



**BOARD OF CORRECTION
CITY OF NEW YORK**

**NOTICE OF RULEMAKING
CONCERNING RESTRICTIVE HOUSING
IN CORRECTIONAL FACILITIES**

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Board of Correction (the “Board”) is proposing a new rule and rule amendments designed to ensure that people in the Department of Correction’s custody: (1) are placed in restrictive housing in accordance with due process and procedural justice principles; and (2) are confined in the least restrictive setting and for the least amount of time necessary to address the specific reasons for their placement and to ensure their own safety as well as the safety of staff and other people in custody.

When and where is the hearing?

The Board of Correction will hold a public hearing on the proposed rules. The public hearing will take place at **9:00 AM on December 2, 2019**. The hearing will be held at 125 Worth Street, Second Floor Auditorium, New York, New York, 10013.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to the Board at BOC@boc.nyc.gov.
- **Mail.** You can mail comments to the Board, Attn: Michele M. Ovesey, 1 Centre Street, Room 2213, New York, NY 10007.
- **Fax.** You can fax comments to the Board at 212-669-7980.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-669-7900. You can also sign up in the hearing room before the hearing begins at **9:00 AM on December 2, 2019**. You can speak for up to four (4) minutes.

Is there a deadline to submit comments? Yes, you must submit comments by the close of business on **December 2, 2019**.

Do you need assistance to participate in the hearing? You must inform the Board if you need a reasonable accommodation of a disability at the Hearing. Please also inform us if you need a language interpreter. You can inform us by mail at the address given above, by telephone at 212-669-7900, or by email at [coc@coc.nyc.gov](mailto:boc@coc.nyc.gov). Please inform us by the close of business on November 30, 2019 so that we have sufficient time to arrange the accommodation.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. One week after the hearing, a transcript of the hearing and copies of the written comments will be available to the public on the Board's website.

What authorizes the Board of Correction to make these rules? Sections 626 and 1043 of the New York City Charter authorize the Board to propose these rules.

Where can I find the Board of Correction's rules? The Board's rules are in Title 40 of the Rules of the City of New York, and are also available on the Board's website under the "Jail Regulations" tab.

What requirements govern the rulemaking process? The Board must meet the requirements of Section 1043 of the City Charter when creating or amending rules. This notice is made according to the requirements of Section 1043 of the City Charter.

STATEMENT OF BASIS AND PURPOSE

Under § 626 of the New York City Charter, the Board of Correction (“Board” or “BOC”) is authorized to establish minimum standards “for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction” of the New York City Department of Correction (“Department” or “DOC”). Pursuant to this authority, the Board proposes to create a new chapter of its rules, and amend certain existing rules, designed to ensure that people in the Department of Correction’s custody: (1) are placed in restrictive housing in accordance with due process and procedural justice principles; and (2) are confined in the least restrictive setting and for the least amount of time necessary to address the specific reasons for their placement and to ensure their own safety as well as the safety of staff, other people in custody, and the public.

From Reforms to Rules

In just five years — 2014 through 2018 — the New York City jail system underwent groundbreaking reforms. These critical changes spurred a period of innovation and experimentation as the Department, under the oversight of the Board, developed alternatives to punitive segregation, alternative ways to reduce violence in the jails, and alternative strategies to manage its adolescent and young adult populations. Implementation of reforms required DOC to seek variances from the Minimum Standards and led to the Board’s imposition of conditions on granting the variances.

In January 2015, the Board enacted historic amendments to its Minimum Standards: namely, limitations on the use of punitive segregation (“PSEG”)¹ and the creation of enhanced supervision housing (“ESH”)² for adults as part of systemic reforms in the City jails. The reforms included the elimination of PSEG for 16-21-year-olds and individuals with serious mental or serious physical disabilities or conditions.³ Approximately one year later, in December 2015, BOC enacted further amendments, including some proposed by DOC such as the 60-day sentence for assaults on staff. The Department achieved elimination of PSEG for adolescents (i.e., people ages 16 and 17) in December 2014 and for young adults (i.e., people ages 18 through 21) in October 2016. Just two years later, in October 2018, DOC achieved another milestone — the transfer of adolescents off Rikers Island to the Horizon Juvenile Center in the Bronx, under the joint care of DOC and ACS.⁴

¹ Minimum Standard (“Min. Std.”) § 1-17 (“Limitations on the Use of Punitive Segregation”).

² Min. Std. § 1-16 (“Enhanced Supervision Housing”).

³ Min. Std. § 1-17(b)(iii) (“Exclusions”).

⁴ “ACS” is the NYC Administration for Children’s Services.

The elimination of punitive segregation for young people and limitations on its use for adults led the Department to establish alternative restrictive housing for the jail population: Second Chance Housing Unit (“Second Chance”), Transitional Restorative Unit (“TRU”) (adolescents and young adults ages 18-21), Secure Unit (“Secure”), and Young Adult ESH (“YA-ESH”) (young adults ages 18-21).⁵

During this period of reform, the Department also commingled young adults with adults in certain ESH units, implemented the non-individualized use of restraint desks in ESH Level 1, and operated a highly restrictive unit in West Facility without affording due process to the adults and young adults placed there. The Board viewed these actions as running counter to basic tenets underlying the Department’s Young Adult Plan, the PSEG amendments, and the intended purposes of ESH. This retrenchment of the 2014-2015 reforms led to variances and variance conditions, which continue to the present day. It also led to the Board’s unanimous vote in 2016 to conduct rulemaking on restrictive housing.⁶

The proposed rules are the result of extensive fact-finding in 2017-2018, including discussions with 30 organizations and individuals — the local defense bar, criminal justice advocates, national criminal justice organizations and oversight entities, Correction Officers’ Benevolent Association (COBA), correctional experts, and academics — and our City partners, DOC and CHS.⁷ This comprehensive effort also entailed a literature review and examination of DOC directives, policies, and reports; Board staff research, analyses, and reports; consultation of model restrictive housing standards at the national and international level; and study of restrictive housing in jails and prisons nationwide.

Following is a descriptive summary of (i) the proposed rules in Chapter 6 (Section I); and (ii) proposed amendments to Chapter 1 Standards to make them consistent with the Chapter 6 rules (Section II).

I. THE PROPOSED CHAPTER 6 RULES

Subchapter A: Core Principles § 6-01

Proposed rule § 6-01 enumerates the core principles upon which the Chapter 6 Standards are based. These principles are reflected in other Board Standards, model criminal justice standards, and DOC’s policies on restrictive housing.

⁵ The proposed rules do not address restrictive housing for adolescents.

⁶ Minutes of January 12, 2016 Public Meeting (at 7-8), [https://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes-\(1.12.16\).pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes-(1.12.16).pdf).

⁷ “CHS” is the NYC Health + Hospitals’ Correctional Health Services Division.

The first principle⁸ seeks to protect the safety of people in DOC custody and the staff who work in DOC facilities⁹ by: (i) ensuring that all people in custody and all staff are treated with dignity and respect; (ii) prohibiting restrictions that dehumanize or demean people in custody¹⁰; (iii) placing restrictions on people in custody that are limited to those required to achieve the appropriate objectives for which the restrictions are imposed¹¹; and (iv) confining people to the least restrictive setting and for the least amount of time necessary to address the specific reasons for their placement and to ensure their own safety as well as the safety of staff, other people in custody, and the public.¹²

⁸ Proposed rule § 6-01(a)(1)(i) through (iv).

⁹ See, e.g., Minimum Standard (“Min. Std.”); § 1-16 (a) (ESH/“Purpose”); § 1-16(b) (ESH/“Policy”); ABA Criminal Justice Standards on Treatment of Prisoners, Part I (“ABA Std.”) (2011), Stds. 23-2.6(a) and 23-2.7, https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/Treatment_of_Prisoners.authcheckdam.pdf; American Correctional Association Restrictive Housing Expected Practices, (“ACA Std.”) (January 2018), Std. 4-RH-0001, http://www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards_Accreditation/Standards/Restrictive_Housing_Committee/ACA_Member/Standards_and_Accreditation/Restrictive_Housing_Committee/Restrictive_Housing_Committee.aspx?hkey=458418a3-8c6c-48bb-93e2-b1fcbca482a2; and U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing, Final Report (“DOJ Final Report”) (January 2016) (at 1), <https://www.justice.gov/archives/daq/file/815551/download>.

¹⁰ See, e.g., ABA Std. 23-1.1(d); United Nations Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”), Rule 1, <https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf>.

¹¹ See, e.g., Min. Std. § 1-16(d)(1) (ESH/“Conditions, Programming and Services”); § 1-17(b)(4) (PSEG/ “Exclusions”); ABA Std. 23-1.1(c); and DOJ Final Report, Guiding Principle No. 19, <https://www.justice.gov/archives/daq/file/815556/download>.

¹² See, e.g., Min. Std. § 1-02(f)(1) (“Classification of Prisoners”/“Security classification”); § 1-17(e) (PSEG/“Required out-of-cell time”); Variance from Min. Std. § 1-16(c)(1)(ii) (YA-ESH Variance), Condition Nos. 2, 5, and 7, <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/February/2019.02.12%20DRAFT%20Record%20of%20Variance%20Action%20-%20YA%20ESH.pdf>; ABA Std. 23-2.6(a); DOJ Final Report, Guiding Principle Nos. 1 and 2; and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Standards (“CPT Stds.”), Standard 61, <https://rm.coe.int/16806cccc6>.

The second core principle¹³ aims to place people in custody into restrictive housing or restrictive statuses in accordance with due process and procedural and restorative justice principles by (i) explaining disciplinary rules and the sanctions for violating them when people are first admitted to DOC custody; (ii) imposing sanctions that are proportionate to the offenses committed; and (iii) applying disciplinary rules and imposing sanctions fairly and consistently.¹⁴

The third core principle¹⁵ strives to promote the rehabilitation of people in custody and reintegrate them into the community by: (i) incentivizing good behavior; (ii) allowing people placed in restrictive housing as much out-of-cell time and programming participation as practicable, consistent with safety and security; and (iii) providing necessary programs and resources.¹⁶

The fourth and final core principle¹⁷ seeks to monitor and track compliance with the proposed rules and the core principles on which they are based by developing performance measures and regularly reporting outcomes to the Board and the public.¹⁸ In furtherance of this principle, proposed rules regarding data collection and review are designed to ensure that the Department and CHS track and the information necessary to monitor compliance with the rules and promote transparency on compliance through regular reporting.

Chapter 6's data reporting provisions take a comprehensive and holistic approach toward data collection and review with respect to all types of restrictive housing. They require DOC and CHS to report information on compliance and conditions of confinement in

¹³ Proposed rule § 6-01(a)(2)(i) through (iv).

¹⁴ See, e.g., Min. Std. § 1-16(g) (ESH/"Placement Review Hearing"); Min. Std. § 1-17(c) (PSEG/"Due process"); ABA Std. 23-4.2; and DOJ Final Report, Guiding Principle No. 20.

¹⁵ Proposed rule § 6-01(a)(3)(i) through (iii).

¹⁶ See, e.g., § 1-16(a) (ESH/"Purpose"); ABA Std. 23-3.8(d); DOJ Final Report, Guiding Principle No. 30; and Association of State Correctional Administrators Restrictive Status Housing Policy Guidelines, August 9, 2013 ("ASCA Stds."), Std. No. 4, <https://asca.memberclicks.net/assets/2013%20ASCA%20Resolution%20Restrictive%20Housing%20Status%20Policy%20Guidelines.pdf>.

¹⁷ Proposed rule § 6-01(a)(4)(i) and (ii).

¹⁸ See, e.g., § 1-16(i) (ESH/"Board Review of ESH Implementation"); § 1-17(h) (PSEG/"Reports on punitive segregation"); conditions imposed on variances regarding commingling of young adults with adults, Young Adult-ESH, the Secure Unit, and PSEG (waiver of 7-day requirement), <https://www1.nyc.gov/site/boc/jail-regulations/variances.page>; ABA Stds. 23-11.1 and 23-11.3.

restrictive housing and regular data sharing with the Board.¹⁹ Many of the reporting provisions, such as those related to disciplinary housing, transitional/administrative housing, and young adults,²⁰ are intended to replace existing rules or codify variance reporting conditions.²¹ Regular reporting required in the proposed rule will ensure the Board, DOC, CHS, and the public have the same information from which to measure compliance and progress. The rule related to each report also require that the Board and the Department jointly develop reporting templates to ensure the necessary compliance metrics are clearly communicated to the public.

The Department has begun soliciting recommendations from vendors to modernize the manner in which operations are tracked, recorded, and communicated. Currently, many processes related to restrictive housing exist only on paper forms and in paper logbooks. This inhibits efficient and safe operations and effective monitoring of compliance with the Minimum Standards. The Board understands that DOC will invest in enhancing and developing electronic systems necessary to track the data and produce the reports required by the rule. Investments in comprehensive electronic data tracking systems will position the Department to determine the effectiveness of agency programs, initiatives, policies, and practices; make data-driven policy decisions; and implement targeted corrective action when necessary.²² With such systems, DOC would be able to determine whether any of its

¹⁹ See, e.g., proposed rules § 6-04(e)-(h) (Pre-Hearing Detention); § 6-05(k)-(n) (De-escalation Confinement); § 6-08 (Data Collection and Review/Disciplinary Housing); § 6-17 (Data Collection and Review – Transitional/Administrative Housing); § 6-24 (Data Collection and Review/Structurally Restrictive Housing); § 6-28 (Data Collection and Review/Access to Health Services); § 6-33 (Data Collection and Review/Procedural Justice and Due Process); and § 6-36(m)-(p) (restrictive statuses).

²⁰ *Id.*

²¹ See, e.g., Min. Std. § 1-16(i) (“Board Review of ESH Implementation”); Min. Std. § 1-17(h) (“Reports on punitive segregation”); Variance from Min. Std. § 1-16(c)(1)(ii) (YA-ESH Variance, Condition Nos. 15 and 16; Variance from Min. Std. § 1-02(c)(1) (“Young Adult (YA) Commingling Variance”), Condition Nos. 1 and 2, <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/July/2019.07%20Record%20of%20Variance%20Action%20-%20YA%20Co-mingling%20FINAL.pdf>.

²² The Vera Institute of Justice (“Vera”) recommends that prisons and jails “[d]evelop robust systems for collecting and reporting data on the use of restrictive housing and other relevant measures, such as outcomes of the disciplinary process. Such data should be used to measure the impact of policy changes, identify areas in which the desired outcomes are not being achieved, and ensure that all people benefit from the improvements (including populations such as youth, women, and people of color).” Vera, “Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems” (May 2018) (at 37), <https://www.vera.org/downloads/publications/rethinking-restrictive-housing-report.pdf>.

restrictive housing models or restrictions have been effective in preventing or reducing violence in the jails.

Subchapter B: Definitions §§ 6-02 and 6-03

General Definitions (§ 6-02)

Proposed rule § 6-02 sets forth definitions of terms used throughout Chapter 6. Of note is the definition of a person confined in a DOC facility as a “person in custody.” Because individuals in the Department’s custody are people first and the circumstances of their incarceration are not their defining feature, the Board has made a commitment to employ person-first language in its Standards and general communications going forward. To this end, the proposed Chapter refers to people in DOC custody as “people in custody.” Additionally, the proposed rule amendments discussed in Section II of this Statement delete all references to “inmates” and “prisoners” in favor of “people in custody.”

Definition of Restrictive Housing and Related Terms (§ 6-03)

Subdivision (a) of proposed rule § 6-03 defines “restrictive housing” to include existing types of housing in DOC facilities and similar housing the Department may establish in the future, which meet the proposed rule’s defining criteria and, therefore, are subject to the requirements of Chapter 6.

Specifically, § 6-03(a)(1) and (2) define restrictive housing as the placement of people in custody into housing units separate and apart from the general population where all those in the unit are subject to restrictions not applicable to the general population. Restrictions vary by housing type and may include one or more of the following: (i) out-of-cell time is less than 14 hours a day (as is offered to the general population);²³ (ii) services mandated under Chapter 1 of the Standards are provided in the housing unit as opposed to a facility’s common areas, such as the chapel or law library;²⁴ (iii) people are permitted to congregate with only one or two other people in the unit;²⁵ and (iv) fewer privileges are offered to the people in the unit (e.g., limits on commissary spending).²⁶

²³ Proposed rule § 6-03(a)(2)(i).

²⁴ Proposed rule § 6-03(a)(2)(ii).

²⁵ Proposed rule § 6-03(a)(2)(iii).

²⁶ Proposed rule § 6-03(a)(2)(iv).

Subdivision (b) of § 6-03 defines the housing types subject to Chapter 6 regulation. They are: (i) immediate placement responses to violence; (ii) disciplinary housing; (iii) transitional/administrative housing; and (iv) structurally restrictive housing.

► Immediate Placement Responses to Violence

Immediate placement responses to violence, addressed in Subchapter C (§§ 6-04–6-06), include pre-hearing detention — the placement of a person into PSEG I (defined below) pending the investigation or adjudication of the person’s disciplinary infraction for a Grade I violent offense (§§ 6-03(b)(14); 6-04). Also subject to Subchapter C rules are de-escalation confinement in an intake area (§ 6-03(b)(11); § 6-05), and the emergency lock-in of people in their cells (§ 6-06).

► Disciplinary Housing

Disciplinary housing is of two types — PSEG I and PSEG II — and is addressed in Subchapter D of the proposed rules (§§ 6-07—6-08). PSEG I is defined as the placement of a person separate and apart from the general population, with four (4)-hour lock-out per day, pursuant to a disciplinary sanction for a Grade I violent offense imposed after a disciplinary hearing (§§ 6-03(b)(15) and 6-07(a)). PSEG I includes the Restrictive Housing Unit (“RHU”), defined as punitive segregation, with four (4)-hour daily lock-out, for certain people with mental health needs, but not serious mental illness (§ 6-03(b)(19)). According to DOC policy, people confined in the RHU may earn time off their sentence if they successfully complete a voluntary incentive program.

Proposed rule § 6-03(b)(16) defines PSEG II as the placement of a person separate and apart from the general population pursuant to a disciplinary sanction for a Grade 1 non-violent offense or Grade II offense imposed after a disciplinary hearing. People confined in PSEG II are offered seven (7) hours of out-of-cell time per day (§ 6-07(b)).

► Transitional/Administrative Housing

Proposed rule § 6-03(b)(23) defines transitional/administrative housing (“T/A Housing”) as the placement of a person separate and apart from the general population for non-disciplinary reasons after a placement review hearing pursuant to § 6-31. T/A Housing is addressed in Subchapter E (§§ 6-10—6-17). This includes ESH for adults and young adults (ages 18 through 21) as well as Secure, TRU, and Second Chance for young adults only.

► Structurally Restrictive Housing

The Department’s operation of West Facility (“West”) as a restrictive administrative segregation unit, which BOC staff documented through its monitoring of the Facility in 2016, exemplifies the need for the proposed rules’ definition of restrictive housing to include not

only housing publicly identified as “restrictive,” but also housing which is not publicly identified as restrictive but operates as such. Thus, proposed rule § 6-03(b)(21) defines structurally restrictive housing as a housing unit the physical design of which permits people confined in the unit to congregate with only one or two other people in custody. This housing includes West Facility and similar housing units in other DOC facilities. Structurally restrictive housing is addressed in Subchapter F (§§ 6-18–6-24).

Subchapter C: Immediate Placement Responses to Violence § 6-04, § 6-05, and § 6-06

Proposed Subchapter C covers: (1) pre-hearing detention; (2) confinement for de-escalation purposes; and (3) emergency lock-ins. These forms of restrictive confinement, which the Department utilizes as immediate responses to violence, are discussed below.

Pre-Hearing Detention (§ 6-04)

People who must be immediately separated from others after committing a violent or other serious infraction are placed in pre-hearing detention (“PHD”) to ensure the safety and security of staff and other people in custody. Proposed rule § 6-04 incorporates provisions of Minimum Standard § 1-17(c)(2) (PSEG/“Due Process”) stating that people in custody who qualify for and are placed in PHD shall be afforded an infraction hearing no later than seven (7) business days after PHD placement, and time spent in PHD prior to the infraction hearing shall count toward the person’s PSEG sentence.²⁷ The proposed rule expands upon these requirements by codifying certain provisions in DOC policies regarding placement criteria and time limitations governing the Department’s use of PHD.

To monitor compliance with § 6-04, subdivisions (e) and (f) require: (i) the Department to produce semi-annual reports on DOC’s use of pre-hearing detention and (ii) the Board and the Department jointly develop the reporting template.

Confinement for De-Escalation Purposes (§ 6-05)

Proposed rule § 6-05 sets forth parameters for the Department’s confinement of people in custody for de-escalation purposes and builds upon DOC’s existing policies on this subject. The need for parameters arose out of Board staff’s discovery in 2016 of people being held in housing units classified as “closed” by DOC, yet serving as temporary space

²⁷ Proposed rule § 6-04 and other Chapter 6 rules are intended to replace Min. Std. § 1-17 (“Limitations on the Use of Punitive Segregation”) in its entirety as discussed later in Section I and in Section II, below.

for people who required immediate removal from their housing unit after a violent incident.²⁸ When a person in custody was moved to one of these units, few staff members were alerted to where the individual was and official records did not reflect these locations. The person was effectively hidden, including from BOC staff and other oversight. Health staff was also not aware of the location of their patients in these units, creating dangerous barriers to medication and healthcare. Board staff further determined that these units operated in violation of Minimum Standards and without any written procedures. In response to the Board's concerns, the Department reported it would cease the practice of placing people in closed housing areas.

The parameters set forth in proposed rule § 6-05 are designed to: (1) prevent unregulated use of closed housing units as occurred in 2016; and (2) limit the time spent by people in custody in facility intake pens, some of which are single-person while others house multiple individuals. Intake pens, particularly of the multiple-person variety, are marked by lack of privacy (shared toilet and sink behind a partition) and lack of comfort (no beds/bedding; only steel benches where multiple people in a shared pen may sit or lie down or, if all the bench space is occupied, lie on the cement floor). People confined to intake pens as an immediate response to violence, pending re-placement, are denied access to services mandated under the Board's Minimum Standards. People in custody have been known to linger in intake pens for up to 24 hours or more.²⁹

For these reasons, proposed rule § 6-05 permits the Department to confine people in custody for de-escalation purposes only when (1) a person's behavior poses an immediate threat to the safety of the persons or others or significantly disrupts DOC activities in progress;³⁰ (2) temporarily house a person in custody for the person's own safety after the

²⁸ BOC Report on Satellite Intake: <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2018.10.19 - Satellite Intake Report.pdf>

²⁹ As the *Nunez* Monitor has repeatedly noted in his Reports, the high number of uses of force occurring in intake areas has been of concern since the effective date of the *Nunez* Agreement. The practice of escorting people in custody to an intake area immediately following a use of force interferes with the delivery of prompt medical access to injured individuals and "diverts DOC intake staff from their primary duty of processing people in and out of the Facility. Additionally, "placing an agitated person in the intake pens brings unnecessary chaos and tension into the area, which sometimes erupts into additional violence, and the inherently chaotic environment of Intake does not serve the de-escalation purpose for an agitated person in custody." Fourth Report of the Nunez Independent Monitor, https://www1.nyc.gov/assets/doc/downloads/pdf/Fourth_Report_Nunez_Independent_Monitor_10.10.17.pdf (p. 31).

