information it deems relevant to the assessment of [RMAS] restrictive housing. No later than eighteen months (18) after implementation of [RMAS] restrictive housing, the Board

shall meet to discuss the effectiveness of [RMAS] restrictive housing. The Board's discussion shall address but not be limited to findings regarding the conditions of confinement in [RMAS] restrictive housing, the impact on the mental health of people housed therein, and the quality and effectiveness of programming provided in [RMAS] restrictive housing.

§ 41. Subdivision (c) of section 6-25 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is REPEALED; and subdivisions (a) and (b) of such section are amended to read as follows:

(a) The Department shall provide the Board with the architectural renderings for [RMAS] restrictive housing units prior to their submission to the New York State Commission of Correction (SCOC). The Department shall provide the Board with the architectural renderings for such units as approved by SCOC within two (2) business days of SCOC's approval.

(b) Within one (1) month of the Effective Date, the Department shall provide [a comprehensive transition plan, in writing to] the Board[, which shall include] the following documents and information concerning the elimination of punitive segregation and the implementation of [RMAS] restrictive housing:

(1) A list of written policies to implement [RMAS] restrictive housing;

(2) Specific plans related to implementation of [RMAS] restrictive housing for women in custody;

(3) Staffing plans for uniform and non-uniform staff who will work in [RMAS] restrictive housing;

(4) Training curricula for uniform and non-uniform staff who will work in [RMAS] restrictive housing;

(5) Programming to be provided to people housed in [RMAS] restrictive housing, and how, where, and by whom such programming will be afforded;

(6) Youth-specific staffing and programming plans for young adult [RMAS] restrictive housing units;

(7) Plans for conducting a process and outcome evaluation with proposed metrics to determine success of the [RMAS] restrictive housing model.

§ 42. The heading of Subchapter F of Title 40 of the Rules of the City of New York is amended to read as follows:

Subchapter F: Step-Down from [RMAS] Restrictive Housing

§ 43. Section 6-26 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

§ 6-26 Restorative Rehabilitation Units (RRUs). (a) *Purpose.* The purpose of the RRU is to enable the Department to operate a general population setting with [enhanced security,] programming[, and therapeutic support for people in custody who [have been identified as posing an increased safety risk in a standard general population housing unit] request placement in RRU following their discharge from restrictive housing. [This includes, but is not limited to, people being discharged from RMAS.] Placement in RRU is voluntary.

(b) *Case Management, Individual Support Plans, and Periodic Reviews.*

(1) People [stepping] who choose to step down to a RRU from [RMAS] restrictive housing shall, to the extent practicable, retain the same case manager assigned to them in [RMAS] restrictive housing.

(2) People [stepping] who choose to step down to a RRU from [RMAS] restrictive housing shall continue with the same individual behavior support plan designed for them in [RMAS] restrictive housing, and their assigned multidisciplinary team shall continue to conduct periodic reviews as set forth in 40 RCNY § 6-14 every fifteen (15) days to assess progress with the plan, make any necessary adjustments to the plan, or modify programming recommendations.

(3) Following a periodic review, the multidisciplinary team can recommend to the facility head that someone be moved out of a RRU to a regular general population housing area if such transfer would be advisable.

(4) [The Department may not transfer someone out of the RRU who has stepped down from RMAS unless the multidisciplinary team has approved of such transfer following a periodic review]

A person in custody can request to be discharged from a RRU at any point during their placement and shall be discharged to general population upon such request.

(c) *Conditions.*

(1) RRUs must afford identical services and out-of-cell time as are afforded to the rest of the general population.

(2) RRUs must be located in cell housing units that share the same physical characteristics as standard general population cell housing areas (e.g., a congregate dayroom).

(3) To promote enhanced safety and supervision, an RRU shall not house more than fifteen (15) people at one time.

(4) RRU must comply with 40 RCNY § 6-15 and § 6-16(a), (b), (c), (e), and (j) and all provisions regarding conditions, services, and programs for people in general population.