³⁰ Proposed rule § 6-05(a)(1).

person has been assaulted or otherwise victimized by another person in custody;³¹ or (3) facilitate the decontamination of people in custody following exposure to chemical spray.³²

Proposed rule § 6-05 requires, among other things, that the Department ensure the immediate written notification to CHA³³ of a person's placement in de-escalation confinement, including the initial and any subsequent locations of such confinement, so that the person's access to healthcare services and medication is not interrupted.³⁴ De-escalation confinement in an intake area must have an adequate number of working flush toilets; sinks with drinking water, including hot and cold water; and appropriate furnishings for seating and reclining to accommodate the number of people confined there, and such areas must be maintained in a clean and sanitized manner.³⁵ Meals and snacks must be served to people in such confinement at or about the same time and of the same quality and quantity as the meals served to people in general population.³⁶

A person in custody's initial placement in de-escalation confinement shall be no more than four (4) hours, and re-authorization must be based upon written approval up DOC's security chain of command every four (4) hours for a maximum of 12 hours.³⁷ Additionally, a person's placement in such confinement shall not exceed 12 hours from the time the person is placed in such confinement, and DOC shall notify the Board, in writing, of all instances where a person in custody exceeds the 12-hour maximum and the reasons why the person has not been placed elsewhere.³⁸ For the purposes of compliance with the time limitations in this section, the length of a person's de-escalation confinement includes the time spent in the de-escalation area in which the person is initially placed and in other de-escalation areas or cells to which DOC moves the person during the same confinement period.³⁹ DOC must

³¹ Proposed rule § 6-05(a)(2).

³² Proposed rule § 6-05(a)(3).

³³ Proposed rule § 6-02(b) defines "CHA" as "the Correctional Health Authority designated by the City of New York as the agency responsible for health and mental health services for people in the care and custody of the Department." Hereinafter, this Statement will refer to CHS as the current health care provider in the New York City jails.

³⁴ Proposed rule § 6-05(b).

³⁵ Proposed rule § 6-05(c).

³⁶ Proposed rule § 6-05(e).

³⁷ Proposed rule § 6-05(f)(1) through (3).

³⁸ Proposed rule § 6-05(f)(4).

³⁹ Proposed rule § 6-05(f)(5)(i)-(ii).

also conduct visual and aural observation of people in de-escalation confinement every 30 minutes.⁴⁰ Finally, when designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the Department shall consider installing individual cells for de-escalation purposes in intake areas or elsewhere in the facility.⁴¹

To monitor compliance with § 6-05, subdivisions (k) and (l) require: (i) the Department to produce quarterly reports on DOC's use of de-escalation confinement and (ii) the Board and the Department jointly develop the reporting templates.

Emergency Lock-Ins (§ 6-06)

Department policy permits staff to lock down housing areas and facilities to investigate or avoid serious violent incidents, conduct searches for contraband, and restore order. As a security response that impacts many people and services, Board analyses find that lock-ins contribute to perceptions of unfair and excessive punishment, frustrations, and tensions in the jails, and that they hinder DOC's and CHS's ability to meet the Minimum Standards.

Minimum Standard § 1-05(a) ("Lock-in"/"Policy") states that except for people confined in PSEG or for medical reasons in contagious disease units, the time spent by people confined to their cells "should be kept to a minimum and required only when necessary for their safety and security of the facility." Proposed rule § 6-06 on emergency lock-ins (or "lockdowns") builds on § 1-05(a). The proposed rule is intended to minimize the impact of emergency lock-ins on access to mandated services, ensure adequate coordination between DOC and CHS when they occur, and improve transparency and accountability around the Department's use of this practice.

In 2018, the Board issued several reports on the number of emergency lock-ins and the total lock-in time experienced by people in custody from January 2017 through November 2017. This analysis found, among other things, that: (i) there was an 88% increase in the Department's use of emergency lock-ins since 2008; (ii) from 2016 to 2017, there was a 32% increase in the total number of emergency lock-ins; and (iii) DOC's current method of reporting and tracking these lock-ins does not readily allow for an accurate or comprehensive understanding of the number of lockdowns, total duration of lock-in time by people in custody, and the services impacted.⁴²

⁴⁰ Proposed rule § 6-06(g).

⁴¹ Proposed rule § 6-06(h).

⁴² Lockdown Report (January 2018), <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Lockdown-Report-Jan-8-2018.pdf>; Additional Lockdown Findings (January 2018),

The Board's May 2019 report⁴³ analyzed emergency lock-ins occurring in 2018 and found that while the Department had reduced the use of emergency lock-ins by 18% (from 1,595 in 2017 to 1,313 in 2018) and decreased their average duration by 8% (from 12 to 11 hours), more than half (58%, n=768) of all emergency lock-ins still resulted in nine (9) or more hours of continuous lock-in time for people in custody. The Board's report also found significant and concerning discrepancies between DOC and CHS documentation of the impact on health-related services. Board interviews with people working or held in areas where extended lock-ins occurred also confirmed that lockdowns can contribute to tensions and perceptions of unfairness.

In response to the Board's findings, the Department publicly agreed to the Board's recommendations to continue reducing the number and duration of lockdowns and work toward ending the use of facility-wide lockdowns; notifying the public of lockdowns impacting visits and/or phone calls; and update the Incident Reporting System to electronically track the impact of lockdowns on services. Section 6-06 incorporates these recommendations.⁴⁴ The proposed rule further requires that: (i) as soon as an emergency lock-in occurs, or is extended beyond a regularly scheduled lock-in period, the Department notify the Board and CHS, in writing, as to the facilities and specific housing area locations and number of people impacted;⁴⁵ (ii) for lock-ins continuing more than 24 hours or more, DOC notify the Board, in writing, of the steps taken to address the emergency and lift the lock-in;⁴⁶ and (iii) DOC and CHS issue a written directive to staff regarding the requirements of § 6-06 and provide the directive to the Board for its review and feedback prior to finalization.⁴⁷ The directive must

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/April-20-2018/2018.01%20-%20Additional%20Lockdown%20Findings.pdf>; Audit of DOC Facility Report of Area Lock-In Forms (April 2018) <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/April-20-2018/2018.01%20-%20Additional%20Lockdown%20Findings.pdf>; and Consecutive Lockdowns and Duration of Lockdowns (April 2018), https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/continuous_lockdowns_report_final.pdf.

⁴³ Annual Lockdown Report (May 2019), https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Lockdown%20Report%202019_5.13.19_FINAL.pdf.

⁴⁴ Proposed rules §§ 6-06(a), (c), (d), (e), and (i).

⁴⁵ Proposed rule § 6-06(b)

⁴⁶ Proposed rule § 6-06(g).

⁴⁷ Proposed rule § 6-06(m).

include protocols for communication and coordination between DOC and CHS during and after emergency lock-ins.⁴⁸

Section § 6-06 requires quarterly DOC data reporting to the Board on emergency lock-ins to monitor compliance.⁴⁹ The proposed rule also requires CHS to produce quarterly data reports on the impact of emergency lock-ins on required health services (rounding, scheduled and unscheduled services, and sick call) and require CHS to share with the Board the data it used to produce the reports.⁵⁰

Subchapter D: Disciplinary Housing, § 6-07 and § 6-09

Between 2012 — when the average daily population (“ADP”) in PSEG reached its peak (n=868) — and the first three quarters of 2019 -- when the ADP in PSE was 123 people⁵¹ — the average daily PSEG population declined by 86%. The Department has only infrequently extended a person’s PSEG sentence beyond the 30- and 60-day limitations in the 2015 rule amendments. During the period from September 1, 2015 through August 31, 2019, DOC considered only 39 “7-day waiver” requests, of which it approved 29 and denied 10.⁵² The Department’s reliance on the use of “60-day overrides” also has decreased over

⁴⁸ *Id.*

⁴⁹ Proposed rule § 6-06(q).

⁵⁰ Proposed rule § 6-06(n).

⁵¹ This number – 123 – represents the combined population in PSEG I, RHU, and PSEG II.

⁵² Min. Std. § 1-17(d)(2) requires that a person who has served 30 consecutive days in PSEG be released for at least seven (7) days before the person can be returned to PSEG. In September 8, 2015, DOC first requested, and the Board approved, a variance permitting the Department, “in highly exceptional circumstances presenting safety and security concerns” to waive this requirement. Since then, the Board has repeatedly approved renewal of this variance subject to certain conditions. The most recent variance is available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/July/2019.07%20Record%20of%20Variance%20Action%20-%20Seven%20Day%20Waivers%20FINAL.pdf>

time.⁵³ In the third quarter of 2015, DOC requested fifty (50) such overrides, as compared to the third quarter of 2019, when it requested only five (5).⁵⁴

The Board applauds the Department for its considerable achievements in PSEG reform and proposes the following rules to further advance reforms in this area consistent with research, model standards, and trends.

PSEG Exclusions (§ 6-07(a)(1) and § 6-07(b)(1))

► **PSEG I**

Proposed rule § 6-07(a)(1) expands exclusions from PSEG I to include: (1) pregnant persons, persons within eight (8) weeks of pregnancy outcome, or persons caring for a child in the Department nursery program;⁵⁵ and (2) people age 55 and older.⁵⁶

► **PSEG I and II**

(i) Mental Health Exclusion

⁵³ Min. Std. § 1-17(d)(3) states that a person may not be held in PSEG for more than a total of 60 days within a six-month period unless, upon completion of or throughout the 60-day period, the person has continued to engage in persistent, serious acts of violence, other than self-harm, such that any placement other than PSEG would danger other incarcerated persons or staff.

⁵⁴ BOC reports on punitive segregation: <https://www1.nyc.gov/site/boc/reports/BOC-Reports/punitive-segregation-reports.page>

⁵⁵ Proposed rule § 6-07(a)(1)(i)(E); See Humane Alternatives to Long-Term (HALT) Solitary Confinement bill (A. 2500/S. 1623) proposes elimination of segregated confinement (more than 17-hour daily lock-in) for pregnant and new mothers, https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A02500&term=2019&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y; DOJ Report, Guiding Principle No. 49 (“Women who are pregnant, who are post-partum, who recently had a miscarriage, or who recently had a terminated pregnancy should not be placed in restrictive housing”).

⁵⁶ Proposed rule § 6-07(a)(1)(i)(F); see HALT bill excluding people age 55 and older from PSEG.

Proposed rules § 6-07(a)(1) and § 6-07(b)(1) expand the serious mental illness exclusion from PSEG I and II — currently in Minimum Standard § 1-17(b)(iii) — to conform to current CHS practice, which also excludes people with intellectual impairments.⁵⁷

(ii) Medical Exclusion

Proposed rule § 6-07 also emphasizes a separate exclusion for people with serious medical conditions from PSEG I and II.⁵⁸ Such an exclusion already exists in Minimum Standard § 1-17(b)(iii),⁵⁹ however, the term “serious medical conditions” has never been clinically defined. As a result, the exclusion has proven challenging to effectuate and monitor. To implement this exclusion going forward, CHS, in consultation with the Board, has agreed to identify certain medical conditions and corresponding markers of acuity and advancement of disease for which separation could present a higher level of risk. Such conditions include, but are not limited to, asthma, seizure, diabetes, heart disease, lung disease, liver disease, kidney disease, organ transplants, treatment with anticoagulants, and involuntary hospitalizations. The Board will approve this list of conditions and markers, and all future modifications to it.

CHS has expressed concern that despite Board Standards meant to exclude individuals at elevated risk in segregation, there is no body of medical literature that reliably guides the assignment of risk to any individual patient. Therefore, proposed rules §§ 6-07(a)(1)(iv) (PSEG I) and 6-07(b)(1)(iv) (PSEG II) require that DOC provide one-on-one constant supervision for anyone placed in disciplinary housing units (and other restrictive housing units, discussed below), for the first 24 hours of their placement into such units. The proposed rules also make clear that after an individual is placed into PSEG I or II, CHS has the authority to determine if that person should be transferred to a therapeutic unit.⁶⁰

(iii) Dual Loyalty

Since at least 2014, the Department has maintained a form titled “Mental Health Review for Punitive Segregation.” The first section of the form is filled out by a hearing officer after a person has been found guilty of an infraction and sentenced to punitive

⁵⁷ Compare Min. Std. § 1-17(b)(iii) (people with “serious mental disabilities or conditions” shall be excluded from PSEG) with proposed rules § 6-07(a)(1)(i)(B)-(D) (PSEG I) and § 6-07(b)(1)(i)(B)-(D) (PSEG II) (excluding from PSEG and PSEG II people “with a mental disorder that qualifies as serious mental illness,” “diagnosed with an intellectual disability”).

⁵⁸ Proposed rule §§ 6-07(a)(1)(i)(D) and 6-07(b)(1)(i)(D).

⁵⁹ Min. Std. § 1-17(b)(3) states that people with “serious physical disabilities or conditions” shall be excluded from PSEG I and PSEG II.

⁶⁰ Proposed rule §§ 6-07(a)(1)(iii) (PSEG I) and 6-07(b)(1)(iii) (PSEG II).

segregation. If the hearing officer discovers that the person has an “M”-designation in the Inmate Information System (IIS) indicating that the person is known to Mental Health Services, or if the person was admitted into DOC custody less than five (5) days before the date of the infraction, the hearing officer must forward the form to a CHS mental health clinician. The CHS mental health clinician is required to check a box indicating whether the person may be placed into PSEG I, RHU, or PSEG II (collectively, “PSEG”), or else must be excluded from PSEG.

CHS has long raised concerns that any process which requires them to identify people for exclusion from PSEG after an infraction hearing and immediately prior to placement raises significant “dual loyalty” concerns.⁶¹ Specifically, CHS argues that such a process may subject health staff to undue pressure from DOC; fosters a perception among patients that health staff is involved in decisions about punishment, thus undermining the patient-doctor relationship; and creates an ethical conflict for health staff to the extent they are asked to impliedly approve a practice (i.e., PSEG) with no known health benefits.

Proposed rule § 6-07 requires CHS to identify people for exclusion from PSEG who have serious mental illness, serious medical conditions, and intellectual disabilities.⁶² To effectuate these exclusions, while also recognizing CHS’s dual loyalty concerns, the Board and CHS have agreed on a new process for identifying people who are excluded from certain types of restrictive housing based on medical or mental health factors. Going forward, CHS will create a list at intake of individuals identified as meeting one or more medical or mental health exclusionary criteria. This list can also be updated after clinical encounters if and when someone develops an exclusionary condition while in custody. Every time the Department determines to place someone into a restrictive housing unit that carries medical or mental health exclusions, DOC will need to check against the list before placing that individual into the restrictive unit. This new process will obviate the need for the “Mental Health Review for Punitive Segregation” form and all post-infraction involvement by CHS which could be perceived as “clearance” and, hence, minimize CHS’ actual or perceived involvement with punishment.

PSEG I Time Limitations (§ 6-07(a)(3))

⁶¹ “Dual loyalty is an ethical dilemma commonly encountered by health care professionals caring for people in custody. Dual loyalty may be defined as clinical role conflict between professional duties to a patient and obligations, express or implied, to the interests of a third party such as an employer, an insurer, or the state.” Pont, et al., *Dual Loyalty in Prison Health Care*, 102 Am J Public Health, 475 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3487660/>.

⁶² Proposed rule §§ 6-07(a)(1)(ii) (PSEG 1) and 6-07(b)(1)(ii) (PSEG II).

Proposed rule § 6-07(a)(3): (i) reduces the maximum PSEG I sentence from 30 days to 15 days;⁶³ (ii) retains 60 days as the maximum sentence for assault on staff that causes serious injury, but permits the person sentenced for this infraction to earn time off the sentence if the person refrains from violent conduct while in PSEG I;⁶⁴ and (iii) incorporates, as is, the provision from Minimum Standard § 1-17(d)(3), which prohibits a person from being held in PSEG I for more than 60 days within any six-month period except under certain circumstances.⁶⁵

► 15-Day Sentence

The 30-to-15-day sentence reduction is supported by a widespread consensus among correctional officials, researchers, policymakers, and a range of national and international organizations that punitive segregation should be limited to very short periods of time — “durations that are measured in hours, days, or weeks, rather than months or years.”⁶⁶ Nationally, New Jersey has restricted solitary confinement to a maximum of 20 consecutive days or 30 days total over the course of 60 days;⁶⁷ Colorado has reduced the

⁶³ Proposed rule §§ 6-07(a)(3)(i)-(ii).

⁶⁴ Proposed rule §§ 6-07(a)(3)(viii).

⁶⁵ Proposed rule §§ 6-07(a)(3)(vii).

⁶⁶ Craig Haney (2018), “Restricting the Use of Solitary Confinement,” *Annual Review of Criminology* (2018) (“Haney”) (at 301), <https://www.annualreviews.org/doi/full/10.1146/annurev-criminol-032317-092326>; The scientific consensus on the significant risks of psychological harm imposed by PSEG on people in custody of all ages is well established and has led to PSEG reforms at the local, state, and federal level. Haney at 286-299; Fatos, et al., “Solitary Confinement and Risk of Self-Harm Among Jail Inmates,” *Am J Public Health* (March 2014), 104(3):442-447, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/>; Vera, “The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the New York City Department of Correction (June 2017) (“Vera Report”), (noting that “[r]esearchers have found no evidence that longer stays in disciplinary segregation decrease infractions or violence by people upon return to general population” (at 46-47), https://storage.googleapis.com/vera-web-assets/downloads/Publications/safe-alternatives-segregation-initiative-findings-recommendations/legacy_downloads/safe-alternatives-segregation-initiative-findings-recommendations-nycsas.pdf.

⁶⁷ Catherine Kim, “Solitary Confinement isn’t effective. That’s why New Jersey passed a law to restrict it,” *Vox*, July 11, 2019; <https://www.vox.com/policy-and-politics/2019/7/10/20681343/solitary-confinement-new-jersey>.

maximum sentence to 15 days; while Cook County has eliminated it altogether.⁶⁸ Various legal, health, and human rights organizations have passed resolutions or adopted position statements that punitive segregation should be no longer than 15 days.⁶⁹ Additionally, experts consulted during fact-finding advocated reduction of the sentence from 30 to 15 days.

► **60-Day Sentence**

Proposed rule § 6-07 retains the 60-day sentence for serious assault of a jail staff member.⁷⁰ However, people serving a PSEG I sentence for a serious assault on staff that exceeds fifteen (15) days may earn one day off their sentence for every two (2) days without a violent incident.⁷¹

► **Seven-Day Waiver**

Pursuant to the Department's request,⁷² proposed rule 6-07(a)(3)(iv) codifies a variance from Minimum Standard § 1-17(d)(2), permitting DOC, "in highly exceptional circumstances presenting safety and security concerns," to waive the requirement that people be immediately released from PSEG I for seven (7) days after they have been held there for fifteen (15) consecutive days.

⁶⁸ Cook County replaced PSEG with a 60-day maximum stay, with at least three (3) hours of daily lockout (exclusive of law library) and access to mental health services by appointment three (3) days a week.

⁶⁹ National Commission on Correctional Health Care (NCCHC), Position Statement on Solitary Confinement (Isolation) (April 2016) (at 4) (no longer than 15 consecutive days), <https://www.ncchc.org/filebin/Positions/Solitary-Confinement-Isolation.pdf>; Mandela Rules 43.1(b) and 44 (15 days); New York State Bar Association (NYSBA) Committee on Civil Rights Report to the House of Delegates on Solitary Confinement in New York State (January 25, 2013) (NYSBA House of Delegates passed a resolution calling on state officials to significantly limit the use of solitary confinement and recommended that such confinement for longer than 15 days be proscribed), <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=32124>.

⁷⁰ Proposed rule § 6-07(a)(3)(viii).

⁷¹ Proposed rule § 6-07(a)(3)(viii)(C).

⁷² January 2, 2019 letter from Commissioner Brann to Chair Cephas re Variance Renewal Request (at 2), [https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/Jan-2019/1.2.19Request%20for%20a%20Limited%20Variance%20Renewal%20to%20Board%20of%20Correction%20Minimum%20Standards%20%201-17\(d\)\(2\)%20Punitive%20Segregation.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/Jan-2019/1.2.19Request%20for%20a%20Limited%20Variance%20Renewal%20to%20Board%20of%20Correction%20Minimum%20Standards%20%201-17(d)(2)%20Punitive%20Segregation.pdf).

Fines (§ 6-07(a)(4))

This rule adopts a Vera Report recommendation to eliminate this automatic surcharge because “fines disproportionately impact indigent individuals, and there is little evidence that they lead to behavioral changes.”⁷³ The fine also penalizes infracted people’s families — most of whom are poor — by deducting the \$25 from moneys families have placed in their loved ones’ commissary accounts.⁷⁴ DOC shall only include a financial penalty as an option for restitution for destruction of property, and any imposition of a fine shall take into account the person’s ability to pay.

Four-Hour Daily Lock-Out in PSEG I (§ 6-07(a)(5))

In June 2019, the New York State Commission of Correction (SCOC), enacted a regulation requiring, among other things, that disciplinary or administratively segregated individuals in local correctional facilities, such as the New York City jails, be allowed out of their cells for a minimum of four (4) hours a day. The regulation carves out an exception where the jail’s chief administrative officer determines that such individual would pose a threat to the safety, security, or good order of the facility, or the safety, security or health of the individual, staff, or other people in custody, and that less restrictive measures would not adequately alleviate the threat (“four-hour exception”).⁷⁵ Any such determination must be made in writing, state the specific facts and reasons underlying the determination, and be reviewed every seven (7) days.⁷⁶ The “purpose” of this regulation is to ensure that people subject to segregated confinement are deprived of essential services “only when necessary and for the least amount of time necessary, to maintain the safety, security and good order of the facility.”⁷⁷ Moreover, “absent exigent circumstances, this period of confinement or deprivation may not risk significantly compromising the health of the person.”⁷⁸

⁷³ Vera Report, Rec. B14 at 54; the Report further stated that “in meetings and focus groups with the Vera team, [DOC] staff reported fines were an ineffective sanction” (at 54).

⁷⁴ See, NYC Comptroller Report, “Fees, Fines and Fairness: How Monetary Charges Drive Inequity in New York City’s Criminal Justice System” (September 2019), <https://comptroller.nyc.gov/reports/fees-fines-and-fairness/>.

⁷⁵ 9 NYCRR § 7075.4(c).

⁷⁶ 9 NYCRR § 7075.4(d).

⁷⁷ 9 NYCRR §7075.1.

⁷⁸ *Id.*

Proposed rule § 6-07(a)(5) incorporates the SCOC’s regulation for people in PSEG I and includes the following additional requirements: (1) approvals and denials of the four-hour exception must be submitted to the affected person in custody, BOC, and CHS;⁷⁹ and (2) for people who have been held in PSEG I longer than 15 consecutive days or more than 60 days within a six (6)-month period, DOC shall offer, during out-of-cell time in PSEG I, evidence-based programming aimed at addressing the root causes of the behavior that led to the person’s extended stay in PSEG I.⁸⁰

Data Collection and Review (§ 6-08)

To monitor compliance with the proposed rules on disciplinary housing, § 6-08 requires (i) quarterly data reports on the Department’s use of disciplinary housing (PSEG I, RHU, PSEG II) and the use of Clinical Alternative to Punitive Segregation (“CAPS”);⁸¹ (ii) quarterly reports on conditions of confinement in disciplinary housing and CAPS;⁸² (iii) the Board and the Department to jointly develop reporting templates for the required reports.⁸³ The quarterly reports required by § 6-08(b) will replace the 60-day PSEG reports currently mandated under §1-17(h) of the existing Minimum Standards.