(d) *Staffing and Training.*

(1) The Department shall endeavor to staff the RRUs with as many steady officers as possible. The Department shall also strive for a significantly higher staff-to-person-in-custody ratio in the RRUs than in standard general population units.

(2) Security staff assigned to RRUs shall receive training designed to address the unique characteristics and operations of these units and the people in custody who are housed in these units. Such training shall include, but not be limited to recognition and understanding of mental illness and distress, effective communication skills, and conflict de-escalation techniques.

(3) Security staff assigned to RRUs housing young adults shall receive specialized training for managing and understanding young adult populations, including crisis intervention, conflict resolution, and trauma-informed training.

(e) Programming.

(1) The Department shall offer at least six (6) hours of daily programming to people who step down to the RRU from [RMAS] restrictive housing, in addition to one (1) hour of daily recreation. Meals, showers, and sick call shall not count towards the six (6) hour daily programming requirement.

(2) At least three (3) of the six (6) hours of daily programming required under 40 RCNY § 6-[27]26(e)(1) must be offered in a congregate setting and shall be led by therapeutic or programming staff.

(f) Data Collection and Review.

(1) The Department shall maintain and update as necessary a list of the type and specific location of all RRU units, including which RRUs contain individuals who have stepped down from [RMAS] restrictive housing. The list shall include the opening and closing dates of all such units. The Department shall provide this list to the Board on at least a monthly basis and notify the Board in writing when any new RRU units open or close.

(2) The Department shall maintain and develop the system(s) necessary to collect accurate, uniform data on RRUs and the requirements of 40 RCNY Subchapter F and to centrally store related documentation, in a manner that may be analyzed electronically by the Board.

(3) The Department shall provide the Board with a monthly public report with information on RRUs, including but not limited to the following information for the Adult and Young adult populations:

(i) Facility and housing unit locations for each RRU unit;

(ii) Number of placements and unique people who requested to be placed in RRU [by reason for placement (e.g., RMAS stepdown, other therapeutic reason, etc.)] following discharge from restrictive housing, the number of unique people who were discharged

from restrictive housing and did not opt in for RRU placement, and the number of unique people who requested to be placed in RRU following discharge from restrictive housing but were not placed in RRU, including the reason why they were not placed in RRU;

(iii) The average daily population, and the number of adults and young adults currently housed in RRU as of the last day of the reporting period;

(iv) Average staff-to-person in custody ratios in each RRU unit operating during the reporting period;

(v) Number of exits of people from RRU during the reporting period and their cumulative and consecutive days in RRU during current incarceration (i.e., minimum, maximum, mean, median days) and for each exit;

(vi) Number of people in RRU as of the last day of the reporting period and their cumulative and consecutive days in the RRU (i.e., minimum, maximum, mean, median days);

(vii) The number of periodic reviews required and conducted by whether people attended their review, and whether any modifications were made to a person's individual behavior support plan;

(viii) The number of people who requested to be discharged from RRU as of the last day of the reporting period and the total number of days each person spent in the RRU;

(ix) Any other information the Department or the Board deems relevant to understanding the Department's use of RRU [for people stepping down from RMAS].

(g) On a monthly basis, the Department shall provide the Board with the individually identified data used to create the monthly public report required by 40 RCNY § 6-2[7]6(f)(3) and all supporting documentation including but not limited to RRU placement, review, and IBSP documentation.

(h) The Board and the Department shall jointly develop the reporting templates for the public report required by 40 RCNY § 6-2[7]6(f)(3).

§ 44. Section 6-27 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

§ 6-27 Restraints. (a) Nothing in this section shall prohibit:

(1) The use of restraints that are reasonable and necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, prevent escape, control a person in custody, or protect staff, other people in custody, and others from injury;

(2) The immediate use of restraints to prevent a person in custody from self-harm or harming others or causing serious property damage;

(3) The routine use of restraints for movement, escort, and transportation purposes when an individualized determination is made that such restraints are necessary and such use complies with this section.