Disciplinary System Plans for Young Adults (§ 6-09)

The NYC jail system lacks a holistic and transparent approach to implementing discipline and behavior management for young adults. The absence of a written plan detailing the key elements of the Department’s approach to discipline for this population makes it impossible for DOC to measure the effectiveness of its processes, strategies, and goals regarding the discipline of young adults when they commit violent acts or engage in other misconduct, and hinders the Board’s ability to conduct effective monitoring in this area.

Proposed rule § 6-09 requires that DOC submit to the Board a written plan for a disciplinary process for young adults in custody that is consistent with the proposed Chapter 6 Standards and the requirements of the *Nunez Agreement*.

⁷⁹ Proposed rule § 6-07(a)(5)(iii).

⁸⁰ Proposed rule § 6-07(a)(5)(iv). This rule is derived from Minimum Standard § 1-17(d)(6), which provides, in pertinent part, that people housed in PSEG I for longer than 30 consecutive days or have served more than 60 days within a six (6) month period shall be offered “cognitive behavioral therapy or a similar evidence-based intervention aimed at addressing the root causes of the behavior that led to [people’s] extended stays in punitive segregation.”

⁸¹ Proposed rule § 6-08(b).

⁸² Proposed rule § 6-08(c).

⁸³ Proposed rule § 6-08(d).

The disciplinary plan must include the following elements (among others):

- Prohibited conduct;⁸⁴
- The penalties that may be imposed for engaging in the prohibited conduct;⁸⁵
- The due process procedures that must be followed to: (i) appropriately charge the person for the infraction; (ii) determine whether the person committed an infraction; (iii) impose appropriate sanctions; and (iv) consider appeals of sanctions by people in custody;⁸⁶
- A plan for communicating the rules of conduct, penalties, and disciplinary procedures in a clear and understandable manner to people in custody and to all DOC staff, including non-uniformed staff, who have routine contact with young adults in custody;⁸⁷
- The assistance the Department shall provide young adults to understand the disciplinary process and procedures, including their rights thereunder. This shall include the procedures DOC will follow if the young adult in custody is non-English or limited-English proficient, illiterate, or has a disability including, for example, if the person is deaf or hard of hearing, is blind or has low vision, or has an intellectual, psychiatric, or speech disability;⁸⁸
- A disciplinary process that includes: (i) engaging DOC staff in its development; (ii) progressive sanctions; (iii) consideration of each violator's previous institutional conduct history, mental health, and the direct circumstances surrounding the infraction charge; (iv) penalties that are proportionate to the infraction charge; (v) behavioral incentives; and (vi) principles of procedural and restorative justice.⁸⁹

Subchapter E: Transitional/Administrative Housing §§ 6-10 – 6-17

⁸⁴ Proposed rule § 6-09(a)(1).

⁸⁵ Proposed rule § 6-09(a)(2).

⁸⁶ Proposed rule § 6-09(a)(3)(i) through (iv).

⁸⁷ Proposed rule § 6-09(a)(4).

⁸⁸ Proposed rule § 6-09(a)(6).

⁸⁹ Proposed rule § 6-09(a)(7)(i) through (vi).

Proposed rules on T/A Housing are set forth in Subchapter E. As noted above, existing types of such housing include ESH for adults and young adults, and the Secure Unit, TRU, and Second Chance for young adults. The proposed rules aim to standardize key aspects of this housing type, such as exclusions, minimum out-of-cell time, placement criteria, placement approval, periodic review and progression, individual behavior and programming plans, access to mandated services, and data reporting and auditing requirements. The proposed Subchapter accomplishes this primarily by codifying existing variances and variance conditions and incorporating DOC policies governing T/A Housing.

Exclusions (§ 6-10)

Proposed rule § 6-10 excludes from placement into T/A Housing people with serious mental illness, intellectual disabilities, and serious medical conditions.⁹⁰ These exclusions are intended to operate with the same expanded definitions and pursuant to the same exclusionary list process as described above in the discussion of proposed rules in Subchapter D (Disciplinary Housing). Section 6-10 also provides that CHS has the authority to determine if any person, after being placed in T/A Housing, should be removed to a therapeutic housing unit.⁹¹ The proposed rule further provides that all people placed into T/A Housing with more than 10 hours of daily lock-in shall be observed without interruption for their first 24 hours in the unit by individual security staff dedicated for that purpose. Such one-on-one observations shall be documented in writing.⁹²

Out-of-Cell Time (§ 6-11)

Proposed rule § 6-11(a) states that adults in custody who are confined in T/A Housing must be permitted at least seven (7) out-of-cell hours per day.⁹³ Section 6-11(b) increases the minimum number of daily lockout hours for young adults from seven (7) to 10 hours per day. The impetus for this proposed change is the Vera Center on Youth Justice's work with jails and prisons in Connecticut, Massachusetts, and South Carolina to establish a new practice model —“Restoring Promise” — for young adults ages 18-24.⁹⁴ This model is premised on restorative justice principles and prioritizes family engagement, self-expression,

⁹⁰ Proposed rule § 6-10(a)(1) through (3).

⁹¹ Proposed rule § 6-10(c).

⁹² Proposed rule § 6-10(d).

⁹³ This is consistent with Min. Std. § 1-05(b)(2), which states that people in ESH may be locked in during the day “for up to nine hours in any 24-hour period.”

⁹⁴ As part of fact-finding, the Committee spoke with the Senior Program Director and Research Director of Vera's Center on Youth Justice.

peer support, personal growth and development, education, and career readiness.⁹⁵ The model was first established at a super-max prison in Cheshire, Connecticut where for 13 hours each day, young adults in the housing unit are out-of-cell and unrestrained, “free to be in common space, a dedicated outdoor area, or one of many converted cells within the unit that serve as a library study room, meeting room, and quiet space.”⁹⁶ Experts consulted during fact-finding were also of the view that a non-punitive approach, as exemplified by the Restoring Promise model, would be more effective in preventing and reducing young adult violence than a punitive approach centered on isolation and the absence of programming.

Placement Criteria (§ 6-12)

Under proposed rule § 6-12, placement criteria for T/A Housing are tied to the number of hours out-of-cell a person is afforded. This is because across the restrictive housing continuum in the jails, increasingly violent acts or a history of serious, persistent violence are associated with decreasing hours of lock-out per day:

- If an adult is being considered for placement in restrictive housing with seven (7) hours daily lock-out, the criteria for placement is virtually the same as the criteria for ESH set forth in Minimum Standard § 1-16(b).⁹⁷
- If a young adult is being considered for placement in a restrictive unit that provides at least 10 hours out-of-cell time per day, the criteria for placement is the criteria the Department currently uses for placement in Secure.⁹⁸
- If a young adult is being considered for placement in a restrictive housing unit with 14 hours daily lock-out, the criteria for placement is the criteria DOC currently uses for placement in TRU.⁹⁹

⁹⁵ See Vera, Restoring Promise Initiative, <https://www.vera.org/projects/restoring-promise-young-adult-reform-initiative>.

⁹⁶ See Vera, “Reimagine Prisons” (October 2018), https://storage.googleapis.com/vera-web-assets/downloads/Publications/reimagining-prison-print-report/legacy_downloads/Reimagining-Prison_FINAL3_digital.pdf at 88; see gen. pp. 83-90.

⁹⁷ Proposed rule § 6-12(a).

⁹⁸ Proposed rule § 6-12(b).

⁹⁹ Proposed rule § 6-12(c).

Consistent with conditions to the variance from Minimum Standard § 1-16,¹⁰⁰ an adult's or young adult's prior misconduct that may be considered in determining placement is shortened from five (5) years to one (1) year for misconduct that occurred while incarcerated.¹⁰¹ The two-year look-back for activity that occurred while not incarcerated is eliminated.

Placement Approval (§ 6-13)

Proposed rule § 6-13 essentially codifies the placement approval requirements in condition no. 4 of the YA-ESH variance and expands these requirements to all T/A Housing. Section 6-13 requires that each request for approval of a person in custody's placement into T/A Housing, and each decision approving or disapproving such request must: (1) be in writing; (2) specify the reasons for requesting and approving or disapproving, a person's placement and any individual restrictions imposed on that person; and (3) specify why a less restrictive housing setting and placement without individual restrictions is not a safe option.

Individual Behavior and Programming Plan (§ 6-14)

Proposed rule § 6-14 calls for the development of written individual behavior and programming plans for all adults and young adults upon their placements in T/A Housing¹⁰² that: (1) outline program expectations and services to facilitate the person's reintegration into housing in the general population;¹⁰³ and (2) tailor plan goals to the individual's literacy, education level, and capacity to complete programming.¹⁰⁴ The Department shall review and update the person's progress toward meeting these goals with the person's participation at each periodic review.¹⁰⁵

Proposed rule § 6-14 expands the Department's use of individual behavior and programming plans in Secure, TRU, and Second Chance as per DOC policy to adults and young adults in ESH. The use of individual behavior plans is also considered a best practice in other jurisdictions.¹⁰⁶

¹⁰⁰ See Min. Std. § 1-16(b)(6); YA-ESH Variance Condition No. 13.

¹⁰¹ *Id.*

¹⁰² Proposed rule § 6-14(a).

¹⁰³ Proposed rule § 6-14(a)(1).

¹⁰⁴ Proposed rule § 6-14(a)(2).

¹⁰⁵ Proposed rule § 6-14(c).

¹⁰⁶ At the Middlesex County Adult Correction Center in New Jersey, weekly interdisciplinary restrictive housing meetings comprised of senior facility staff, classification and intelligence

Periodic Review of Placement (§ 6-15)

Proposed rule § 6-15 furthers one of the core principles underlying the Chapter 6 Standards; namely that people in custody should be confined to the least restrictive setting and for the least amount of time necessary to ensure their own safety as well as the safety of staff, other people in custody, and the public. Section 6-15, which incorporates certain YA-ESH and Secure Variance conditions,¹⁰⁷ shortens the interval between periodic reviews for young adults and adults in T/A Housing to 15 days, and requires that at each periodic review, a person advance to a less restrictive level or unit unless the person: (1) has engaged in disruptive, violent, or aggressive behavior while in the person's current level;

staff, and mental health staff discuss the status of people in restrictive housing and their individualized case plans, to ensure they can successfully transition to less restrictive housing as soon as possible. Vera, "Rethinking Restrictive Housing" (May 2018) (at 24), <https://www.vera.org/downloads/publications/rethinking-restrictive-housing-report.pdf>; the Nebraska Department of Correctional Services (NDCS) utilizes a high-level Central Office Multi-Disciplinary Review Team that must approve the placement of prisoners in its "longer-term restrictive housing" unit and periodically reviews each prisoner, including his behavioral programming plan, to determine whether transfer to a less restrictive setting is safely possible. NDCS Administrative Regulation No. 210.01 re Restrictive Housing (rev'd. 7.14.16), Appendix III to "The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the Nebraska Department of Correctional Services," Vera Institute of Justice (2016), https://storage.googleapis.com/vera-web-assets/downloads/Publications/safe-alternatives-segregation-initiative-findings-recommendations/legacy_downloads/safe-alternatives-segregation-initiative-findings-recommendations-ndcs.pdf; the North Dakota Department of Corrections and Rehabilitation (NDDOCR) operates the Behavioral Intervention Unit or BIU for individuals who commit the most serious in-custody offenses and utilizes individualized behavior plans to monitor progress toward plan goals and make progression decisions (Bertsch," Reflections on North Dakota's Sustained Solitary Confinement Reform" (October 2018) (at 72-74), https://law.yale.edu/sites/default/files/area/center/liman/document/asca_limam_2018_restrictive_housing_released_oct_2018.pdf; DOJ Report, Guiding Principle No. 5 ("For every [person in custody] in restrictive housing, correctional staff should develop a clear plan for returning the [person] to less restrictive housing as promptly as possible. This plan should be shared with the [person] unless doing so would jeopardize the safety of the inmate, staff, other inmates, or the public").

¹⁰⁷ YA-ESH Variance condition nos. 5 and 6; Secure Variance condition no. 7, https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/May/2019-05-14%20FINAL%20Record%20of%20Variance%20Action_Secure-corrected.pdf.

and/or (2) there is credible intelligence that the person may engage in additional violence in a less restrictive unit.¹⁰⁸

Conditions, Programming, and Services (§ 6-16)

Proposed rule § 6-16(b) codifies the variance from Minimum Standard § 1-08(f), which permits access to law library services by means of a law library kiosk and typewriters in Secure. Section 6-16(b) states that law library services may be provided in T/A Housing other than in a law library, so long as such alternative means ensures the same level of services as are provided to people in general population. At a minimum there must be one law library coordinator assigned to every two (2) units of T/A Housing at least five (5) times a week (§ 6-16(c)(1)), and the law library coordinator must provide instruction on available legal research tools and respond to people in custody's requests for law library services (§ 6-16(c)(2)).

Data Collection and Review (§ 6-17)

To ensure compliance with the proposed rules on T/A Housing, § 6-17 requires (i) quarterly reports on the Department's use of T/A Housing;¹⁰⁹ (ii) quarterly reports on conditions of confinement in T/A Housing;¹¹⁰ and (iii) the Board and the Department to jointly develop the reporting templates for the required reports.¹¹¹ The quarterly reporting required by § 6-17(b) and (c) is intended to codify reporting required under the existing Young Adult ESH variance conditions for all T/A and Structurally Restrictive Housing and replace existing ESH 60-day reporting requirements under the Minimum Standards.¹¹²

Subchapter F: Structurally Restrictive Housing §§ 6-18 – 6-24

Proposed Chapter F includes rules on structurally restrictive housing, the purpose of which are to ensure against the operation or opening of new housing units, such as West Facility, that operate in a highly restrictive environment without procedural due process protections, Department policies, or Board oversight in place.

¹⁰⁸ YA-ESH Variance condition no. 6; Secure Variance condition no. 7.

¹⁰⁹ Proposed rule § 6-17(b) and (c).

¹¹⁰ Proposed rule § 6-17(d).

¹¹¹ Proposed rule § 6-17(e).

¹¹² YA-ESH variance conditions (at 3) <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/july-11-2017-esh-secure-unit-variance-report.pdf>; Min. Std. § 1-16(i).

In 2016, the Board served a Notice of Violation on the Department for its placement of people in West Facility without due process or access to services mandated under Chapter 1 of the Minimum Standards.¹¹³ The physical space was also restrictive, resulting in social isolation. Without a dayroom as in general population, time out of cell was limited to one person in custody at a time in the “anteroom” or narrow space between two solid cell doors. Subsequently, DOC fashioned empty cells into dayrooms and law library space, and committed to moving young adults and people with serious mental illness out of the Facility. As noted above, the conditions at West Facility led to the Board’s unanimous resolution in 2016 to commence restrictive housing rule making.¹¹⁴

Exclusions (§ 6-18)

Proposed rule § 6-18 excludes the placement of a person into structurally restrictive housing on the same grounds as enumerated in proposed rule § 6-10(a) (exclusions from T/A Housing). Similarly, subdivision (c) of § 6-18 requires the removal of a person from structurally restrictive housing who CHA determines should be in a therapeutic unit while subdivision (d) requires that the Department place everyone into such housing under one-on-one supervision for their first 24 hours in the unit.

Placement Criteria and Placement Approval (§§ 6-19 and 6-20)

Subdivision (a) of § 6-19 states that a person may be placed in structurally restrictive housing if: (i) the person, despite multiple housing transfers, continually engages in assaultive behavior toward other people in custody and, as a result, cannot be safely housed with more than one or two people in custody; and (ii) the person is placed in enhanced restraint status. Subdivision (a) further provides that placement in such housing shall be subject to the due process procedures applicable to T/A Housing, which are set forth in Subchapter H (§§ 6-31 and 6-32).

Similar to the placement approval process for placement of people in custody into T/A Housing,¹¹⁵ proposed rule § 6-20 requires that: (1) a Deputy Warden or above authorize

¹¹³ 9/26/16 letter from then Board Chair Stanley Brezenoff to then DOC Commissioner Joseph Ponte re Notice of Violation of Minimum Standards at West Facility (enclosing letter of the same date from BOC General Counsel Michele Ovesey to DOC General Counsel Heidi Grossman (at 4)), <https://www1.nyc.gov/assets/boc/downloads/pdf/News/2016.09.29%20-%20Letters%20from%20BOC%20to%20DOC%20re%20West%20Facility%20Violations.pdf>.

¹¹⁴ Since the Board was engaged in developing its Chapter 5 Standards on elimination of sexual abuse and sexual harassment in correctional facilities, it did not commence restrictive housing rulemaking until January 2017 after the Chapter 5 Standards were enacted.

¹¹⁵ Proposed rule § 6-13.

placement of individuals into structurally restrictive housing;¹¹⁶ (2) such authorizations be in writing, specify the reasons for authorizing the person's placement and any individual restrictions imposed on that person, and specify why a less restrictive housing setting and placement without individual restrictions is not a safe option;¹¹⁷ and (3) a copy of each determination be sent to the affected person in custody, the Board, and CHS within 24 hours of determination.¹¹⁸

Individual Behavior and Programming Plan (§ 6-21)

Proposed rule § 6-21 requires that DOC develop, in writing, an individual behavior and programming plan for each person in structurally restrictive housing (with the same attributes as the individual plans required for people in T/A Housing).¹¹⁹ The Department must review and update the plan of each person with the person's participation, at each periodic review, as is required for people in T/A Housing.¹²⁰

Periodic Review of Placement (§ 6-22)

Proposed rule § 6-22 requires that a Deputy Warden or above review the placement of people in custody confined in structurally restrictive housing every 30 days.¹²¹ Like periodic placement reviews for people in T/A Housing, people confined in structurally restrictive housing have the right to: (1) receive written notice of the impending review; (2) submit a statement; and (3) participate in the review.¹²² Similarly, all placement review decisions must be made by a Deputy Warden or above and be in writing, specify the reasons underlying the determination, and if the decision is to continue the person's placement in structurally restrictive housing, state what other housing was considered and the reasons why such housing is not a safe option.¹²³ The progression criteria is the same as that for T/A Housing; namely, at each periodic review, a person shall advance to a less restrictive level of structurally restrictive housing or to a less restrictive housing unit unless

¹¹⁶ Proposed rule § 6-20(a).

¹¹⁷ Proposed rule § 6-20(b)(2) and (3).

¹¹⁸ Proposed rule § 6-20(c).

¹¹⁹ Proposed rule § 6-21(a)(1) and (2).

¹²⁰ Proposed rule § 6-21(c).

¹²¹ Proposed rule § 6-22(a).

¹²² Proposed rule § 6-22(b).

¹²³ Proposed rule § 6-22(c) and (d).

the person has engaged in disruptive, violent, or aggressive behavior while in the person's current level or housing unit or there is credible intelligence that the person may engage in violence in a less restrictive level or housing unit.¹²⁴

Programming and Services (§ 6-23)

Proposed rule § 6-23 states that services may be provided to people confined in structurally restrictive housing in a manner other than required under the Minimum Standards so long as such alternative provision of services is sufficient to meet the intent of the Standards. This may include provision of mandated services in a non-congregate setting. Such services must be specified in writing, provided to the affected person and the Board, and included in the person's behavior and programming plan.

Data Collection and Review (§ 6-24)

Proposed rule § 6-24 states that the data collection review requirements regarding T/A Housing¹²⁵ shall also apply to Structurally Restrictive Housing.

Subchapter G: Access to Medical and Mental Health Services §§ 6-25 – 6-28

Daily Rounds (§ 6-25)

Proposed rule § 6-25 incorporates and amends the requirement for daily CHS medical rounds in ESH per § 1-16(d)(4),¹²⁶ and daily mental health rounds in PSEG per § 1-17(d)(6) by requiring daily CHS mental health and medical rounds in all types of restrictive housing and that such rounds be documented in writing.

Notification to CHA (§ 6-26)

To ensure continuity of medical and mental health treatment, it is vital that the Department immediately notify CHA, in writing, of each placement of a person in custody into restrictive housing. Proposed rule § 6-26 incorporates this requirement.

Clinical Encounters (§ 6-27)

¹²⁴ Proposed rule § 6-22(f)(1) and (2).

¹²⁵ Proposed rule § 6-17.

¹²⁶ Minimum Standard § 1-16(d)(4) states that “[a]ll [people in custody] in ESH shall be seen at least once each day by medical staff who shall make referrals to medical and mental health services where appropriate.”

Proposed rule § 6-27 recognizes the legal and ethical requirements to treat patients in private and confidential settings. Cell-side discussions of medical conditions are overheard by others, subject to significant background noise, and ineffective. The rule prohibits, with the exception of daily rounds, cell-side mental health and medical encounters. Instead the rule requires DOC to ensure that all individuals in restrictive housing are brought to the facility clinic for their scheduled appointments.

Data Collection and Review (§ 6-28)

Proposed rule § 6-28 requires monthly reports on compliance with the requirements of this Subchapter,¹²⁷ and data sharing with the Board.¹²⁸

Subchapter H: Procedural Justice and Due Process §§ 6-29 – 6-33

The rules in proposed Subchapter H afford all people in restrictive housing procedural due process protections including written notice, a hearing, written determination, and right to appeal. The purpose of these rules is to standardize the varying procedural due process protections currently set forth in Minimum Standards § 1-16(g) (ESH/“Placement Review Hearing”) and § 1-17(c) (PSEG/ “Due Process”) as well as Department policies.

Purpose (§ 6-29)

As stated in proposed rule § 6-29, the Standards in Subchapter H are intended to ensure that people in custody are placed into restrictive housing in accordance with due process and procedural justice principles. These Standards are consistent with a central tenet of procedural justice — that “people believe justice as fair, based on their perception of fairness in the *process*, not just the perception of a fair *outcome*.”¹²⁹ Research suggests that when people are treated with procedural justice and respect, “they view law and legal authorities as more legitimate and entitled to be obeyed. As a result, people become self-regulating, taking on the personal responsibility for following social rules.”¹³⁰ Incorporating procedural justice principles in the New York City jails means ensuring through effective communication that people in custody understand the rules and the sanctions for violating them; sanctions proportionate to the offense are imposed consistently and fairly; and

¹²⁷ Proposed rule § 6-28(b).

¹²⁸ Proposed rule § 6-28(c).

¹²⁹ Vera Report at 79 (emphasis in original).

¹³⁰ Tom R. Tyler, “Restorative Justice and Procedural Justice: Dealing with Rule Breaking,” *Journal of Social Issues*, Vol. 62, No. 2, 2006 (at 308), <https://courses.washington.edu/pbafhall/514/514%20Readings/tyler%20justice.pdf>.

sentences are served swiftly following adjudication of guilt.¹³¹ The proposed rules in Subchapter H, which are based on these key principles, are discussed below.

Disciplinary Due Process (§ 6-30)

Proposed rule § 6-30 enumerates the procedural due process protections afforded to people in custody in connection with the Department's adjudication of disciplinary charges against them. Section § 6-30 incorporates the disciplinary due process provisions of Minimum Standard § 1-17 and codifies additional due process protections enumerated in DOC policy on disciplinary due process. As discussed below, the proposed rule adds new provisions regarding the videotaping of refusals to sign infraction notices and attend disciplinary hearings; a process for ensuring a person's placement in PSEG follows quickly upon adjudication; and development of a disciplinary system plan for young adults.

► **Investigations**

Subdivision (a) of § 6-30 states that: (i) disciplinary investigations must be conducted "promptly, thoroughly, and objectively;"¹³² (ii) DOC personnel conducting the investigation must be the rank of Captain or above and must not have reported, participated in, or witnessed the conduct;¹³³ (iii) if the rule violation in question could lead to a subsequent criminal prosecution, DOC must inform the person in custody who is interviewed that any statements made by the person may be used against the person in a subsequent criminal trial, that the person has the right to remain silent, and that silence will not be used against the person;¹³⁴ (iv) all investigations must be documented in written reports that include "a description of the physical, testimonial, and documentary evidence as well as investigative facts and findings;"¹³⁵ (v) all investigations must commence within 24 hours after the incident¹³⁶; and (vi) the Department shall proceed with adjudication of charges against a

¹³¹ Vera Report at 45.

¹³² Proposed rule § 6-30(a)(1) is consistent with Standard § 5-30(a) which also states that all investigations into allegations of sexual abuse and sexual harassment must be conducted "promptly, thoroughly, and objectively."

¹³³ Proposed rule § 6-30(a)(2).

¹³⁴ Proposed rule § 6-30(a)(3).

¹³⁵ Proposed rule § 6-30(a)(4) incorporates Standard § 5-30(f)(2)'s requirement of written reports in PREA investigations.

¹³⁶ Proposed rule § 6-30(a)(5).

person in custody upon a determination that there is reasonable cause to believe the person committed the infraction charged.¹³⁷

► Notice of Infraction

Proposed rule § 6-30(b) requires that prior to the disciplinary hearing: (i) people in custody must receive written notice detailing the charges against them;¹³⁸ (ii) people who are unable to read or understand the notice shall be provided with assistance;¹³⁹ (iii) the notice must be served upon any person placed in pre-hearing detention within 24 hours of such placement¹⁴⁰ and upon people not in pre-hearing detention no later than three (3) business days after the incident, absent extenuating circumstances;¹⁴¹ (iv) any member of DOC staff, except those who participated in the incident, may serve the person charged with the notice of infraction;¹⁴² (v) all refusals to sign the notice shall be videotaped;¹⁴³ and (vi) if the person is charged with a Grade I violent offense, the notice must be transmitted, via e-mail or fax, to the person's criminal defense counsel at the same time it is served upon the person in custody.¹⁴⁴ This last requirement will ensure that defense counsel can advise clients of self-incrimination and other issues that may arise at the disciplinary hearing and/or affect the outcome of a person's court case.

► Disciplinary Hearing

Proposed rule § 6-30(c) incorporates the due process provisions in Minimum Standard § 1-17(c), including the right to: (i) appear in person, make statements, present material evidence, and call witnesses at the infraction hearing; (ii) the assistance of a hearing facilitator under certain circumstances; and (iii) a written determination.¹⁴⁵ Additionally, the Department has the burden of proof in all disciplinary proceedings, and a

¹³⁷ Proposed rule § 6-30(a)(6).

¹³⁸ Proposed rule § 6-30(b)(1) incorporates the same language in Minimum Standard § 1-17(c)(1).

¹³⁹ Proposed rule § 6-30(b)(2) incorporates the same language in Minimum Standard § 1-17(c)(1).

¹⁴⁰ Proposed rule § 6-30(b)(3).

¹⁴¹ Proposed rule § 6-30(b)(4).

¹⁴² Proposed rule § 6-30(b)(5).

¹⁴³ Proposed rule § 6-30(b)(6).

¹⁴⁴ Proposed rule § 6-30(b)(7).

¹⁴⁵ Proposed rule § 6-30(c)(6)(i) through (vi) and § 6-30(d).

person's guilt must be shown by a preponderance of the evidence.¹⁴⁶ Section 6-30(c) also incorporates DOC policy on who can serve as a hearing adjudicator, how due process violations must be addressed, time limits on the length of hearings and hearing adjournments, and the right to appeal an adverse decision.¹⁴⁷ Finally, people's refusal to attend their hearing must be videotaped and made a part of the hearing record.¹⁴⁸

► Disciplinary Sanctions – Addressing the PSEG Backlog

The Department reported that, as of July 31, 2019, 815 people in custody were waiting to be held in PSEG I, PSEG II, and RHU.¹⁴⁹ Historically, people in DOC custody have experienced significant delays between adjudication and placement into segregation, which result in a disciplinary system that “appears arbitrary” and negatively “impact[s] transparency and perceptions of fairness and legitimacy.”¹⁵⁰

Vera analyzed 9,793 infractions committed in 2015 that resulted in a segregation sanction and discovered that by the end of 2015 nearly half of those cases had not resulted in an admission into PSEG.¹⁵¹ For those who were eventually admitted to PSEG, the average time between the issuance of a sanction and admission into PSEG was 13 days. One third of admissions into PSEG came after two or more infractions had been adjudicated

¹⁴⁶ Proposed rule § 6-30(c)(7).

¹⁴⁷ Proposed rule § 6-30(c)(1), (3), and (8); § 6-32 (right to appeal).

¹⁴⁸ Proposed rule § 6-30(c)(5).

¹⁴⁹ DOC 60-Day Report on Punitive Segregation for the period 6/1/19-7/31/19, https://www1.nyc.gov/assets/boc/downloads/pdf/boc_rules_60_day_report_pseg_report_june-july_2019.pdf.

¹⁵⁰ Vera Report, Finding B11 at 41-42; Report of Dr. James Gilligan and Dr. Bandy Lee to the NYC Board of Correction (September 5, 2013) (“Gilligan and Lee Report”) at 7, <https://solitarywatch.org/wp-content/uploads/2013/11/Gilligan-Report.-Final.pdf> (“Any behavioral control that punishment purports to effect also becomes counterproductive when there is a long delay between the punishable behavior and the time when the person is actually locked up. We have seen examples at Rikers Island where [people in custody] have waited a month or two before they are placed in [PSEG] – even if during that intervening time they had obeyed every rule in the book. By that point, the only lesson they will learn, at an emotional level, from being locked up is that they are being punished for having behaved themselves in the meantime. Thus, the use of [PSEG] in these circumstances is completely self-defeating, in that it stimulates instead of inhibit[s] antisocial behavior, by embittering the [people in custody], who can only feel that they are being punished arbitrarily and unfairly for pro-social, law-abiding behavior”).

¹⁵¹ For the purposes of the Vera Report, “PSEG” included PSEG I, PSEG II, and RHU.

guilty. The Vera Report attributes several causes for the backlog, including (i) a delay in mental health reviews of people with “M” designations, which is required before their placement in PSEG¹⁵²; and (ii) waiting for a person to clear the 30-day or 60-day sentence limitations. Vera-run focus groups revealed that people in custody and Correction Officers did not understand why some people were placed into segregation while others were not, resulting in a system that appeared arbitrary.¹⁵³

To address this issue, proposed rule § 6-30(e)(2) requires that placement in disciplinary segregation occur within 30 days of adjudication of guilt. If the Department does not place a person into punitive segregation within this 30-day period, DOC may not place the person in PSEG at a later time. The purpose of this rule is to ensure that, in keeping with procedural justice and due process principles underlying Chapter 6, punishment is “swift, certain, and fair.”¹⁵⁴

► Videotaping of Hearing Refusal

Proposed rule § 6-30(c)(5) requires that a person’s refusal to attend a disciplinary hearing be videotaped and made part of the hearing record. This will allow BOC to monitor the Department’s compliance with the requirement that it provide timely and effective notice of infraction hearings to people in custody. This, in turn, will improve perceptions that the disciplinary process is fair.

Placement Due Process (§ 6-31)

Proposed rule § 6-31 enumerates procedural due process protections applicable to people in custody who are placed in restrictive housing for non-disciplinary reasons. Section 6-31 incorporates the due process provisions of Minimum Standard § 1-16(g) (ESH/“Placement Review Hearing”) and expands them to all types of T/A Housing. These same procedures are also applicable to Structurally Restrictive Housing, as per proposed

¹⁵² Pursuant to a settlement in *Brad H. v. City of New York*, a person is assigned an “M” designation (or Brad H. flag) if the person, during one incarceration event, has engaged with the mental health system at least three times or has been prescribed certain classes of medication.

¹⁵³ Vera Report at 41-42.

¹⁵⁴ *Id.* at 45; n. 72.

rule § 6-19(a). With few exceptions,¹⁵⁵ § 6-31 enumerates the same procedural due process protections as § 6-30 (re disciplinary hearings).

Appeals (§ 6-32)

Proposed rule § 6-32 provides a right to appeal a disciplinary determination or placement review decision.¹⁵⁶ The appeal must be in writing, based on facts already in the record, and clearly set forth the basis for the appeal, except the person may raise any newly discovered evidence in the appeal.¹⁵⁷ The decision on appeal must be in writing and state the reasons for granting or denying the appeal.¹⁵⁸ People who are unable to read or understand the decision must be provided with necessary assistance.¹⁵⁹ Finally, appeals must be decided by DOC staff of the rank of Captain or above, who were not involved in the underlying incident or placement recommendation, or presided at the underlying hearing.¹⁶⁰

Data Collection and Review (§ 6-33)

To ensure compliance with the requirements of this Subchapter H, proposed rule § 6-33 requires the Department to: (i) provide semiannual reports on the procedural due process protections provided to people placed in disciplinary housing,¹⁶¹ T/A Housing, and structurally restrictive housing¹⁶² and (ii) the Board and the Department to jointly develop the reporting templates for these reports.¹⁶³

Subchapter I: Staffing and Training §§ 6-34 and 6-35

Staffing (§ 6-34)

¹⁵⁵ Proposed rule § 6-31 does not require videotaping of refusals to sign a notice of placement or attend one's placement review hearing. Additionally, the proposed rule provides different time frames for hearings (§ 6-31(b)(2)) and for appeal of a placement decision (§ 6-32(a) and (c)).

¹⁵⁶ Proposed rule § 32(a).

¹⁵⁷ *Id.*

¹⁵⁸ Proposed rule § 32(f).

¹⁵⁹ *Id.*

¹⁶⁰ Proposed rule § 32(g)(1) through (4).

¹⁶¹ Proposed rule § 6-33(a).

¹⁶² Proposed rule § 6-33(b).

¹⁶³ Proposed rule § 6-33(d).

Chapter 1 Minimum Standards require that at least 25% of correction staff assigned to ESH and PSEG be assigned to steady posts.¹⁶⁴ Proposed rule § 6-35(a)(1) expands this requirement by: (i) increasing the 25% minimum to at least 50%; and (ii) defining “steady post” as a post “within a specific unit of a housing area to the extent feasible given leave schedules and personnel changes.”¹⁶⁵ These requirements reflect the importance of DOC security staff assigned to the same restrictive housing units, if feasible, so that staff is familiar with the unit’s operations and people confined in the unit. This familiarity leads to better rapport and engagement between Correction Officers and people in custody and reduces housing unit tension occasioned by frequent changes in staff assigned to the unit.

Proposed rule § 6-34(a)(2) states that the Department shall retain records sufficient to show accurate, uniform data on the security staff transferring in and out of restrictive housing units and the years of experience and training of security staff assigned to and working in these units. DOC shall semi-annually report this information, in writing, to the Board.

Proposed rule § 6-34(b) requires that DOC provide the Board with DOC’s staffing plans developed for each type of restrictive housing and regularly update BOC on any material changes to such plans.

Training (§ 6-35)

Proposed rule § 6-35(a) incorporates Chapter 1 Minimum Standards § 1-16(e)(1) (ESH) and § 1-17(f)(1) (PSEG), and provides that (i) DOC staff assigned to PSEG or ESH shall receive 40 hours of special training designed to address the unique characteristics of these units and the people in custody who are housed in these units; and (ii) 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.

Proposed rule § 6-35(b) requires the Department to provide hearing adjudicators and other staff involved in sentencing and placement decisions training on procedural and restorative justice principles and written policies to guide sentencing and placement decisions. This requirement is informed by the findings and recommendations of the Vera Report and the Board’s ESH Reports.

¹⁶⁴ § 1-16(e)(2) (ESH/“Staffing”); § 1-17(f)(2) (PSEG/“Staffing”).

¹⁶⁵ This is consistent with the *Nunez* Agreement’s requirement that DOC adopt and implement a staff assignment system under which a team of officers and supervisor “are consistently assigned to the same Young Inmate Housing Area unit and the same tour, to the extent feasible given leave schedules and personnel changes.” *Nunez* Consent Decree, XV(17) at 43.

Vera determined that people in custody, as well as DOC and CHS staff, find the disciplinary process difficult to understand and attributed this to: (i) inconsistent DOC directives and other official documents;¹⁶⁶ (ii) a lack of clear communication between the Department’s Adjudication Unit and the various parties involved in an incident regarding outcomes of the disciplinary process;¹⁶⁷ and (iii) as discussed above, delays and backlogs in the process, resulting in distrust in disciplinary proceedings and outcomes.¹⁶⁸ To address these issues, Vera recommended, among other things, that all correction officers be trained on due process and procedural justice principles.¹⁶⁹

Board staff found similar due process issues with respect to ESH — adults in custody expressed confusion about why they were being placed in ESH; placement hearings did not include discussion or explanation of ESH levels or the restraint desks; and adjudication Captains were not provided written guidance or training on ESH due process policies to guide decision-making.¹⁷⁰ Based on these findings, BOC’s Adult ESH Report recommended, among other things, that procedural justice principles be incorporated into all aspects of ESH placement, and ESH adjudication Captains, Correction Officers, and staff involved in placement decisions receive training on this issue.¹⁷¹

Finally, proposed rule § 6-35(c) states that on at least an annual basis, the Department shall provide the Board with information related to the training to be provided in accordance with 6-35.

Subchapter J: Restraints and Canines, §§ 6-36 and 6-37

¹⁶⁶ Vera Report, Finding B12 at 43.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*, Finding B11 at 41.

¹⁶⁹ *Id.*, Rec. G8 at 78-79 (“Vera encourages [DOC] to train all staff on procedural justice; while the Adjudication Unit plays a key role in [DOC’s] due process procedures, staff at all levels initiate and engage with the adjudication process. By adding concepts of procedural justice into [DOC]’s training curriculum, [DOC] has the opportunity to further legitimize the disciplinary process, equip its officers with the tools to effectively respond to unwanted behavior, and ultimately increase compliance with departmental rules.”).

¹⁷⁰ Adult ESH Report, Findings (“Placement in ESH”) at vi, https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/FINAL-BOC-ESH_Assessment-Adults-2017.04.26.pdf.

¹⁷¹ *Id.*, 1st Rec. bullet (“ESH Management”) at x.

Restraints (§ 6-36)

Proposed rule § 6-36(a) states that nothing in this section shall prohibit: (i) 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;¹⁷² (ii) the immediate use of restraints to prevent a person in custody from self-harm, harming others, or causing serious property damage;¹⁷³ or (iii) the routine use of restraints for movement, escort, and transportation purposes.¹⁷⁴

► **Limitations**

Section 6-36(b) through (d) sets limitations on the use of restraints that are enumerated in Department policy, such as: (i) restraints shall be imposed only when no lesser form of control would be effective in addressing the risks posed by unrestricted movement;¹⁷⁵ (ii) the method of restraint shall be the least intrusive necessary to control a person in custody's movement;¹⁷⁶ and (iii) restraints shall be imposed only for the time required and shall be removed as soon as possible after the risks posed by unrestricted movement are no longer present.¹⁷⁷ Limitations are also imposed on the use of restraints with respect to people who are paraplegic, quadriplegic, or near death;¹⁷⁸ in a wheelchair;¹⁷⁹ visually impaired;¹⁸⁰ deaf, hearing impaired, or have impaired speech and communicate with hand gestures;¹⁸¹ or in labor, admitted to a hospital for delivery, or recovering after giving birth.¹⁸²

¹⁷² Proposed rule § 6-36(a)(1).

¹⁷³ Proposed rule § 6-36(a)(2).

¹⁷⁴ Proposed rule § 6-36(a)(3).

¹⁷⁵ Proposed rule § 6-36(b).

¹⁷⁶ Proposed rule § 6-36(c).

¹⁷⁷ Proposed rule § 6-36(d).

¹⁷⁸ Proposed rule § 6-36(i).

¹⁷⁹ Proposed rule § 6-36(j).

¹⁸⁰ *Id.*

¹⁸¹ Proposed rule § 6-36(k).

¹⁸² Proposed rule § 6-36(h).

► Prohibitions

Proposed rule 6-36(f) states that restraints must never be used to cause unnecessary physical pain or discomfort,¹⁸³ e.g., applied as punishment or retaliation,¹⁸⁴ or used inside a cell unless the cell is being used to hold more than person in custody and restraints are the only way to ensure the safety of those held in the cell.¹⁸⁵ These prohibitions are enumerated in DOC policy.

► Restraint Desks

In November 2016, the Department introduced restraint desks in ESH Level 1 for adults and young adults. People have their ankle shackled to a desk. The use of restraint desks in ESH magnifies what is already a highly restrictive environment,¹⁸⁶ and was not disclosed to the Board during ESH rulemaking. Moreover, conditioning one's right to lock-out on being shackled to a desk is inherently punitive and inhumane and undermines the principles of procedural justice that form the bedrock of our criminal justice system and the 2015 amendments to the Board's Minimum Standards.

Cognizant of the Department's safety concerns in moving too quickly in eliminating the use of restraint desks for young adults who have engaged in serious acts of violence, the Board — while repeatedly citing its concerns publicly — held off imposing an effective elimination of restraint desks in ESH Level 1 as a condition to the variance it has continually approved since October 2016.¹⁸⁷ Over the next two years, the Department implemented important reforms of ESH, particularly for young adults. These reforms — some of which are embodied in variance conditions¹⁸⁸ — include moving people faster through the program, making the young adult placement criteria more specific, conducting more frequent periodic reviews and involving young adults in them, and establishing a separate school session for young adults in Levels 2 and 3, thereby obviating the need for restraint desks during school.

¹⁸³ Proposed rule § 6-36(f)(4).

¹⁸⁴ Proposed rule § 6-36(f)(1).

¹⁸⁵ Proposed rule § 6-36(f)(5).

¹⁸⁶ In ESH (for young adults and adults), outdoor recreation takes place in recreation cages; showering takes place in shower cells; meals are provided in-cell; daily medical rounds take place through solid cell doors; and most people in ESH are subject to enhanced restraints and restricted to booth visits.

¹⁸⁷ YA-ESH Variance.

¹⁸⁸ *Id.*, Condition Nos. 2, 5-8; Secure Variance, Condition Nos. 2 and 3.

Over the past two years, the number of people in custody in ESH units with restraint desks has declined significantly. As of August 31, 2019, there were two ESH Level 1 housing units in operation housing 24 people in custody — four (4) young adults and 20 adults. This is down from August 31, 2017, when there were three (3) ESH units with restraint desks, housing 14 young adults and 28 adults.

Similarly, the time spent by people in custody in ESH units with restraint desks has declined significantly between 2017 and 2019. Young adults in ESH Level 1 on August 31, 2019 had spent an average of 27 total days (18 consecutive days) in ESH Level 1, compared to an average of 190 total days (83 consecutive days) for young adults on August 31, 2017. Adults in ESH Level 1 on August 31, 2019 had spent an average of 43 total days (32 consecutive days) in ESH Level 1, compared to an average of 176 total days (62 consecutive days) on August 31, 2017. This decline coupled with the significant reduction in the overall jail population have paved the way for alternative measures such as smaller units and increased staffing ratios, which better reflect the intent of the Minimum Standards.

For the foregoing reasons, proposed rule § 6-36(e) states that “As of March 1, 2022, the Department shall eliminate non-individualized use of restraint desk or other restraints 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 unit.” Recognizing that DOC requires time to implement this change, and assuming proposed Chapter 6 goes into effect in 2020, proposed rule § 6-36(e) affords the Department two years to accomplish this.¹⁸⁹ Until then, subdivisions (f) through (k) of § 6-36 set forth conditions for the routine use of restraint desks, which are derived from Minimum Standard § 1-16¹⁹⁰ and conditions in the YA-ESH Variance.¹⁹¹ This includes that: (i) the Department shall only place a person in a restraint desk or other form of non-individualized restraint during lockout if the person has recently participated in an actual or attempted slashing or stabbing, or engaged in activity that caused serious injury to a staff member or other person, and provided the use of a restraint desk is the least restrictive option necessary for the safety of others;¹⁹² (ii) DOC shall review the placement of people in custody in routine restraint during lockout every seven (7) days;¹⁹³ and (iii) at each periodic review, a person in custody shall advance out of a restraint desk unless (a) the person has engaged in disruptive, violent, or aggressive behavior in the

¹⁸⁹ Uncodified Rule § 3, Implementation Dates Table.

¹⁹⁰ Min. Std. 1-16(h).

¹⁹¹ YA-ESH Variance Condition Nos. 2, 6, and 7.

¹⁹² Proposed rule § 6-36(f).

¹⁹³ Proposed rule § 6-36(g).

previous seven (7) days; or (b) there is credible intelligence that the person may engage in violence in a less restrictive level or housing unit.¹⁹⁴

► Restraint Statuses

Proposed rule § 6-36 requires the Department to collect data regarding restrictive statuses involving the use of restraints (“restraint statuses”). For the purposes of Chapter 6, restraint statuses are: Enhanced restraints, Red ID, and Centrally Monitored Cases that include the use of handcuff covers. Specifically, the proposed rule requires DOC to: (i) prepare a semiannual report on the use, reviews, and appeals of restraint statuses¹⁹⁵ and (ii) the Board and the Department to jointly develop the reporting templates.

Canines (§ 6-37)

Proposed rule § 6-37 is based on a variance condition prohibiting the stationing of canines in ESH units that house young adults.¹⁹⁶ Consistent with DOC policy, § 6-37 permits the use of canines inside the secure perimeter of a facility only for searches,¹⁹⁷ and canines must never be used to extract people in custody from their cells, otherwise as a use of force, or for purposes of intimidation.¹⁹⁸

Subchapter K: Implementation of Restrictive Housing §§ 6-38 and 6-39

Existing Restrictive Housing (§ 6-38)

Proposed rule § 6-38 states that all DOC and CHA policies developed or updated to facilitate compliance with these Chapter 6 Standards shall be shared with the Board for its review and feedback prior to finalization.

New Restrictive Housing (§ 6-39)

To enforce and monitor compliance with the proposed rules, the Board must be advised of the Department’s plan to establish new restrictive housing before DOC opens it. Therefore, proposed rule § 6-39 provides that at least two (2) months prior to DOC’s

¹⁹⁴ Proposed rule § 6-36(j).

¹⁹⁵ Proposed rule § 6-36(s).

¹⁹⁶ YA-ESH Variance, Condition No. 9.

¹⁹⁷ Proposed rule § 6-37(a).

¹⁹⁸ Proposed rule § 6-37(b)-(c).

implementation of new restrictive housing, it shall provide the Board with: (i) a written, comprehensive implementation plan, including a detailed description of the new housing (e.g., its purpose and goals, placement criteria and restrictions, physical structure, programming components);¹⁹⁹ (ii) written policies to implement the new housing;²⁰⁰ and (iii) a prescribed date for submission of the plan to BOC.²⁰¹ Additionally, DOC shall not open new restrictive housing until the Board has had an opportunity to review the plan and discuss it with the Department.²⁰²

Subchapter L: Variances § 6-40

Proposed rule § 6-40 permits the Department and CHA to apply for a variance from a specific subdivision or section of these rules in accordance with § 1-15 of the Board's Minimum Standards.