(b) The Department shall not place an incarcerated person in restraints unless an individualized determination is made that restraints are necessary to prevent an imminent risk of self-injury or injury to other persons. Restraints are only to be used when necessary to prevent such an imminent risk. Restraints shall only be imposed when no lesser form of control would be effective in addressing the risks posed by unrestricted movement.

(c) The method of restraint shall be the least intrusive method necessary and reasonably available to control a person in custody's movement based on the level and nature of the risks imposed.

(d) Restraints shall be removed as soon as possible after the risks posed by unrestricted movement are no longer present and may be used no longer than is necessary to abate imminent risk of self-injury or injury to other persons.

(e) [As of November 1, 2021,] From the Effective Date of this section, the Department shall eliminate the non-individualized use of restraints – including restraint desks – during lockout in all facility housing units. Non-individualized use means placing any person or group of people in a restraint desk or other restraint as a condition of lockout, or solely based on their transfer to a restrictive housing unit.

(f) [From the Effective Date of the Rule, the Department shall not subject any person or group of people to routine restraints during lockout periods, unless the person or people have recently participated in an actual or attempted slashing or stabbing, or engaged in activity that caused serious injury to a staff member or another person. In such cases, the use of a restraint desk or other restraint must be the least restrictive option necessary for the safety of others.

(g) From the Effective Date of the Rule and until the prohibition on non-individualized restraints takes effect on November 1, 2021, the Department shall review the placement of people in custody in non-individualized restraint during lockout every seven (7) days.

(1) Prior to such periodic review, the Department shall provide written notice to people in custody of the pending review and of the person's right to submit a written statement for consideration and to participate in the review. People in custody who are unable to read or understand such notice shall be provided with necessary assistance.

(2) Periodic review of a person's placement in non-individualized restraint during lockout shall consider the following, with conclusions recorded in a written report made available to the person within two (2) days of the review:

(i) The justifications for continued placement of the person in non-individualized restraints during lockdown;

(ii) The continued appropriateness of the person in a form of non-individualized restraint during lockdown;

(iii) Information regarding the person's subsequent behavior and attitude since placement of the person in non-individualized restraints during lockdown;

(iv) Any written statement the person submitted for consideration or any oral statement the person made at the person's periodic review;

(v) Any other factors that may favor retaining the person or removing the person from non-individualized restraints during lockdown; and

(vi) If the person's placement in non-individualized restraints during lockdown is to continue, any actions or behavioral changes that the person might undertake to further rehabilitative goals and facilitate the lifting of non-individualized restraints during lockdown.

(3) At each periodic review, the Department shall advance a person out of non-individualized restraints during lockdown unless:

(i) The person has engaged in violent behavior in the previous seven (7) days; or

(ii) There is credible intelligence that the person may engage in violence in a less restrictive level or housing unit.

(4) The Department shall determine whether the person shall advance out of restraint desks or other form of non-individualized restraint within twenty-four (24) hours of the person's periodic review. If the Department determines that a person in custody should be moved out of restraint desks or other form of non-individualized restraint during lockdown, the use of restraints shall cease within forty-eight (48) hours of such determination. If the use of restraints does not cease within forty-eight (48) hours, the Department shall notify the Board, in writing, within forty-eight (48) hours of its decision. The notification shall include the reason the Department did not move the person out of restraint desk or other form of non-individualized restraint]

Any continued use of restraints must be reviewed by the Department daily and discontinued once there is no longer an imminent risk of self-injury or injury to other persons. Continued use of restraints may only be authorized for seven (7) consecutive days.

([h]g) Restraints shall never be:

(1) Applied as punishment or retaliation;

(2) Applied to the head or neck or in a manner that may restrict blood circulation or breathing;

(3) Used to pull or lead a person in custody;

(4) Used to cause unnecessary physical pain or discomfort;

(5) Used inside of a cell unless the cell is being used to hold more than one person in custody and restraints are the only way to ensure the safety of those held in the cell.

([i]h) CHA shall notify the Department in writing of people in custody who have functional needs or impairments that contraindicate the imposition of one or more permitted restraints. The Department shall consider this information before such individuals are escorted in restraints, transported in restraints, or otherwise subject to restraints.