Effective Date and Implementation Dates (Uncodified Rule §§ 2 and 3)

Uncodified Rule § 2 states that the rules in Chapter 6 shall take effect on February 24, 2020 ("Effective Date").

Certain of the proposed rules, such as those requiring implementation of new policies and procedures, and data collection and reporting, will not be implemented on the Effective Date. Uncodified Rule § 3 specifies time periods within which each of these rules must be implemented.

Authority

The Board of Correction's authority for these rules is found in Sections 1043 and 626 of the New York City Charter.

¹⁹⁹ Proposed rule § 6-38(a)(1).

²⁰⁰ Proposed rule § 6-38(a)(2).

²⁰¹ Proposed rule § 6-38(a)(4).

²⁰² Proposed rule § 6-38(b).

II. Proposed Amendments to Chapter 1 Standards

The Board proposes amendments to certain of its Minimum Standards in Chapter 1 of Title 40 of the Rules of the City of New York. The proposed amendments:

- Define Board expectations and data reporting requirements regarding the commingling of young adults (ages 18-21) and adults (ages 22 and over);
- Ensure that all provisions in Chapter 1 are consistent with the proposed restrictive housing rules in Chapter 6; and
- Further the Board's commitment to employing person-first and gender-inclusive language in its Standards and general communications by modernizing all such language in each amended section of Chapter 1.

Following is a descriptive summary of the proposed amendments.

Amendments to § 1-02(c): Commingling of Young Adults with Adults

In 2013, members of the public petitioned the Board to initiate rulemaking in many areas related to conditions in the jails. Throughout the rulemaking process, the Board recognized the unique needs of young adults in jail and ultimately passed rules that reflected the need for a distinct approach to managing the young adult population. BOC approved rules in January 2015 which require DOC to house young adults separately and apart from young adults (§ 1-02(c)(1))²⁰³ and provide age-appropriate programming to young adults (§ 1-02(c)(2)).²⁰⁴

These requirements, however, were never fully implemented. In September 2015, the Department sought and the Board granted a variance from these Standards on the ground that DOC needed additional time to establish specialized housing with appropriate programming and staff training before implementing these requirements. In its variance request, DOC stated that the "success of this plan is dependent on the Department's ability to lay a solid foundation to build upon moving forward."²⁰⁵

²⁰³ Min. Std. § 1-02(c)(1) states: "No later than October 15, 2015, the Department shall implement the requirement . . . that [people in custody] ages 18 through 21 be housed separately and apart from [people] over the age of 22."

²⁰⁴ Min. Std. § 1-02(c)(2) states: "Housing for [people in custody] ages 18 through 21 shall provide such [people] with age-appropriate programming. No later than August 1, 2015, the Department shall provide the Board with a plan to develop such age-appropriate programming."

²⁰⁵ Letter from DOC Commissioner Joseph Ponte to Board Chair Stanley Brezenoff re variance request from Min. Std. § 1-02(c) (September 8, 2015),

Almost one year later, in summer 2016, the Department saw a marked spike in violence after it attempted to co-locate over 700 young adults in GMDC.²⁰⁶ Since that time, DOC has continuously sought and received six (6)-month variances from § 1-02(c) permitting the commingling of young adults with adults.

The Department's July 2019 variance request noted that while DOC "remains committed to a young adult housing strategy that prioritizes housing young adults in pure young adult housing, so long as they can reasonably and safely be housed in that manner, it also requires the flexibility to commingle with individuals over 21 those young adults who engage in violent or assaultive behavior or who pose security risks to other young adults with whom they cohabitate."²⁰⁷ The Department further noted that as of June 2019, 68% of young adults were housed in young adult-only housing. In approving this variance request, the Board imposed conditions on commingling young adults with adults.²⁰⁸

The proposed amendments to § 1-02(c) codify: (i) certain conditions of the limited variance from §§ 1-02(c)(1) and 1-02(c)(2); (ii) a continuing variance — granted in November 2015 — from § 1-02(c)(1)²⁰⁹ permitting the commingling of young adults with adults in specialized mental health units, including but not limited to PACE and CAPS, and NIC infirmary and West Facility communicable disease unit (CDU); and (iii) a continuing variance — granted in July 2016 — permitting the commingling of young adults with adults in the RMSC infirmary, RMSC nursery, and RMSC housing for pregnant people in custody.²¹⁰

<https://www1.nyc.gov/assets/boc/downloads/pdf/DOC%20Variance%20Request%20-%20Commingling%20of%20Young%20Adults%20and%20Adults%20-%20Implement.pdf>

²⁰⁶ <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/July-2016/DOC%20Six%20Month%20Variance%20Requests%20Letter%20-%20Elimination%20of%20Punitive%20Segregation%20for%2019-21%20year%20olds%20and%20Housing%20Separately%20and%20Apart%206.30.16.pdf>

²⁰⁷ <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/July/7.2.19%20-%20July%202019%20Commingling%20Variance%20Request%20Letter.pdf>

²⁰⁸ *Id.*

²⁰⁹ This continuing variance incorrectly cites "§ 1-02(2)(c)" instead of § 1-02(c)(1).
[https://www1.nyc.gov/assets/boc/downloads/pdf/HHC%20Record%20of%20Variance%20Action%20\(Amended\)%20POST.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/HHC%20Record%20of%20Variance%20Action%20(Amended)%20POST.pdf).

²¹⁰ [https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/July-26-2016/2016.07.26%20-%20Post%20Record%20of%20Variance%20Action%20-%201-02\(c\)\(1\).pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/July-26-2016/2016.07.26%20-%20Post%20Record%20of%20Variance%20Action%20-%201-02(c)(1).pdf).

No-Commingling Presumption (§§ 1-02(c)(1) and 1-02(c)(2))

The proposed amendments strike a balance between housing young adults together to facilitate youth-specific management strategies and programming, and housing certain young adults with adults to address legitimate safety and security concerns. Thus, proposed § 1-02(c)(1), as amended, creates a presumption that the Department shall “house young adults (ages 18-21) in young adult-only housing” unless the young adult (i) has engaged in violent or assaultive behavior towards staff or other people in custody;²¹¹ or (ii) has been a victim of violent or assaultive behavior in multiple young-adult housing areas.²¹²

Proposed amended § 1-02(c)(2) states that the presumption that DOC shall house young adults with adults shall not apply to medical housing areas, specialized mental health units, the nursery, or housing areas for pregnant people.

Commingling Placement Determination and Approval (§ 1-02(c)(3)-(5))

Section 1-02(c)(3) through (5) state that DOC may house a young adult with adults (in housing areas other than those referenced in § 1-02(c)(2)) only after an individualized determination is made.²¹³ Such determinations must be in writing and include the reasons for such determination and all Central Operation Desk (COD) and incident reports supporting the determination.²¹⁴ Additionally, the Department shall send notification to the person in custody within three (3) days of placement as to why the young adult is being housed with adults.²¹⁵

Data Collection and Review (§ 1-02(c)(6))

Finally, proposed rule § 1-02(c)(6) states that the Department shall comply with the following data reporting requirements on commingling of young adults with adults: (i) provide the Board with a bi-weekly report of all individualized commingling determinations and related information;²¹⁶ (ii) provide BOC with a monthly public census showing which housing units and facilities house young adults; the census shall indicate how many young adults are

²¹¹ Proposed amended § 1-02(c)(1)(i).

²¹² Proposed amended § 1-02(c)(1)(2).

²¹³ Proposed rule § 1-02(c)(3).

²¹⁴ Proposed rule § 1-02(c)(4).

²¹⁵ Proposed rule § 1-02(c)(5).

²¹⁶ Proposed rule § 1-02(c)(6)(i).

in each unit and whether the unit is a young-adult only unit or a commingled housing unit;²¹⁷ (iii) report to the Board the locations of all units operating as young adult-only housing units at each facility, the date each unit started operating as a young adult-only unit, and the date each unit stopped operating as a young adult-only unit;²¹⁸ and (iv) provide BOC with monthly public progress reports on its plans for housing and providing age-appropriate programming and services to young adults in custody (i.e., Young Adult Plan).²¹⁹

Amendments to Ensure Consistency between Chapter 1 and Chapter 6 Standards

The other proposed amendments to Chapter 1 Standards replace all specific references to enhanced supervision housing (ESH) with the broader term “transitional/administrative housing” as defined in Chapter 6. This substitution ensures that certain Minimum Standard protections and limitations are triggered by the restrictive characteristics of a housing unit rather than by the name given to a housing unit.

Section 1-05 (Lock-in)

The proposed amendments to § 1-05(a) clarify that the Chapter 1 Minimum Standards related to lock-in apply not only to punitive segregation and CDU units, but also to transitional/administrative housing units where lock-in is governed by proposed rule § 6-11.

Section 1-06 (Recreation)

Whereas existing § 1-06(g) emphasizes that all persons in punitive segregation shall be permitted outdoor recreation for one (1) hour per day, the amendments expand that right to all people in custody who are confined in restrictive housing units, as defined in Chapter 6. Section 1-06(g) has been further amended to eliminate the reference to “close custody,” a practice the New York Supreme Court declared unlawful in 2010.²²⁰

Existing § 1-06(h) states that a person in custody’s “access to recreation may be denied for up to five days only upon conviction of an infraction for misconduct on the way to,

²¹⁷ Proposed rule § 1-02(c)(6)(ii).

²¹⁸ Proposed rule § 1-02(c)(6)(iii).

²¹⁹ Proposed rule § 1-02(c)(6)(iv).

²²⁰ Matter of Jackson v Horn, 27 Misc. 3d 463, 474 (Sup. Ct. N.Y. Cty. 2010) (holding that DOC’s practice of confining people in close custody housing units violated §1-05 of the Board’s Minimum Standards).

from or during recreation.” Subdivision (h) has been amended based upon SCOC guidance that the Department may not restrict recreation as part of a disciplinary sanction.

Section 1-07 (Religion)

Whereas existing § 1-07(h) ensures the free exercise of religion for all persons in punitive segregation, including congregate religious activities with appropriate security, the amendments expand this protection to all persons in restrictive housing units, as defined in Chapter 6.

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

Section 1-08(f)(6) is amended to permit the Department to reduce or eliminate law library hours not only in punitive segregation, but also in in transitional/administrative housing units, provided that an alternative method of access to legal materials is instituted to permit effective legal research.

Section 1-09 (Visiting)

The proposed amendment to § 1-09(f) permits the Department to impose limitations on contact visits with persons in transitional/administrative housing in accordance with the due process provisions governing placement review hearings, as set forth in proposed rule § 6-31(b)(5)(iv).

Section 1-11 (Correspondence)

Sections 1-11(c)(6) and 1-11(e)(1) currently permit the Warden of a facility to read non-privileged correspondence pursuant to a lawful search warrant or a Warden’s written order articulating a reasonable basis to believe that the correspondence constitutes a security threat. In such cases, §§ 1-11(c)(6)(ii)-(iii) and 1-11(e)(1)(ii)-(iii) allow the Warden to read such correspondence without any notification to the sender or recipient when that person is in ESH; the existing sections also exempts the Warden from maintaining a written record of correspondence that has been read so long as the sender or recipient is in ESH. The amendments eliminate these exceptions related to people in ESH, mandating that Wardens will be required to notify everyone in custody when a determination has been made to read their correspondence, and will be required to keep a written record of all correspondence read pursuant to § 1-11.

Section 1-16 (Enhanced Supervision Housing) and Section 1-17 (Limitations on the Use of Punitive Segregation)

As described above, these sections are repealed.

Non-Substantive Language Amendments (§§ 1-05—1 1-09 and § 1-11)

People in DOC custody are people first and the circumstance of their incarceration is not their defining feature. Therefore, the Board has made a commitment to employ person-first language in its Standards and general communications going forward. To this end, the Board is deleting all references to “Inmates” in favor of person-first terms such “people/persons/individuals in custody” in Minimum Standards §§ 1-05 through 1-09 and § 1-11. The Board is also making a concerted effort towards gender inclusivity in its use of language, and will avoid the use of terminology that suggests a gender binary.

PROPOSED RULES

“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.

Section 1. Chapter 1 of Title 40 of the Rules of the City of New York is amended by repealing sections 1-16 and 1-17 in their entirety, except that sections 1-16(i) and (h) and 1-17(h) will be repealed 365 days after this rule is promulgated.

§ 2. Section 1-02 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-02 Classification of [Prisoners] People in Custody.

(a) *Policy.* Consistent with the requirements of this section the Department shall employ a classification system for [prisoners] people in custody.

(b) *Categories.*

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

(i) punitive segregation;

(ii) medical housing areas;

(iii) mental health centers and mental observation cell housing areas;

(iv) [enhanced supervision housing] transitional/administrative housing, as defined in Chapter 6 of these Rules;

(v) nursery;

[(vi) adolescent housing areas;]

[(vii)] (vi) housing areas designated for [inmates] people ages 18 to 21 inclusive; and

[(viii)] (vii) housing areas for pregnant [inmates] people.

(2) Where sentenced [inmates] individuals are housed with [inmates] people awaiting trial or examination in the housing areas listed in subparagraphs (i) through (vii) of paragraph (1) of this subdivision, the sentenced [inmates] individuals shall be treated as [inmates] people awaiting trial or examination for all purposes other than housing.

[(3) Within the categories set forth in paragraph (1), the following groupings shall be housed separate and apart:

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

(c) [Inmates ages 18 to 21 inclusive.] Commingling of Young Adults with Adults

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

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

- (1) The Department shall house young adults (ages 18-21) in young adult-only housing unless:
 - (i) The young adult has engaged in violent or assaultive behavior towards staff or other people in custody; or
 - (ii) The young adult has been a victim of violent or assaultive behavior in multiple young adult-only housing areas.
- (2) The presumption that the Department shall house young adults separately from adults shall not apply to medical housing areas, specialized mental health units, the nursery, or housing areas for pregnant people.
- (3) The Department may house a young adult with adults only after an individualized determination is made.
- (4) Each determination shall be in writing and include the reason(s) for such determination and all Central Operations Desk (COD) and Incident reports supporting the determination.
- (5) The Department shall send notification to the person in custody within three (3) days of placement as to why the young adult is being housed with adults.
- (6) Data Collection and Review.
 - (i) The Department shall send the Board a bi-weekly report of all such determinations, including the reason for the housing determination and

the full record of COD and Incident reports supporting such determinations.

- (ii) The Department shall provide the Board with a monthly public census showing which housing units and jails house 18-21 year-olds. The census shall indicate how many young adults are in each unit and whether the unit is a young adult-only unit or a commingled housing unit.
- (iii) The Department shall report to the Board the locations of all units operating as young adult-only housing units at each facility, including the dates each unit started operating as a young adult-only unit and the date each unit stopped operating as a young adult-only unit (if applicable).
- (iv) The Department shall provide the Board with monthly, public progress reports on its plans for housing and providing age appropriate programming and services to young adults in custody (i.e., Young Adult Plan). The monthly report shall include but not be limited to the following information as of the first day of the reporting month:
 - (A) Number of young adults, in total and disaggregated by gender and custody status (i.e., detainee, sentenced), and percent of young adults in each category out of the overall young adult population and the DOC population as a whole;
 - (B) Number of young adults, in total and disaggregated by facility and by young adult- only versus co-mingled housing units, and percent of the young adult population in each category out of the total young adult population in custody;
 - (C) Number of young adults in young adult-only housing units, in total and disaggregated by classification level and custody status;
 - (D) Number of young adults in commingled housing units, in total and disaggregated by classification level and custody status;
 - (E) Number of young adults in CAPS, PACE, Detox, and Mental Observation housing units;
 - (F) Number of young adults disaggregated by location of transitional/administrative housing and structurally restrictive housing units (as defined in Chapter 6 of these Rules);
 - (G) Number of young adults in transitional/administrative housing and structurally restrictive housing units disaggregated by type of housing and by classification level;
 - (H) Number of active young adult-only housing areas by facility during the reporting month;

- (I) A list and description of the staff trainings focusing on working with the young adult population offered by the Department (e.g., Safe Crisis Management, Direct Supervision, Supervision of Adolescents);
- (J) The number and percent of active staff in total (Department-wide) and disaggregated by facility and by type and status of young adult training (qualified, trained but expired, never trained);
- (K) Young adult program offerings by facility, housing type (young adult-only, commingled), and provider type (Department-led programming, external program staff);
- (L) For each program offered by facility and housing type: the number of sessions, total average number of young adult participants per session, and total number of unique young adult participants; and
- (M) Any other information the Department or the Board deems relevant to assessment of the young adult plan.

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

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

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

(e) *Limited commingling.* Nothing contained in this section shall prevent [prisoners] people in custody in different categories or groupings from being in the same area for a specific purpose, including, but not limited to, entertainment, classes, contact visits or medical necessity.

(f) *Security classification.*

(1) The Department shall use a system of classification to group [prisoners] people in custody according to the minimum degree of surveillance and security required.

(2) The system of classification shall meet the following requirements:

(i) It shall be in writing and shall specify the basic objectives, the classification categories, the variables and criteria used, the procedures used and the specific consequences to the [prisoner] person in custody of placement in each category.

(ii) It shall include at least two classification categories.

(iii) It shall provide for an initial classification upon entrance into the corrections system. Such classification shall take into account only relevant factual information about the [prisoner] person in custody, capable of verification.

(iv) It shall provide for involvement of the [prisoner] person in custody at every stage with adequate due process.

(v) [Prisoners] People placed in the most restrictive security status shall only be denied those rights, privileges and opportunities that are directly related to their status and which cannot be provided to them at a different time or place than provided to other [prisoners] individuals in custody.

(vi) It shall provide mechanisms for review of [prisoners] people placed in the most restrictive security status at intervals not to exceed four weeks for [detainees] individuals awaiting trial and eight weeks for sentenced [prisoners] people.

§ 3. Section 1-05 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-05 Lock-in.

(a) *Policy.* The time spent by [prisoners] 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 [prisoners] people confined in punitive segregation and transitional/administrative housing, where lock-in is governed by 40 RCNY § 6-07(a)(4) (PSEG I) and § 6-07(b)(4) (PSEG II) and § 6-11(a) (Adults) and § 6-11(b) (Young Adults), or [prisoners] people confined for medical reasons in the contagious disease units.

(b) *Involuntary lock-in.* [No prisoner] People shall not be required to remain confined to [his or her] their [cell] cells except for the following purposes:

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

(2) During the day for count or required facility business that can only be carried out while [prisoners] 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. [This paragraph shall not apply to prisoners confined in enhanced supervision housing, who may be locked in during the day for up to nine hours in any 24-hour period.]

(c) *Optional lock-in.*

(1) [Prisoners] People shall have the option of being locked in their cells during lock-out periods. [Prisoners] Individuals choosing to lock in at the beginning of a lock-out period of two hours or more shall be locked out upon request after one-half of the period. At this time, [prisoners] people who have been locked out shall be locked in upon request.

(2) The Department may deny optional lock-in to a [prisoner] person in mental observation status if a psychiatrist or psychologist determines in writing that optional lock-in poses a serious threat to the safety of that [prisoner] person. A decision to deny optional lock-in must be reviewed every ten days, including a written statement of findings, by a psychiatrist or psychologist. Decisions made by a psychiatrist or psychologist pursuant to this subdivision must be based on personal consultation with the [prisoner] person in custody.

(d) *Schedule.* Each facility shall maintain and distribute to all [prisoners] people in custody or post in each housing area its lock-out schedule, including the time during each lock-out period when [prisoners] people may exercise the options provided by paragraph (c)(1) of this subdivision.

§ 4. Section 1-06 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-06 Recreation.

(a) *Policy.* Recreation is essential to good health and contributes to reducing tensions within a facility. [Prisoners] People in custody shall be provided with adequate indoor and outdoor recreational opportunities.

(b) *Recreation areas.* Indoor and outdoor recreation areas of sufficient size to meet the requirements of this section shall be established and maintained by each facility. An outdoor recreation area must allow for direct access to sunlight and air.

(c) *Recreation schedule.* Recreation periods shall be at least one hour; only time spent at the recreation area shall count toward the hour. Recreation shall be available seven days per week in the outdoor recreation area, except in inclement weather when the indoor recreation area shall be used.

(d) *Recreation equipment.*

(1) The Department shall make available to [prisoners] people in custody an adequate amount of equipment during the recreation period.

(2) Upon request each facility shall provide [prisoners] people in custody with appropriate outer garments in satisfactory condition, including coat, hat, and gloves, when they participate in outdoor recreation during cold or wet weather conditions.

(e) *Recreation within housing area.*

(1) [Prisoners] People shall be permitted to engage in recreation activities within cell corridors and tiers, dayrooms and individual housing units. Such recreation may include but is not limited to:

- (i) table games;
- (ii) exercise programs; and
- (iii) arts and crafts activities.

(2) Recreation taking place within cell corridors and tiers, dayrooms and individual housing units shall supplement, but not fulfill, the requirements of subdivision (c) of this section.

(f) *Recreation for [inmates] persons housed in the contagious disease units.* In place of out-of-cell recreation, the Department, in consultation with medical providers, may provide inmates confined for medical reasons in the contagious disease units with appropriate recreation equipment and materials for in-cell recreation. The Department must provide such [inmates] individuals with daily access to publications, such as newspapers, books, and magazines, which shall be made available in the six (6) most common languages spoken by the [inmate] jail population.

(g) *Recreation for [prisoners] people in segregation.* [Prisoners] Persons confined in [close custody or] punitive segregation or other restrictive housing areas as defined in Chapter 6 of these Rules shall be permitted recreation in accordance with the provisions of subdivision (c) of this section.

(h) *Limitation on access to recreation.* A [prisoner's] person's access to recreation may be denied for up to five days only [upon conviction of an infraction for misconduct on the way to, from or during recreation] due to imminent safety and security risks, which must be recorded and transmitted to the Board within 24 hours of the restriction.

§ 5. Section 1-07 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-07 Religion.

(a) *Policy.* [Prisoners] People in custody have an unrestricted right to hold any religious belief, and to be a member of any religious group or organization, as well as to refrain from the exercise of any religious beliefs. A [prisoner] person in custody may change his or her religious affiliation.

(b) *Exercise of religious beliefs.*

(1) [Prisoners] People in custody are entitled to exercise their religious beliefs in any manner that does not constitute a clear and present danger to the safety or security of a facility.

(2) No employee or agent of the Department or of any voluntary program shall be permitted to proselytize or seek to convert any [prisoner] person in custody, nor shall any [prisoner] person in custody be compelled to exercise or be dissuaded from exercising any religious belief.

(3) Equal status and protection shall be afforded to all [prisoners] people in the exercise of their religious beliefs except when such exercise is unduly disruptive of facility routine.

(c) *Congregate religious activities.*

(1) Consistent with the requirements of subdivision (a) of this section, [all prisoners] all persons in custody shall be permitted to congregate for the purpose of religious worship and other religious activities, except for [prisoners] people confined for medical reasons in the contagious disease units.

(2) Each facility shall provide [all prisoners] all persons in custody with access to an appropriate area for congregate religious worship and other religious activities. Consistent with the requirements of paragraph (b)(1) of this section, this area shall be made available to [prisoners] people in custody in accordance with the practice of their religion.

(d) *Religious advisors.*

(1) As used in this section, the term "religious advisor" means a person who has received endorsement from the relevant religious authority.

(2) Religious advisors shall be permitted to conduct congregate religious activities permitted pursuant to subdivision (c) of this section. When no religious advisor is available, a person in custody belonging to the [member of a prisoner] religious group may be permitted to conduct congregate religious activities.

(3) Consistent with the requirements of paragraph (b)(1) of this section, [prisoners] people shall be permitted confidential consultation with their religious advisors during lock-out periods.

(e) *Celebration of religious holidays or festivals.* Consistent with the requirements of paragraph (b)(1) of this section, [prisoners] people shall be permitted to celebrate religious holidays or festivals on an individual or congregate basis.

(f) *Religious dietary laws.* [Prisoners] People in custody are entitled to the reasonable observance of dietary laws or fasts established by their religion. Each facility shall provide [prisoners] people with food items sufficient to meet such religious dietary laws.

(g) *Religious articles.* Consistent with the requirements of paragraph (b)(1) of this section, [prisoners] people in custody shall be entitled to wear and to possess religious medals or other religious articles, including clothing and hats.

(h) *Exercise of religious beliefs by [prisoners] people in segregation.*

(1) [Prisoners] People confined in [administrative or] punitive segregation or other restrictive housing areas as defined in Chapter 6 of these Rules 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 [prisoners] people in [close custody or] punitive segregation or other restrictive housing areas as defined in Chapter 6 of these Rules shall be provided for by permitting such [prisoners] individuals to attend congregate religious activities with appropriate security either with each other or with other [prisoners] people in custody.

(i) *Recognition of a religious group or organization.*

(1) A list shall be maintained of all religious groups and organizations recognized by the Department. This list shall be in Spanish and English, and shall be distributed to all [incoming prisoners] persons entering into custody or posted in each housing area.

(2) Each facility shall maintain a list of the religious advisor, if any, for each religious group and organization, and the time and place for the congregate service of each religion. This list shall be in Spanish and English, and shall be distributed to all [incoming prisoners] persons entering custody or posted in each housing area.

(3) [Prisoner requests] People in custody may make requests to the Department to exercise the beliefs of a religious group or organization not previously recognized [shall be made to] by the Department.

(4) In determining requests made pursuant to paragraph (3) of this subdivision, the following factors among others shall be considered as indicating a religious foundation for the belief:

(i) whether there is substantial literature supporting the belief as related to religious principle;

(ii) whether there is formal, organized worship by a recognizable and cohesive group sharing the belief;

(iii) whether there is an informal association of persons who share common ethical, moral, or intellectual views supporting the belief; or

(iv) whether the belief is deeply and sincerely held by the [prisoner] individual making the request.

(5) In determining requests made pursuant to paragraph (3) of this subdivision, the following factors shall not be considered as indicating a lack of religious foundation for the belief:

(i) the belief is held by a small number of individuals;

(ii) the belief is of recent origin;

- (iii) the belief is not based on the concept of a Supreme Being or its equivalent; or
- (iv) the belief is unpopular or controversial.

(6) [In determining] Before the Department determines a request[s] made pursuant to paragraph (3) of this subdivision, [prisoners] the requestor shall be permitted to present evidence indicating a religious foundation for the belief.

(7) The procedure outlined in paragraphs (1) and (3) of this subdivision shall apply when a [prisoner] request made pursuant to paragraph (i)(3) of this subdivision is denied.

(j) *Limitations on the exercise of religious beliefs.*

(1) Any determination to limit the exercise of the religious beliefs of any [prisoner] person in custody shall be made in writing, and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(2) This determination must be based on specific acts committed by the [prisoner] individual in custody during the exercise of his or her religion that demonstrate a serious and immediate threat to the safety and security of the facility. Prior to any determination, the [prisoner] individual must be provided with written notification of the specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond.

(3) Any person affected by a determination made pursuant to this subdivision may appeal such determination to the Board.

(i) The person affected by the determination shall give notice in writing to the Board and the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) The Board or its designee shall issue a written decision upon the appeal within 14 business days after receiving notice of the requested review.

§ 6. Section 1-08 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-08 Access to Courts and Legal Services.

(a) *Policy.* [Prisoners] People in custody are entitled to access to courts, attorneys, legal assistants and legal materials.

(b) *Judicial and administrative proceedings.*

(1) [Prisoners] People in custody shall not be restricted in their communications with courts or administrative agencies pertaining to either criminal or civil proceedings except pursuant to a court order.

(2) Timely transportation shall be provided to [prisoners] people scheduled to appear before courts or administrative agencies. Vehicles used to transport [prisoners] people in custody must meet all applicable safety and inspection requirements and provide adequate ventilation, lighting and comfort.

(c) *Access to counsel.*

(1) [Prisoners] People in custody shall not be restricted in their communication with attorneys. The fact that [a prisoner] someone is represented by one attorney shall not be grounds for preventing [him or her] that person from communicating with other attorneys. Any properly identified attorney may visit any [prisoner] person in custody with [the prisoner's] that person's consent.

(i) An attorney may be required to present identification to a designated official at the central office of the Department in order to obtain a facility pass. This pass shall permit the attorney to visit any [prisoner] person in the custody of the Department.

(ii) The Department only may require such identification as is normally possessed by an attorney.

(2) The Department may limit visits to any attorney of record, or an attorney with a court notice for [prisoners] individuals undergoing examination for competency pursuant to court order.

(3) Visits between [prisoners] people in custody and attorneys shall be kept confidential and protected, in accordance with provisions of 40 RCNY § 1-09. Legal visits shall be permitted at least eight hours per day between 8 a.m. and 8 p.m. During business days, four of those hours shall be 8 a.m. to 10 a.m., and 6 p.m. to 8 p.m. The Department shall maintain and post the schedule of legal visiting hours at each facility.

(4) Mail between [prisoners] people in custody and attorneys shall not be delayed, read, or interfered with in any manner, except as provided in 40 RCNY § 1-11.

(5) Telephone communications between [prisoners] people in custody and attorneys shall be kept confidential and protected, in accordance with the provisions of 40 RCNY § 1-10.

(d) *Access to co-defendants.* Upon reasonable request, regular visits shall be permitted between [a detainee] people awaiting trial and all of [his or her] their co-defendants who consent to such visits. If any of the co-defendants are incarcerated, the Department may require that an attorney of record be present and teleconferencing shall be used, if available.

(e) *Attorney assistants.*

(1) Law students, legal paraprofessionals, and other attorney assistants working under the supervision of an attorney representing a [prisoner] person in custody shall be permitted to communicate with [prisoners] that person by mail, telephone and personal visits, to the same extent and under the same conditions that the attorney may do so for the purpose of representing the [prisoner] individual. Law students, legal paraprofessionals and other attorney assistants working under the supervision of an attorney contacted by a [prisoner] person in custody shall be permitted to communicate with that [prisoner] individual by mail, telephone, or personal visits to the same extent and under the same conditions that the attorney may do so.

(2) An attorney assistant may be required to present a letter of identification from the attorney to a designated official at the central office of the Department in order to obtain a facility pass. A pass shall not be denied based upon any of the reasons listed in 40 RCNY § 1-09(h)(1).

(3) The pass shall permit the assistant to perform the functions listed in subdivision (e) of this section. It may be revoked if specific acts committed by the legal assistant demonstrate his or her threat to the safety and security of a facility. This determination must be made pursuant to the procedural requirements of paragraphs (2), (4) and (5) of subdivision (h) of 40 RCNY § 1-09.

(f) *Law libraries.* Each facility shall maintain a properly equipped and staffed law library.

(1) The law library shall be located in a separate area sufficiently free of noise and activity and with sufficient space and lighting to permit sustained research.

(2) Each law library shall be open for a minimum of five days per week including at least one weekend day. On each day a law library is open:

(i) in facilities [with] housing more than 600 [prisoners] people, each law library shall be operated for a minimum of ten hours, of which at least eight shall be during lock-out hours;

(ii) in facilities [with] housing 600 or fewer [prisoners] people, each law library shall be operated for a minimum of eight and a half hours, of which at least six and a half shall be during lock-out hours;

(iii) in all facilities, the law library shall be operated for at least three hours between 6 p.m. and 10 p.m.; and

(iv) the law library will be kept open for [prisoners'] people's use on all holidays which fall on regular law library days except New Year's Day, July 4th, Thanksgiving, and Christmas. The law library may be closed on holidays other than those specified provided that law library services are provided on either of the two days of the same week the law library is usually closed. On holidays on which the law library is kept open, it shall operate for a minimum of eight hours. No changes to law library schedules shall be made without written notice to the Board of Correction, and shall be received at least five business days before the planned change(s) is to be implemented.

(3) The law library schedule shall be arranged to provide access to [prisoners] people in custody during times of the day when other activities such as recreation, commissary, meals,

school, sick call, etc., are not scheduled. Where such considerations cannot be made, [prisoners] people shall be afforded another opportunity to attend the law library at a later time during the day.

(4) Each [prisoner] person in custody shall be granted access to the law library for a period of at least two hours per day on each day the law library is open. Upon request, extra time may be provided as needed, space and time permitting. In providing extra time, [prisoners] people who have an immediate need for additional time, such as [prisoners] people on trial and those with an impending court deadline shall be granted preference.

(5) Notwithstanding the provisions of paragraph (f)(4), [prisoners] people housed for medical reasons in the contagious disease units may be denied access to the law library. An alternative method of access to legal materials shall be instituted to permit effective legal research.

(6) The law library hours for [prisoners] people in punitive segregation or [enhanced supervision] transitional/administrative housing as defined in Chapter 6 of these Rules 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 [prisoners] shall be conducted at each facility on at least a quarterly basis. Legal research training materials shall be made available upon request to [prisoners] people in special housing.

(8) The Department shall report annually to the Board detailing the resources available at the law library at each facility, including a list of titles and dates of all law books and periodicals and the number, qualifications and hours of English and Spanish-speaking legal assistants.

(g) *Legal documents and supplies.*

(1) Each law library shall contain necessary research and reference materials which shall be kept properly updated and supplemented, and shall be replaced without undue delay when materials are missing or damaged.

(2) [Prisoners] People in custody shall have reasonable access to typewriters, dedicated word processors, and photocopiers for the purpose of preparing legal documents. A sufficient number of operable typewriters, dedicated word processors, and photocopy machines will be provided for [prisoner] people's use.

(3) Legal clerical supplies, including pens, legal paper and pads shall be made available for purchase by [prisoners] people in custody. Such legal clerical supplies shall be provided to indigent [prisoners] individuals at Department expense.

(4) Unmarked legal forms which are commonly used by [prisoners] people in custody shall be made available. Each [prisoner] person shall be permitted to use or make copies of such forms for his or her own use.

(h) *Law library staffing.*

(1) During all hours of operation, each law library shall be staffed with trained civilian legal coordinator(s) to assist [prisoners] people with the preparation of legal materials. Legal coordinator coverage shall be provided during extended absences of the regularly assigned legal coordinator(s).

(2) Each law library shall be staffed with an adequate number of permanently assigned correction officers knowledgeable of law library procedures.

(3) Spanish-speaking prisoners shall be provided assistance in use of the law library by employees fluent in the Spanish language on an as needed basis.

(i) *Number of legal documents and research materials.*

(1) [Prisoners] People in custody shall be permitted to purchase and receive law books and other legal research materials from any source.

(2) Reasonable regulations governing the keeping of materials in cells and the searching of cells may be adopted, but under no circumstances may [prisoners'] people's legal documents, books, and papers be read or confiscated by correctional personnel without a lawful warrant. Where the space in a cell is limited, an alternative method of safely storing legal materials elsewhere in the facility is required, provided that a [prisoner] person in custody shall have regular access to these materials.

(j) *Limitation of access to law library.*

(1) [A prisoner] People in custody may be removed from the law library if [he or she] they disrupt[s] the orderly functioning of the law library or do[es] not use the law library for its intended purposes. A [prisoner] person may be excluded from the law library for more than the remainder of one law library period only for a disciplinary infraction occurring within a law library.

(2) Any determination to limit a [prisoner's] person's right of access to the law library shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(3) An alternative method of access to legal materials shall be instituted to permit effective legal research for any [prisoner] person excluded from the law library. A legal coordinator shall visit any excluded [prisoner] person to determine his or her law library needs upon request.

(4) Any person affected by a determination made pursuant to this subdivision (j) may appeal such determination to the Board.

(i) The person affected by a determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) The Board or its designee shall issue a written decision upon the appeal within five business days after receiving notice of the requested review.

§ 7. Section 1-09 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-09 Visiting.

(a) *Policy.* All [inmates] people in custody are entitled to receive personal visits of sufficient length and number. Maintaining personal connections with social and family networks and support systems is critical to improving outcomes both during confinement and upon reentry. Visitation with friends and family plays an instrumental role in a [n inmate's] person's ability to maintain these connections and should therefore be encouraged and facilitated by the Department. Additionally, the Board recognizes that a [n inmate's] person's family may not be limited to those related to the [inmate] individual by blood or by legally-recognized bonds, such as marriage or adoption. Therefore, the term "family" as it is used in this subdivision should be construed broadly to reflect the diversity of familial structures and the wide variety of relationships that may closely connect a [n inmate] person in custody to others. This should include, for example, but may not be limited to: romantic partners; godparents and godchildren; current and former step-parents, children, and siblings; and those connected to the [inmate] individual through current or former domestic partnerships, foster arrangements, civil unions, or cohabitation.

(b) *Visiting and waiting areas.*

(1) A visiting area of sufficient size to meet the requirements of this section shall be established and maintained in each facility.

(2) The visiting area shall be designed so as to allow physical contact between [prisoners] people in custody and their visitors as required by subdivision (f) of this section.

(3) The Department shall make every effort to minimize the waiting time prior to a visit. Visitors shall not be required to wait outside a facility unless adequate shelter is provided and the requirements of paragraph (b)(4) of this section are met.

(4) All waiting and visiting areas shall provide for at least minimal comforts for visitors, including but not limited to:

(i) sufficient seats for all visitors;

(ii) access to bathroom facilities and drinking water throughout the waiting and visiting periods;

(iii) access to vending machines for beverages and foodstuffs at some point during the waiting or visiting period; and

(iv) access to a Spanish-speaking employee or volunteer at some point during the waiting or visiting period. All visiting rules, regulations and hours shall be clearly posted in English and Spanish in the waiting and visiting areas at each facility.

(5) The Department shall make every effort to utilize outdoor areas for visits during the warm weather months.

(c) *Visiting schedule.*

(1) Visiting hours may be varied to fit the schedules of individual facilities but must meet the following minimum requirements for [detainees] people awaiting trial:

(i) Monday through Friday. Visiting shall be permitted on at least three days for at least three consecutive hours between 9 a.m. and 5 p.m. Visiting shall be permitted on at least two evenings for at least three consecutive hours between 6 p.m. and 10 p.m.

(ii) Saturday and Sunday. Visiting shall be permitted on both days for at least five consecutive hours between 9 a.m. and 8 p.m.

(2) Visiting hours may be varied to fit the schedules of individual facilities but must meet the following minimum requirements for sentenced [prisoners] individuals:

(i) Monday through Friday. Visiting shall be permitted on at least one evening for at least three consecutive hours between 6 p.m. and 10 p.m.

(ii) Saturday and Sunday. Visiting shall be permitted on both days for at least five consecutive hours between 9 a.m. and 8 p.m.

(3) The visiting schedule of each facility shall be available by contacting either the central office of the Department or the facility.

(4) Visits shall last at least one hour. This time period shall not begin until the [prisoner] person in custody and visitor meet in the visiting room.

(5) Sentenced [prisoners] individuals are entitled to at least two visits per week with at least one on an evening or the weekend, as the sentenced [prisoner] individual wishes. [Detainees] People awaiting trial are entitled to at least three visits per week with at least one on an evening or the weekend, as the [detainee] person wishes. Visits by properly identified persons providing services or assistance, including lawyers, doctors, religious advisors, public officials, therapists, counselors and media representatives, shall not count against this number.

(6) There shall be no limit to the number of visits by a particular visitor or category of visitors.

(7) In addition to the minimum number of visits required by paragraphs (1), (2) and (5) of this subdivision, additional visitation shall be provided in cases involving special necessity, including but not limited to, emergency situations and situations involving lengthy travel time.

(8) [Prisoners] People in custody shall be permitted to visit with at least three visitors at the same time, with the maximum number to be determined by the facility.

(9) Visitors shall be permitted to visit with at least two [prisoners] people in custody at the same time, with the maximum number to be determined by the facility.

(10) If necessitated by lack of space, a facility may limit the total number of persons in any group of visitors and [prisoners] people in custody to four. Such a limitation shall be waived in cases involving special necessity, including but not limited to, emergency situations and situations involving lengthy travel time.

(d) *Initial visit.*

(1) [Each detainee] People awaiting trial shall be entitled to receive a non-contact visit within 24 hours of [his or her] their admission to the facility.

(2) If a visiting period scheduled pursuant to paragraph (c)(1) of this section is not available within 24 hours after a [detainee's] person awaiting trial's admission, arrangements shall be made to ensure that the initial visit required by this subdivision is made available.

(e) *Visitor identification and registration.*

(1) Consistent with the requirements of this subdivision, any properly identified person shall, with the [prisoner's] individual in custody's consent, be permitted to visit [the prisoner] that individual.

(i) Prior to a visit, a [prisoner] person in custody shall be informed of the identity of the prospective visitor.

(ii) A refusal by a [prisoner] person in custody to meet with a particular visitor shall not affect [the prisoner's] that person's right to meet with any other visitor during that period, nor [the prisoner's] that person's right to meet with the refused visitor during subsequent periods.

(2) [Each visitor] Visitors shall be required to enter in the facility visitors log:

(i) [his or her] their name;

(ii) [his or her] their address;

(iii) the date;

(iv) the time of entry;

(v) the name of the [prisoner or prisoners] individual or individuals to be visited; and

(vi) the time of exit.

(3) Any prospective visitors who [is] under 16 years of age shall be required to enter, or have entered [for him or her] on their behalf, in the facility visitors log:

- (i) the information required by paragraph (2) of this subdivision;
- (ii) [his or her] their age; and
- (iii) the name, address, and telephone number of [his or her] their parent or legal guardian.

(4) The visitors log shall be confidential, and information contained therein shall not be read by or revealed to non-Department staff except as provided by the City Charter or pursuant to a specific request by an official law enforcement agency. The Department shall maintain a record of all such requests with detailed and complete descriptions.

(5) Prior to visiting a [prisoner] person in custody, a prospective visitor under 16 years of age may be required to be accompanied by a person 18 years of age or older, and to produce oral or written permission from a parent or legal guardian approving such visit.

(6) The Department may adopt alternative procedures for visiting by persons under 16 years of age. Such procedures must be consistent with the policy of paragraph (e) (5) of this subdivision, and shall be submitted to the Board for approval.

(f) *Contact visits.* Physical contact shall be permitted between [every inmate] all people in custody and all of [the inmate's] their visitors. Permitted physical contact shall include a brief embrace and kiss between the [inmate] person in custody and visitor at both the beginning and end of the visitation period. [Inmates] People in custody shall be permitted to hold children in [the inmate's] their family who are ages fourteen (14) and younger throughout the visitation period, provided that the Department may limit a [n inmate's] person in custody to holding [of children to] one child at a time. Additionally, [inmates] 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 [inmates] individuals housed for medical reasons in the contagious disease units. The Department may impose certain limitations on contact visits for [inmates] people confined in [enhanced supervision] transitional/administrative housing in accordance with the procedures and guidelines set forth in 40 RCNY § [1-16]6-31.

(g) *Visiting security and supervision.*

(1) All [prisoners] people in custody, prior and subsequent to each visit, may be searched solely to ensure that they possess no contraband.

(2) All prospective visitors may be searched prior to a visit solely to ensure that they possess no contraband.

(3) Any body search of a prospective visitor made pursuant to paragraph (2) of this subdivision shall be conducted only through the use of electronic detection devices. Nothing contained herein shall affect any authority possessed by correctional personnel pursuant to statute.

(4) Objects possessed by a prospective visitor, including but not limited to, handbags or packages, may be searched or checked. Personal effects, including wedding rings and religious medals and clothing, may be worn by visitors during a visit. The Department may require a prospective visitor to secure in a lockable locker his or her personal property, including but not limited to bags, outerwear and electronic devices. A visit may not be delayed or denied because an operable, lockable locker is not available.

(5) Supervision shall be provided during visits solely to ensure that the safety or security of the facility is maintained.

(6) Visits shall not be listened to or monitored unless a lawful warrant is obtained, although visual supervision should be maintained.

(h) *Restrictions on visitation rights.*

(1) The visitation rights of a [n inmate] person in custody with a particular visitor may be denied, revoked or limited only when it is determined that the exercise of those rights constitutes a serious threat to the safety or security of a facility, provided that visitation rights with a particular visitor may be denied only if revoking the right to contact visits would not suffice to reduce the serious threat.

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

(2) A [n inmate's] person in custody's right to contact visits as provided in subdivision (f) of this section may be denied, revoked, or limited only when it is determined that such visits constitute a serious threat to the safety or security of a facility. Should a determination be made to deny, revoke or limit a [n inmate's] person's right to contact visits in the usual manner, alternative arrangements for affording the [inmate] individual the requisite number of visits shall be made, including, but not limited to, non-contact visits.

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

(3) Restrictions on visitation rights must be tailored to the threat posed by the [inmate] person in custody or prospective visitor and shall go no further than what is necessary to address that threat.

(4) Visitation rights shall not be denied, revoked, limited or interfered with based on a[n inmate's] person in custody's or a prospective visitor's actual or perceived:

- (i) sex;
- (ii) sexual orientation;
- (iii) race;
- (iv) age, except as otherwise provided in this section;
- (v) nationality;
- (vi) political beliefs;
- (vii) religion;
- (viii) criminal record;
- (ix) pending criminal or civil case;
- (x) lack of family relationship;
- (xi) gender, including gender identity, self-image, appearance, behavior or expression; or
- (xii) disability

(5) Any determination to deny, revoke or limit a [n inmate's] person in custody's visitation rights pursuant to paragraphs (1) and (2) of this subdivision shall be in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including a description of the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(i) *Appeal procedure for visitation restrictions.*

(1) Any person affected by the Department's determination to deny, revoke or limit access to visitation may appeal such determination to the Board, in accordance with the following procedures:

(i) The person affected by the determination shall give notice in writing to the Board and the Department of intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) The Board or its designee shall issue a written decision upon the appeal within five (5) business days after receiving notice of the requested review, indicating whether the visitation determination has been affirmed, reversed, or modified.

(iv) Where there exists good cause to extend the time period in which the Board or designee may issue a written decision beyond five (5) business days, the Board or designee may issue a single extension not to exceed ten (10) business days. In such instances, the Board shall immediately notify the Department and any persons affected by the extension.

§ 8. Section 1-11 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-11 Correspondence.