([j]i) A person in a wheelchair or a visually impaired person may be handcuffed only in front.

([k]i) People who are deaf, hearing impaired, or have impaired speech and communicate with hand gestures may only be restrained under controlled conditions, and when it is determined safe to do so, in a manner that allows for communication without jeopardizing safety.

([l]k) Four- and five-point restraints shall not be used other than pursuant to 40 RCNY § 2-06, governing the physical restraint of persons in custody being observed or treated for mental or emotional disorders.

(l) Restraints shall not be used on an incarcerated person under the age of 22 except in the following circumstances: (i) during transportation in and out of a facility, provided that during transportation no person shall be secured to an immovable object; and (ii) during escorted movement within a facility to and from out-of-cell activities where an individualized determination is made that restraints are necessary to prevent an immediate risk of self-injury or injury to other persons. The department is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements.

(m) The Department shall not place an incarcerated person in restraints beyond the use of restraints described in this section, or for two consecutive days, until a hearing is held to determine if the continued use of restraints is necessary for the safety of others. Such hearing shall comply with the Due Process and Procedural Justice rules described in 40 RCNY § 6-23.

([m]n) The Department shall provide the Board with a semiannual public report on the Department's use of restrictive statuses. The report shall include but not be limited to the following information for each restrictive status (i.e., Enhanced Restraint, Red ID, CMC), disaggregated by month:

(1) Number and percent of recommendations for placement in the restrictive status by age, race, ethnicity, gender, and "M" designation status of the person for which the restrictive status was recommended;

(2) Number and percent of people excluded from placement in such status due to a medical or mental health contraindication;

(3) Number of unique individuals placed in the restrictive status during the reporting period and the number of people currently classified in the restrictive status as of the last date of the reporting period;

(4) Number and percent of [periodic] daily reviews conducted, in total and disaggregated by outcome of review (i.e., continued or removed);

(5) Number and percent of appeals of placement into restrictive statuses, in total and disaggregated by outcome of appeal;

(6) Any other information the Department or the Board deems relevant to the understanding the Department's use of restrictive statuses.

([n]o) The Board and the Department shall jointly develop reporting templates for the public report required by 40 RCNY § 6-2[7(m)]6(n), for approval by the Board.

§ 45. Subdivision (d) of section 6-28 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

(d) Canines may not be stationed in [RMAS] restrictive housing units.

§ 46. Section 6-29 of Title 40 of the Rules of the City of New York, as renumbered by this rule, is amended to read as follows:

§ 6-29 Variances. The Department or CHA may apply for a variance from a specific subdivision or section of these 40 RCNY Chapter 6 rules in accordance with the procedures and criteria set forth in 40 RCNY § 1-15, provided that the request is not for a variance from the requirements of section 9-167 of the Administrative Code or a rule promulgated thereunder.

§ 47. Title 40 of the Rules of the City of New York is amended by adding a new subchapter I, to read as follows:

Subchapter I: Medical and Mental Health Housing

§ 6-30 Requirements for medical and mental health housing

(a) All housing for medical or mental health support provided to persons recommended to receive such support by CHA, including placement in contagious disease units, housing for people who are transgender or gender non-conforming, housing for voluntary protective custody, and housing for purposes of school attendance, shall comply with the requirements for restrictive housing and general population housing concerning out-of-cell time, programming and services.

(b) For purposes of the prevention of contagious disease , after a referral from health care staff, a person may be held in a medical unit overseen by health care staff, for as limited a time as medically necessary as exclusively determined by health care staff, in the least restrictive environment that is medically appropriate. Individuals in a contagious disease unit must have comparable access as individuals incarcerated in the general population to phone calls, emails, visits, and programming done in a manner consistent with the medical and mental health treatment being received, such as at a physical distance determined appropriate by medical or mental health staff. Such access must be comparable to access provided to persons incarcerated outside of restrictive housing units.

§ 48. This rule shall take effect on the same day as Local Law 42 for the year 2024 takes effect.