(a) *Policy.* [Prisoners] People in custody are entitled to correspond with any person, except when there is a reasonable belief that limitation is necessary to protect public safety or maintain facility order and security. The Department shall establish appropriate procedures to implement this policy. Correspondence shall not be deemed to constitute a threat to safety and security of a facility solely because it criticizes a facility, its staff, or the correctional system, or espouses unpopular ideas, including ideas that facility staff deem not conducive to rehabilitation or correctional treatment. The Department shall provide notice of this policy to all [prisoners] people in custody.

(b) *Number and language.*

(1) There shall be no restriction upon incoming or outgoing [prisoner] correspondence based upon either the amount of correspondence sent or received, or the language in which correspondence is written.

(2) If a [prisoner] person in custody is unable to read or write, he or she may receive assistance with correspondence from other persons, including but not limited to, facility employees and [prisoners] people in custody.

(c) *Outgoing correspondence.*

(1) Each facility shall make available to indigent [prisoners] people in custody at Department expense stationery and postage for all letters to attorneys, courts and public officials, as well as two other letters each week.

(2) Each facility shall make available for purchase by [prisoners] people in custody both stationery and postage.

(3) Outgoing [prisoner] correspondence shall bear the sender's name and either the facility post office box or street address or the sender's home address in the upper left hand corner of the envelope.

(4) Outgoing [prisoner] correspondence shall be sealed by the [prisoner] sender and deposited in locked mail receptacles.

(5) All outgoing [prisoner] correspondence shall be forwarded to the United States Postal Service at least once each business day.

(6) Outgoing [prisoner] non-privileged correspondence shall not be opened or read except pursuant to a lawful search warrant or the warden's written order articulating a reasonable basis to believe that the correspondence threatens the safety or security of the facility, another person, or the public.

(i) The warden's written order shall state the specific facts and reasons supporting the determination.

(ii) The affected [prisoner] sender shall be given written notification of the determination and the specific facts and reasons supporting it. The warden may delay notifying the [prisoner] sender only for so long as such notification would endanger the safety and security of the facility, after which the warden immediately shall notify the [prisoner] person. [This requirement shall not apply to individuals confined in enhanced supervision housing.]

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

(iv) Any action taken pursuant to this paragraph shall be completed within five business days of receipt of the correspondence by the Department.

(7) Outgoing [prisoner] privileged correspondence shall not be opened or read except pursuant to a lawful search warrant.

(d) *Incoming correspondence.*

(1) Incoming correspondence shall be delivered to the intended [prisoner] recipient within 48 hours of receipt by the Department unless the [prisoner] recipient is no longer in custody of the Department.

(2) A list of items that may be received in correspondence shall be established by the Department. Upon admission to a facility, [prisoners] people shall be provided a copy of this list or it shall be posted in each housing area.

(e) *Inspection of incoming correspondence.*

(1) Incoming [prisoner] non-privileged correspondence

(a) shall not be opened except in the presence of the intended [prisoner] recipient or pursuant to a lawful search warrant or the warden's written order articulating a reasonable basis

to believe that the correspondence threatens the safety or security of the facility, another person, or the public.

(i) The warden's written order shall state the specific facts and reasons supporting the determination.

(ii) The affected [prisoner] recipient and sender shall be given written notification of the warden's determination and the specific facts and reasons supporting it. The warden may delay notifying the [prisoner] recipient and the sender only for so long as such notification would endanger the safety or security of the facility, after which the warden immediately shall notify the [prisoner] recipient and sender. [This requirement shall not apply to prisoners confined in enhanced supervision housing.]

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

(iv) Any action taken pursuant to this subdivision shall be completed within five business days of receipt of the correspondence by the Department.

(b) shall not be read except pursuant to a lawful search warrant or the warden's written order articulating a reasonable basis to believe that the correspondence threatens the safety or security of the facility, another person, or the public. Procedures for the warden's written order pursuant to this subdivision are set forth in paragraph (1) of this subdivision.

(2) Incoming correspondence may be manipulated or inspected without opening, and subjected to any non-intrusive devices. A letter may be held for an extra 24 hours pending resolution of a search warrant application.

(3) Incoming privileged correspondence shall not be opened except in the presence of the recipient [prisoner] in custody or pursuant to a lawful search warrant. Incoming privileged correspondence shall not be read except pursuant to a lawful search warrant.

(f) *Prohibited items in incoming correspondence.*

(1) When an item found in incoming correspondence involves a criminal offense, it may be forwarded to the appropriate authority for possible criminal prosecution. In such situations, the notice required by paragraph (3) of this subdivision may be delayed if necessary to prevent interference with an ongoing criminal investigation.

(2) A prohibited item found in incoming [prisoner] correspondence that does not involve a criminal offense shall be returned to the sender, donated or destroyed, as the [prisoner] recipient wishes.

(3) Within 24 hours of the removal of an item, the Board and the intended [prisoner] recipient shall be sent written notification of this action. This written notice shall include:

- (i) the name and address of the sender;
- (ii) the item removed;
- (iii) the reasons for removal;
- (iv) the choice provided by paragraph (2) of this subdivision; and
- (v) the appeal procedure.

(4) After removal of an item, the incoming correspondence shall be forwarded to the intended [prisoner] recipient.

(g) *Appeal*. Any person affected by the determination to remove an item from [prisoner] correspondence may appeal such determination to the Board.

(1) The person affected by the determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(2) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(3) The Board or its designee shall issue a written decision upon the appeal within 14 business days after receiving notice of the requested review.

§ 9. Title 40 of the Rules of the City of New York is amended by adding a new Chapter 6 to read as follows:

Chapter 6: Restrictive Housing in Correctional Facilities

Subchapter A: Core Principles

§ 6-01 Purpose.

(a) These Chapter 6 rules are based upon and promote the following core principles:

(1) Protection of the safety of people in custody and the staff who work in facilities by:

(i) Ensuring that all people in custody and all staff who work in facilities are treated with dignity and respect;

(ii) Prohibiting restrictions that dehumanize or demean people in custody;

§ 6-02 General Definitions.

For the purposes of this Chapter, the following terms have the following meanings:

- (a) “Board” means the New York City Board of Correction.
- (b) “CHA” means the Correctional Health Authority designated by the City of New York as the agency responsible for health and mental health services for people in the care and custody of the Department.
- (c) “Department” means the New York City Department of Correction.
- (d) “Facility” means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) used by the Department for confinement of individuals.
- (e) “Health staff” means a medical health or mental health professional employed by CHA who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice.
- (f) “Nunez Agreement” means the Consent Judgment in *Nunez v. City of New York*, 11 Civ. 05845 (SDNY).
- (g) “Person in custody” means any person confined in a facility.
- (h) “Security staff” means Department employees primarily responsible for the supervision and control of people in custody in housing units, recreational areas, dining areas, and other program areas of the facility.

§ 6-03 Definition of Restrictive Housing and Related Terms.

- (a) For the purposes of this Chapter, “restrictive housing” includes housing units or housing levels within such units where:
 - (1) People in custody are held separately from people housed in the general population; and
 - (2) All people housed in the restrictive housing unit or a housing level within such unit are subject to one or more of the following restrictions:
 - (i) Out-of-cell time is less than the fourteen (14) hours a day offered to people housed in the general population.

- (ii) 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.
 - (iii) A person is permitted to congregate with only one or two other people in the unit.
 - (iv) Fewer privileges are afforded to people in the unit or in a housing level within the unit, pursuant to DOC policy, than are afforded to people housed in the general population.
- (b) For the purposes of this Chapter, the following terms related to restrictive housing have the following meanings:
- (1) “Disciplinary hearing” means a hearing on an infraction with which a person in custody has been charged.
 - (2) “Disciplinary housing” means punitive segregation and any other housing used to segregate people in custody from the general population pursuant to a disciplinary sanction imposed after a hearing.
 - (3) “General population” or “general population housing” means all housing units in facilities where people are housed other than segregated units.
 - (4) “Grade I violent offense” means an offense for which a person in custody may be sentenced to PSEG I after being found guilty of such offense at a hearing.
 - (5) “Grade I non-violent offense” means an offense for which a person in custody may be sentenced to PSEG II after being found guilty of such offense at a hearing.
 - (6) “Grade II offense” means an offense for which a person in custody may be sentenced to PSEG II, but not to PSEG I, after being found guilty of such offense at a hearing.
 - (7) “Grade III offense” means an offense for which a person may not be sentenced to PSEG I or PSEG II.
 - (8) “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.
 - (9) “Housing area” or “housing unit” means facility housing, including common areas, used to house people in custody.
 - (10) “Infraction” means a violation of Department rules.

- (11) “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.
- (12) “Mandated services” means services mandated under the Board’s Minimum Standards.
- (13) “Placement review hearing” means a hearing on the appropriateness of placing a person in custody into restrictive housing other than disciplinary housing or into a restrictive status.
- (14) “Pre-hearing detention” means the placement of a person in custody in PSEG I pending the investigation or adjudication of the person’s disciplinary infraction.
- (15) “PSEG I” means the placement of a person in custody separate and apart from the general population pursuant to a disciplinary sanction for a Grade I violent offense imposed after a hearing. This housing, which is sometimes referred to as the “Central Punitive Segregation Unit” (CPSU), includes the currently existing Restrictive Housing Unit (RHU).
- (16) “PSEG II” means the placement of a person in custody separate and apart from the general population pursuant to a disciplinary sanction for a Grade I non-violent offense or Grade II offense imposed after a disciplinary hearing.
- (17) “Punitive segregation” means the placement of a person in custody separate and apart from the general population pursuant to a disciplinary sanction imposed after a disciplinary hearing.
- (18) “Restraints” mean any of the following devices: handcuffs, flex cuffs, waist restraint system (consists of a belt or chain around the waist to which the person in custody’s hands may be chained or handcuffed); leg restraints (shackles) (applied on the ankle area of a person in custody); handcuff safety cover (protective device that covers the locking mechanism of handcuffs to prevent tampering); protective mittens (protective tube-like mittens which cover the hands and is secured with handcuffs); gurney (wheeled stretcher); four-point restraints (type of restraint where both arms and legs are secured); five-point restraints (four-point restraint plus the application of an additional restraint across the chest); and restraint desks (school-type desk surface and chair with ankle restraints).
- (19) “Restrictive Housing Unit” or “RHU” means PSEG I for certain people with mental health needs, but not serious mental illness.

- (20) “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.
- (21) “Structurally restrictive housing,” pursuant to 40 RCNY § 6-18 through § 6-24, means a housing unit the physical design of which permits people in custody to congregate with only one or two other people in custody housed in the unit. This housing includes, for example, structurally restrictive housing units currently or previously in existence at Manhattan Detention Complex (MDC), North Infirmery Command (NIC), and West Facility.
- (22) “Therapeutic housing” are housing units where entry and discharge are determined by CHA according to clinical criteria and includes, but is not limited to, mental health housing such as Mental Observation units, Program for Accelerating Clinical Effectiveness (PACE) units, and Clinical Alternatives to Punitive Segregation (CAPS) units, and medical housing such as North Infirmery Command (NIC) and Communicable Diseases Unit (CDU).
- (23) “Transitional/administrative housing,” pursuant to 40 RCNY § 6-10 through § 6-17, means the placement of a person in custody separate and apart from the general population for non-disciplinary reasons after a placement review hearing. This housing includes the following housing units currently in existence:
- (i) Enhanced Supervision Housing (ESH) for adults and young adults.
 - (ii) Secure Unit for young adults.
 - (iii) Transitional Restorative Unit (TRU) for young adults.
 - (iv) Second Chance Housing Unit for young adults (Second Chance).
- (24) “Young adults” mean people in custody ages eighteen (18) through twenty-one (21).

Subchapter C: Immediate Placement Responses to Violence

§ 6-04 Pre-Hearing Detention.

- (a) The Department may place a person in custody in pre-hearing detention 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; and

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

(i) Protect the safety of any person, including staff or other people in custody, prior to the person's infraction 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.

(b) A person in custody who qualifies for and is placed in pre-hearing detention shall be afforded a disciplinary hearing no later than seven (7) business days after the person's placement in pre-hearing detention, and the person's time spent in such detention prior to the hearing shall count toward the person's punitive segregation sentence.

(c) If an infraction hearing is not held within seven (7) business days, the person in custody must be released from pre-hearing detention.

(d) A person in custody may be released from pre-hearing detention if the Department determines that the person's retention in pre-hearing detention is not necessary for the safety or security of that person or others, including staff and other people in custody.

(e) The Department shall provide the Board with a semiannual report with information related to its use of prehearing detention including but not limited to: (1) the number of people placed in prehearing detention, (2) their placement charges, (3) time from placement to hearing, (4) whether people placed in pre-hearing detention were adjudicated for continued placement in PSEG 1 or RHU, and (5) any other information the Department or the Board deems relevant to the Board's assessment of pre-hearing detention.

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

§ 6-05 Confinement for De-Escalation Purposes.

(a) The Department may confine people in custody for de-escalation purposes to:

(1) De-escalate a person's behavior that poses an immediate threat to the safety of the person or others or significantly disrupts Department activities in progress. This may be done to aid the person in calming the person's own behavior and only after other less restrictive measures have been exhausted, are inappropriate, or have been or are likely to be ineffective.

(2) Temporarily house a person in custody for the person's own safety after the person has been assaulted or otherwise victimized by another person in custody.

- (3) Facilitate the decontamination of people in custody following exposure to chemical spray.
- (b) The Department shall ensure the immediate written notification to 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) 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.
- (d) De-escalation confinement in an individual cell must have the features specified in, and be maintained in, accordance with 40 RCNY § 1-03 and § 1-04.
- (e) Meals and snacks must be served 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.
- (f) Subject to the following time limitations, confinement for de-escalation purposes shall be employed for the minimum amount of time required for assessment of the person in custody and determination of the person's subsequent placement:
- (1) A person in custody's initial placement in de-escalation confinement shall be no more than four (4) hours. Each such placement shall be documented in a form designed for this purpose, which shall specify the reasons for the placement.
- (2) Reauthorization based upon written approval up the Department's security chain of command is required every four (4) hours for a maximum of twelve (12) hours. The approval for each four-hour authorization shall specify the reasons therefor, including what attempts were made by the Department to transfer the person in custody out of the de-escalation area after each four-hour period.
- (3) A person in custody's placement in de-escalation confinement shall not exceed twelve (12) hours from the time the person is placed in such confinement.
- (4) The Department shall notify the Board, in writing, of all instances where a person in custody's placement in de-escalation confinement exceeds the 12-hour maximum and the reasons why the person has not been placed elsewhere. The Department shall include in this notification the information specified in 40 RCNY § 6-05(a)(1) through (3). Such notification shall be made as soon as possible after expiration of the twelve (12) hours.

(5) For the purposes of compliance with the time limitations in this section, the length of a person in custody's de-escalation confinement includes the time the person spends:

(i) In the de-escalation area in which the person is initially placed; and

(ii) In other de-escalation areas or cells to which the Department moves a person during the same confinement period.

(g) The Department shall conduct visual and aural observation of people in de-escalation confinement every thirty (30) minutes.

(h) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the Department shall consider installing individual cells for de-escalation purposes in intake areas or elsewhere in the facility.

(i) The Department shall create and regularly update as necessary a list of the specific housing or intake 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 to these designations are made.

(j) For all de-escalation placements exceeding twelve (12) hours, the Department shall provide the Board with documentation supporting initial placement, each four-hour authorization of the continued placement, and the reason placement has continued beyond twelve (12) hours.

(k) The Department shall provide the Board with a quarterly report with information related to its use of de-escalation confinement, including but not limited to the number of placements in de-escalation confinement; number whose placement lasted more than four (4) hours, and the number whose placement lasted more than twelve (12) hours, and 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. Information shall be tracked at the individual level, and reported in total and by facility.

(l) The Board and the Department shall jointly develop the reporting templates for the report required by 40 RCNY § 6-05(k).

§ 6-06 Emergency Lock-Ins.

(a) Emergency lock-ins shall be in effect for no longer than necessary to allow staff to investigate or avoid a serious incident, conduct searches, or restore order or safety.

- (b) As soon as an emergency lock-in occurs, or is extended beyond a regularly scheduled lock-in period, the Department shall notify the Board and CHA, in writing, as to the facilities and specific housing area locations and number of people impacted. Notification may be accomplished via the Department's Incident Reporting System or similar system in place for real-time, operational reporting.
- (c) When emergency lock-ins require the cancellation or delay of visits, the Department shall notify the public on its website or by other means as to the facilities where visits are affected.
- (d) The Department shall electronically document the 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).
- (e) 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).
- (f) In all housing areas where lock-ins have continued for more than ten (10) consecutive hours, CHA staff shall complete medical and mental health rounds.
- (g) 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.
- (h) The Department shall track and record the specific staff activities necessary to address emergency lock-ins and when each activity was accomplished. The Department shall further document the number and type of staff required to conduct each activity, and the number and type of staff removed or re-deployed from other units or assignments to conduct those activities.
- (i) For the following services, the Department shall track and record 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) Medical or Mental health rounds
 - (11) Programming
- (j) If services were delayed or not affected, the Department shall track and report the time each service was afforded for each housing area impacted by the emergency lock-in.
- (k) The Department shall provide the Board with direct access to all documentation related to emergency lock-ins and lock-in extensions.
- (l) The Department and CHA shall issue a written directive to staff regarding the requirements of this section and provide the directive to the Board for its review and feedback prior to finalization. The directive shall include protocols for communication and coordination between DOC and CHA during and after emergency lock-ins. Such protocols shall be designed to facilitate the triage of necessary care by CHA and minimize disruptions to patient care and the rescheduling medical/mental health appointments.
- (m) 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:
- (1) Number of emergency lock-ins and lock-in extensions reported to CHA by DOC, 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 medical rounds missed, in total and disaggregated by facility and restrictive housing units affected (e.g., PSEG I, RHU, PSEG II, ESH, Secure, TRU, Second Chance, structurally restrictive housing, de-escalation areas);
 - (6) Number of required mental health rounds missed, in total and disaggregated by facility and restrictive housing units affected (e.g., PSEG I, RHU, PSEG II, ESH, Secure, TRU, Second Chance, structurally restrictive housing, de-escalation areas);
 - (7) Number of patients requesting sick call but not afforded sick call when requested, in total and disaggregated by facility;
 - (8) Number of patients whose medication services were missed or delayed as a result of an emergency lock-in, in total and disaggregated by facility; and
 - (9) Number of rounds conducted in housing areas with more than ten (10) hours of non-scheduled continuous lock-in, in total and disaggregated by facility.

(n) The Board shall provide CHA with reporting templates for the report required by 40 RCNY § 6-06(m).

(o) 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.

Subchapter D: Disciplinary Housing

§ 6-07 Disciplinary Housing for Adults.

(a) PSEG I

(1) Exclusions

(i) The following categories of people in custody shall be excluded from PSEG I:

(A) People under the age of 22;

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

(C) People diagnosed with an intellectual disability;

(D) People with serious medical conditions;

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

(F) People ages fifty-five (55) and older;

(G) People found guilty of only Grade I non-violent, Grade II, and/or Grade III infractions.

(ii) CHA shall determine if a person in custody meets one or more of the above criteria that constitute exclusion from PSEG I in 40 RCNY § 6-07(a)(1)(i)(B) through (E).

(iii) CHA has the authority to determine if any person, after being placed in PSEG I by the Department should be removed to a therapeutic housing unit because the person meets a criterion in 40 RCNY § 6-07(a)(1)(i)(B) through (E) or the housing is medically contraindicated.

(iv) All individuals placed in PSEG I shall be observed without interruption for their first twenty-four (24) hours in placement by individual security staff dedicated for this purpose. Such one-on-one observations shall be documented in writing.

(v) People excluded from PSEG I at the time of an infraction due to age or health status shall not be placed in PSEG I for the same infraction at a later date, regardless of whether their age or health status has changed.

(2) Placement Criteria

Subject to the exclusions in 40 RCNY § 6-07(a)(1)(i)(A) through (G), and in accordance with the procedural due process protections specified in 40 RCNY § 6-30 and § 6-32, the Department may sentence a person in custody to PSEG I only upon a finding that the person is guilty of having committed a Grade I violent offense.

(3) Time Limitations

(i) Except where a person in custody has committed a serious assault on staff as described in 40 RCNY § 6-07(a)(3)(viii), no person in custody may be sentenced to PSEG I for more than fifteen (15) consecutive days for any single infraction.

(ii) Except where a person in custody is serving a PSEG I sentence for a serious assault on staff as described in 40 RCNY § 6-07(a)(3)(viii), in no event may a person be held in PSEG I longer than fifteen (15) consecutive days.

(iii) Except where a person in custody is serving a PSEG I sentence for a serious assault on staff as described in 40 RCNY § 6-07(a)(3)(viii), and subject to the exception in 40 RCNY § 6-07(a)(3)(iv), a person who has served fifteen (15) consecutive days in PSEG I shall be released from PSEG I for at least seven (7) days before that person may returned to PSEG I.

(iv) The Department, in highly exceptional circumstances presenting safety and security concerns, may waive the requirement that people in custody be immediately released from PSEG I for seven (7) days after they have been held in PSEG I for fifteen (15) consecutive days.

(v) The Chief of Department shall approve such waivers (“7-day waivers”) in writing. Such approval must specify:

(A) The Chief’s reason for granting or denying the request;

(B) What other housing options were considered; and

(C) Why each such option was not a safe option.

- (vi) Immediately after the Chief's decision is made on a 7-day waiver request, the Department shall send the Board the request and the Chief's decision.
- (vii) An incarcerated person may not be held in PSEG I for more than a total of sixty (60) days within any six (6)-month period, unless upon completion of or throughout the sixty (60)-day period, the person has continued to engage in persistent, serious acts of violence other than self-harm, such that any placement other than PSEG I would endanger other people in custody or staff.
- (A) In such instances, the Department shall not be required to release the incarcerated person from PSEG I after sixty (60) days have elapsed.
- (B) The Chief of Department must approve such extensions of PSEG I placement in writing and state the reasons why placement in a less restrictive setting has been deemed inappropriate or unavailable, and why retaining the person in custody in PSEG I is necessary to ensure the safety of staff or other people in custody.
- (C) The Department must immediately provide the Board and CHA with a copy of the Chief of Department's written approval of each such extension.
- (viii) People in custody who are sentenced to PSEG I for an assault on staff that causes staff to suffer one or more serious injuries, as listed under the Department's definition of "A" Use of Force Incidents, may receive a PSEG I sentence of up to sixty (60) days for that single infraction.
- (A) The Chief of Department or a designee must approve or disapprove in writing any PSEG I sentence for a serious assault on staff that exceeds fifteen (15) days. The written approval or disapproval shall be sent immediately to the person in custody, the Board, and CHA.
- (B) While a person in custody is serving a PSEG I sentence for a serious assault on staff that exceeds fifteen consecutive (15) days, the Department shall not be required to release the person from PSEG I after fifteen (15) consecutive days.
- (C) People serving a PSEG I sentence for a serious assault on staff that exceeds fifteen (15) consecutive days shall earn one (1) day off their sentence for every two (2) days without a violent incident.
- (ix) No person in custody shall be assigned to or held in PSEG I for any time from a separate and previous incarceration for which such person was sentenced but did not serve in PSEG I.

- (x) The Department shall provide the Board with the Department's penalty grid for PSEG I, and submit to the Board, in writing, any changes to the grid at least one (1) month before implementation of any such changes.

(4) Out-of-Cell Time

- (i) Each person in custody confined to PSEG I as punishment for a Grade I violent offense must be allowed at least four (4) out-of-cell hours per day ("out-of-cell requirement"), unless the Chief of Department or a designee determines that doing so would cause a threat to the safety or security of the facility, or the safety, security, or health of staff, the person, or other people in custody, and that less restrictive measures would not adequately alleviate such threat.

- (ii) The Chief of Department or a designee must approve, in writing, all exceptions to the out-of-cell requirement in 40 RCNY § 6-07(a)(5)(i), and state:

(A) The specific facts and reasons underlying the determination; and

(B) Why less restrictive measures are not adequate to alleviate the threat.

- (iii) Any determination made pursuant to 40 RCNY § 6-07(a)(5)(i) or § 6-07(a)(5)(ii) shall be reviewed by the Chief of Department or a designee every seven (7) days to determine whether the person in custody could safely be permitted four (4) hours of daily out-of-cell time while in PSEG I. The decision and the reason supporting it shall be stated in writing and immediately sent to the person in custody, the Board, and CHA.

- (iv) For people who have been held in PSEG I longer than fifteen (15) consecutive days or more than sixty (60) days within a six (6) month period, the Department shall offer, during out-of-cell time in PSEG I, evidence-based programming aimed at addressing the root causes of the behavior that led to the person's extended stay in PSEG I.

(b) PSEG II

(1) Exclusions

- (i) The following categories of people in custody shall be excluded from PSEG II:

(A) People under the age of 22;

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

(C) People diagnosed with an intellectual disability;

(D) People with serious medical conditions.

(ii) CHA shall determine if a person in custody meets one or more of the above criteria that constitute an exclusion from PSEG II in 40 RCNY § 6-07(b)(1)(i)(B) through (D).

(iii) CHA has the authority to determine if any person, after being placed in PSEG II by the Department, should be removed to a therapeutic housing unit.

(iv) All individuals placed in PSEG II shall be observed without interruption for their first 24 hours in the unit by individual security staff dedicated for this purpose. Such one-on-one observations shall be documented in writing.

(v) People excluded from PSEG II at the time of infraction due to age or health status shall not be placed in PSEG II for the same infraction at a later date, regardless of whether their age or health status has changed.

(2) Placement Criteria

Subject to the exclusions in 40 RCNY § 6-07(b)(1)(i)(A) through (D), and in accordance with the procedural due process protections specified in 40 RCNY § 6-30 and § 6-32, the Department may sentence a person in custody to PSEG II only upon a finding that the person is guilty of having committed a Grade I non-violent offense or a Grade II offense.

(3) Time Limitations

(i) The Department shall provide the Board with the Department's penalty grid for PSEG II and submit to the Board, in writing, any changes to the grid one (1) month before implementation of any such changes.

(ii) The Department shall provide the Board with the Department's penalty grid for Grade III offenses and submit to the Board, in writing, any changes to the grid one (1) month before implementation of any such changes.

(4) Out-of-Cell Time

People in custody confined to PSEG II as punishment for Grade I non-violent offenses or Grade II offenses must be permitted at least seven (7) out-of-cell hours per day.

(c) Fines

The Department shall not automatically assign a monetary fine to all guilty infractions. The Department shall only include a financial penalty as an option for restitution for destruction of property. Any imposition of a fine shall take into account the person's ability to pay.

§ 6-08 Data Collection and Review.

- (a) The Department shall maintain and update as necessary a list of the type and specific location of all Disciplinary 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 Disciplinary Housing units open, close, or change type.
- (b) The Department shall provide the Board with a quarterly report with information related to 40 RCNY § 6-07, including but not limited to the following information for each type of disciplinary housing (e.g., PSEG I, RHU, PSEG II) and CAPS:
- (1) The average daily population, the total number of people placed during the reporting period and the number of people currently housed as of the last day of the reporting period, and the number and percent of people placed by age, race, ethnicity, gender, and "M" designation status at time of placement;
 - (2) Number of cases during the reporting period with a sentence to disciplinary housing by offense type (Rule Violation Grade Level, Disciplinary Housing Type, Rule Number, Rule Description) and length of sentences; time from adjudication to placement for all placements in the reporting period.
 - (3) Number and percent of requests for a sentence exceeding fifteen (15) days for a serious assault on staff, by whether the request was approved; number of 7 Day Waivers requested during the reporting period by whether the waivers were approved; number of people with one or more prior 7-day waiver approvals; number of 60-day override requests by whether the request was approved; number of people with one or more prior 60-day override approvals; total days in PSEG I or RHU, and total consecutive days in PSEG I or RHU at time of exception approval, disaggregated by type of exception (i.e., greater than 15-day sentence for assault on staff, 7-day waiver, 60-day override); and number of requests for exemptions of out of cell time in PSEG I by whether the request was approved.
 - (4) Number of exits from disciplinary housing during the reporting period by cumulative and consecutive time in disciplinary housing and CAPS during current incarceration; number of people in disciplinary housing as of the last day of the reporting period and their cumulative and consecutive days in disciplinary housing and CAPS.
 - (5) Total number of unique individuals precluded from placement in disciplinary housing due to contraindications (e.g., serious medical illness, serious medical condition) by alternate housing placement.
 - (6) Average number of out-of-cell hours received per day; average rate of participation in daily recreation; programming and behavioral therapy offered, if any.

- (c) The Department shall provide the Board with quarterly snapshot reports for each type of disciplinary housing (e.g., PSEG I, RHU, PSEG II). The Department shall sample at least four (4) days per month as the snapshot period for the report. The reports shall include information on the following for each individual housed in the units: time spent out of cell; access to law library; access to showers; participation in recreation; and time spent participating in programming. The reports shall further contain the number, length of, and reasons for late lockouts in units reported on; updates on the status of implementing prior recommendations and corrective action(s) related to the subject of the report, if any. Information gathering to prepare this report shall not be conducted by staff regularly assigned to the facilities or units. The dates selected for report preparation shall be selected at random and shall not be previously disclosed to staff with responsibilities related to the units reported on.
- (d) The Board and the Department shall jointly develop the reporting templates for the reports required by 40 RCNY §§ 6-08(b) and (c).
- (e) The disciplinary housing reporting provisions outlined in 40 RCNY § 6-08 shall be reviewed and revised as necessary upon submission and review of the Department's disciplinary system housing plan submitted pursuant to 40 RCNY § 6-09.

§ 6-09 Disciplinary System Plan for Young Adults.

- (a) The Department shall submit to the Board a written plan for a disciplinary process for young adults in custody that is consistent with these Chapter 6 Standards on restrictive housing and the requirements of the Nunez Agreement. The Department shall not be required to submit the plan to the Board until after the Nunez Independent Monitor (or court) has approved the graduated sanctions disciplinary plan for young adults. The effective date for implementation of the disciplinary plan the Department submits to the Board shall be subject to the approval of the Nunez Independent Monitor or court. The plan shall include:
- (1) Prohibited conduct;
 - (2) The penalties that may be imposed for engaging in the prohibited conduct.
 - (3) The due process procedures that must be followed to:
 - (i) Appropriately charge a person for the infraction;
 - (ii) Determine whether the person committed an infraction;
 - (iii) Impose the appropriate sanctions; and
 - (iv) Consider appeals of sanctions by people in custody.

(4) A plan for communicating the rules of conduct, penalties for violating the rules, and due process procedures in a clear and understandable manner to young adults in custody and to all Department staff, including non-uniformed staff, who have routine contact with young adults in custody.

(5) Training curricula for uniformed and non-uniformed staff on the disciplinary process and procedures.

(6) The assistance the Department shall provide people in custody to understand the disciplinary process and procedures, including their rights thereunder. This shall include the procedures the Department will follow if the person in custody is non-English or limited-English proficient, illiterate, or has a disability including, for example, if the person is deaf or hard of hearing, is blind or has low vision, or has an intellectual, psychiatric, or speech disability.

(7) A disciplinary process that includes:

(i) Engaging Department staff in the plans' development;

(ii) Progressive sanctions;

(iii) Consideration of each person in custody's previous institutional conduct history, mental health, and the direct circumstances underlying the infraction charge;

(iv) Penalties that are proportionate to the infraction charge;

(v) Behavioral incentives; and

(vi) Principles of procedural and restorative justice.

(b) The disciplinary housing reporting provisions outlined in 40 RCNY § 6-08 shall be reviewed and revised as necessary upon review of the disciplinary system plan for young adults.

Subchapter E: Transitional/Administrative Housing

§ 6-10 Exclusions.

(a) The following categories of people in custody shall be excluded from transitional/administrative housing units where individuals are locked in their cells for more than ten (10) hours per day:

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

(2) People diagnosed with an intellectual disability;

(3) People with serious medical conditions.

(b) CHA shall determine if a person in custody meets one or more of the above exclusionary criteria in 40 RCNY § 6-10(a)(1) through (3).

(c) CHA has the authority to determine if any person, after being placed in transitional/administrative housing, should be removed to a therapeutic housing unit because they meet a criteria of 40 RCNY § 6-10(a)(1) through (3) or if the housing is medically contraindicated.

(d) All people in custody placed in transitional/administrative housing units with more than ten (10) hours of daily lock-in shall be observed without interruption for their first twenty-four (24) hours in the unit by individual security staff dedicated for that purpose. Such one-on-one observations shall be documented in writing.

§ 6-11 Out-of-Cell Time.

(a) Adults in custody who are confined in transitional/administrative housing must be permitted at least seven (7) out-of-cell hours per day.

(b) Young adults in custody who are confined in transitional/administrative housing must be permitted at least ten (10) out-of-cell hours per day.

§ 6-12 Placement Criteria.

(a) Adults in Custody

(1) Subject to the exclusions in 40 RCNY § 6-10(a)(1) through (3), and in accordance with the procedural due process protections specified in 40 RCNY § 6-31 and § 6-32, an adult in custody may be confined in transitional/administrative housing only upon a determination that the person presents a significant threat to the safety and security of the facility if housed elsewhere. Such a determination must be supported by a finding that one of the following has occurred:

(i) The adult has demonstrated active involvement as an organizer or perpetrator of violent dangerous activity;

(ii) The adult has committed a slashing or stabbing, has committed repeated assaults, has seriously injured another person in custody, visitor, or employee, or has rioted or actively participated in disturbances with other people in custody while in Department custody, or otherwise incarcerated;

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

(iv) The adult has engaged in serious or persistent violence; or

(v) The adult, while in Department custody or otherwise incarcerated, has engaged in repeated activity or behavior of a gravity and degree of danger similar to the acts described in 40 RCNY § 6-12(a)(1)(i) through (iv), and such activity or behavior has a direct identifiable and adverse impact on the safety and security of the facility, such as repeated acts of arson.

(b) Young Adults with Ten (10)-Hour Daily Lockout

(1) Subject to the exclusions in 40 RCNY § 6-10(a)(1) through (3), and in accordance with the procedural due process protections specified in 40 RCNY § 6-31 and § 6-32, a young adult in custody may be confined in transitional/administrative housing with ten (10)-hour daily lockout only upon a determination that the young adult presents a significant threat to the safety and security of the facility if housed elsewhere. Such a determination must be supported only by a finding that one of the following has occurred:

(i) The young adult has participated in an assault on a person with injury;

(ii) The young adult has assaulted a person while using a weapon;

(iii) The young adult has demonstrated active involvement as an organizer or perpetrator of violent dangerous activity;

(iv) The young adult has committed a slashing or stabbing;

(v) The young adult has rioted or actively participated in disturbances with other incarcerated people while in Department custody or otherwise incarcerated; or

(vi) The young adult, while in Department custody or otherwise incarcerated, has engaged in repeated activity or behavior of a gravity and degree of danger similar to the acts described in 40 RCNY § 6-12(b)(1)(i) through (v), and such activity or behavior has a direct identifiable and adverse impact on the safety and security of the facility, such as repeated acts of arson.

(c) Young Adults with 14-Hour Daily Lockout

(1) Subject to the exclusions in 40 RCNY § 6-10(a)(1) through (3), and in accordance with the procedural due process protections specified in 40 RCNY § 6-31 and § 6-32, a young adult in custody may be confined in transitional/administrative housing with fourteen (14)-hour daily lockout only upon a determination that placement of the young adult in a less restrictive setting is not a safe option. Such a determination must be supported only by a finding that one of the following has occurred:

(i) The young adult committed an assault on staff;

(ii) The young adult engaged in assault or other behavior that resulted in an injury;

(iii) The young adult was found in possession of a weapon that has the potential to cause serious injury; or

(iv) The young adult engaged in persistent, negative and/or aggressive behavior while housed in a less restrictive housing setting.

(d) The Department, when determining placement of an adult or young adult in custody into transitional/administrative housing, may consider the person's activity occurring or actions committed at a time when the person was incarcerated only if such activity or actions occurred within the preceding year.

§ 6-13 Placement Approval.

(a) Each request for approval of a person in custody's placement into transitional/administrative housing, and each decision approving or disapproving such request must:

(1) Be in writing;

(2) Specify the reason for requesting, and approving or disapproving, a person's placement and any individual restrictions imposed on that person; and

(3) Specify why a less restrictive housing setting and placement without individual restrictions is not a safe option.

§ 6-14 Individual Behavior and Programming Plan.

(a) The Department shall develop, in writing, an individualized behavior and programming plan for each person in custody who is placed in transitional/administrative housing.

(1) The plan shall describe the expectations and services for the person while in transitional/administrative housing to facilitate the person's reintegration into housing in the general population; and

- (2) The plan's goals shall be tailored to the person's literacy, education level, and capacity to complete programming.
- (b) Within seven (7) days of a person in custody's placement in transitional/administrative housing, the Department must review the plan with the person.
- (c) The Department shall review and update each person's behavioral and programming plan with the person's participation at each periodic review.
- (d) The date of initial and subsequent reviews with the person and changes to the plan shall be documented in writing.

§ 6-15 Periodic Review of Placement.

- (a) The Department shall review the placement of people in custody confined in transitional/administrative housing every fifteen (15) days.
 - (1) At least twenty-four (24) hours prior to such periodic review, people in custody shall be notified of the pending review in writing and of the (i) right to submit a written statement for consideration, and (ii) right 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 in custody's transitional/administrative housing status shall consider the following, with conclusions recorded in a written report made available to the person within seven (7) days of the review:
 - (i) The justifications for continued placement of the person in transitional/administrative housing;
 - (ii) The continued appropriateness of each individual restriction and whether any such individual restrictions should be relaxed or lifted;
 - (iii) Information regarding the person's subsequent behavior and attitude since placement in transitional/administrative housing began, including participation in and availability of programming;
 - (iv) Any written statement the person submitted for consideration or any oral statement the person made at his or her periodic review;
 - (v) Any other factors that may favor retaining the person or releasing the person from transitional/administrative housing or any other factors that may favor the lifting of

individual restrictions or continuing to impose individual restrictions on the person;
and

- (vi) If the person's placement in transitional/administrative housing is to continue, any actions or behavioral changes that the person might undertake to further rehabilitative goals and facilitate the lifting of individual restrictions or release from such housing.
- (3) At each periodic review, the Department shall advance a person in custody to a less restrictive level of the person's current housing unit or to a less restrictive housing unit unless the Department determines that:
- (i) The person has engaged in disruptive, violent, or aggressive behavior while in the person's current level or housing unit; 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 to a less restrictive level of the person's current housing unit or to a less restrictive housing unit within twenty-four (24) hours of the person's periodic review. If the Department determines that a person in custody should be moved to a less restrictive level or unit, the person shall be moved to such level or unit within forty-eight (48) hours of such determination. If the person is not moved within forty-eight (48) hours of such determination, the Department shall notify the Board, in writing, within forty-eight (48) hours of its decision not to move the person. The notification shall include the reason the Department did not move the person to a less restrictive level or unit.

§ 6-16 Conditions, Programming, and Services.

- (a) To the extent the Department imposes individual restrictions on a person in custody confined in transitional/administrative housing that deviate from those imposed on people housed in the general population, such restrictions must be limited to those required to address the specific safety and security threat posed by that person.
- (b) To the extent the Department seeks to limit access to contact visits of a person in custody who is confined in transitional/administrative housing, a hearing shall be held, as required in 40 RCNY § 6-31(b), 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.
- (c) Law library services may be provided in transitional/administrative housing units other than in a law library. Such alternative means must ensure services are provided to people in custody who are confined in these housing units. At a minimum:

(1) There shall be one library coordinator assigned to every two (2) units of transitional/administrative housing at least five (5) times per week; and

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

§ 6-17 Data Collection and Review.

(a) The Department shall maintain and update as necessary a list of the type, level, and specific location of all Transitional/Administrative Housing units and Structurally Restrictive Housing units Subchapter F. The list shall include the opening and closing dates of all such units (and/or levels within 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 Transitional/Administrative or Structurally Restrictive Housing units open, close, or change type or level.

(b) The Department shall provide the Board with monthly, quarterly reports on each type of Transitional/Administrative and Structurally Restrictive Housing. Separate reports shall be provided for the Adult and Young Adult populations. Metrics provided in reports on Transitional/Administrative Housing shall be reported in total and disaggregated by type of housing (e.g., ESH, Secure, TRU, Second Chance) and, where applicable, by placement level.

(c) Reports shall include but not be limited to:

(1) The average daily population, the total number of people placed during the reporting period and the number of people housed as of the last day of the reporting period; number of placements by placement criteria, housing category prior to placement, the number and percent of unique individuals placed over the reporting period, in total and disaggregated by race, ethnicity, gender, and "M" designation, Security Risk Group, Red ID, and Enhanced Restraint status at time of placement.

(2) The number of periodic reviews required and conducted by outcome of review and whether the individual attended their review; number of people progressing to a less restrictive level and if progression occurred within 48 hours of recommendation and reason not progressed, number of movements to a more or less restrictive level by reason for movement if not related to a review.

(3) Number of exits during the reporting period by reason for exit; length of stay; housing assignment upon exit; and length of placement for people housed as of the last day of the reporting period:

- (4) 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;
 - (5) The name, description, and type of staff delivering each program offered; the number of sessions of each program offered and the average number of participants per session during the reporting period;
- (d) The Department shall provide the Board with quarterly snapshot reports for Adults and Young Adults housed in Transitional/Administrative Housing and Structurally Restrictive Housing units. Information collection concerning Transitional/Administrative Housing shall be by type of Transitional/Administrative Housing (e.g., ESH, Secure, TRU, Second Chance). Each information collection concerning Structurally Restrictive Housing shall be conducted and reported by location of the Structurally Restrictive Housing unit.
- (1) Reports shall include but not be limited to information on the following for each individual housed in units reviewed: time spent out of cell; access to law library; participation in recreation, time spent participating in programming, status of enrollment and time spent in education services; number, length of, and reasons for late lockouts in units; updates on the status of implementing recommendations and corrective action(s) related to the subject of the report, if any. Information collection for the report shall not be conducted by staff regularly assigned to the facilities or units. The dates selected for the snapshot of data shall be selected at random and shall not be previously disclosed to staff with responsibilities related to the units. The Department shall collect information on at least four (4) days per month in the reporting period.
- (e) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY § 6-17(c) and the public reports required by 40 RCNY § 6-17(d).

Subchapter F: Structurally Restrictive Housing.

§ 6-18 Exclusions.

- (a) The following categories of people in custody shall be excluded from structurally restrictive housing units:
 - (1) People with a mental disorder that qualifies as a serious mental illness;
 - (2) People diagnosed with an intellectual disability.
- (b) CHA shall determine if a person in custody meets one or more of the above exclusionary criteria in 40 RCNY §6-18(a).

(c) CHA has the authority to determine if any person, after being placed in a structurally restrictive housing unit by the Department, should be removed to a therapeutic housing unit.

(d) All individuals placed in structurally restrictive housing shall be observed without interruption for their first 24 hours in the unit by individual security staff dedicated for that purpose. Such one-on-one observations shall be documented in writing.

§ 6-19 Placement Criteria.

(a) Subject to the due process procedures set forth in 40 RCNY § 6-31 and § 6-32 the Department may place a person in custody into structurally restrictive housing if:

(1) The person, despite multiple housing transfers, continually engages in assaultive behavior toward other people in custody and, as a result, cannot be safely housed with more than one or two other people in custody; and

(2) The person is placed into Enhanced Restraint status.

§ 6-20 Placement Approval.

(a) A Deputy Warden or above shall authorize the placement of people in custody into structurally restrictive housing.

(b) Each authorization of a person in custody's placement into structurally restrictive housing must:

(1) Be in writing;

(2) Specify the reason for authorizing the person's placement and any individual restrictions imposed on that person; and

(3) Specify why a less restrictive housing setting and placement without individual restrictions is not a safe option.

(c) A copy of each determination made pursuant to 40 RCNY § 6-19 and § 6-20 shall be sent to the affected person in custody, the Board, and CHA within 24 hours of the determination.

§ 6-21 Individual Behavior and Programming Plan.

(a) The Department shall develop, in writing, an individualized behavior and programming plan for each person in custody who is placed in structurally restrictive housing.

- (1) The plan shall describe the expectations and services for the person while in structurally restrictive housing to facilitate the person's reintegration into housing in the general population; and
- (2) The plan's goals shall be tailored to the person's literacy, education level, and capacity to complete programming.
- (b) Within seven (7) days of a person in custody's placement in structurally restrictive housing, the Department must review the plan with the person.
- (c) The Department shall review and update each person's behavioral and programming plan with the person's participation at each periodic review.
- (d) The date of initial and subsequent reviews with the person and changes to the person's behavioral and programming plan shall be documented in writing.

§ 6-22 Periodic Review of Placement.

- (a) A Deputy Warden or above shall review the placement of people in custody confined in structurally restrictive housing every thirty (30) days.
- (b) At least twenty-four (24) hours prior to such periodic review, people in custody shall be notified of the pending review in writing and of the (i) right to submit a written statement for consideration, and (ii) right to participate in the review. People in custody who are unable to read or understand such notice shall be provided with necessary assistance.
- (c) A Deputy Warden or above shall determine whether to continue the person's placement in structurally restrictive housing or transfer the person to other housing.
- (d) Any determination to continue the person's placement in structurally restrictive housing shall be in writing and state the specific facts and reasons underlying such determination. If the decision is to continue the person's placement in structurally restrictive housing, the determination shall also state what other housing was considered and the reasons why such housing is not a safe option.
- (e) A copy of such determination shall be sent to the affected person in custody, the Board, and CHA within 24 hours of the determination.
- (f) At each periodic review, the Department shall advance a person in custody to a less restrictive level of structurally restrictive housing or to a less restrictive housing unit unless the Department that:

(1) The person has engaged in disruptive, violent, or aggressive behavior while in the person's current level or housing unit; or

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

(g) The Department shall determine whether the person shall advance to a less restrictive level of a structurally restrictive housing unit or to a less restrictive housing unit within twenty-four (24) hours of the person's periodic review. If the Department determines that a person in custody should be moved to a less restrictive level or unit, the person shall be moved to such level or unit within forty-eight (48) hours of such determination. If the person is not moved within forty-eight (48) hours of such determination, the Department shall notify the Board, in writing, within forty-eight (48) hours of its decision not to move the person. The notification shall include the reason the Department did not move the person to a less restrictive level or unit.

§ 6-23 Programming and Services.

Services may be provided to a person in custody who is confined in structurally restrictive housing in a manner other than required under the Minimum Standards so long as such alternative provision of services is sufficient to meet the intent of the Standards. This may include provision of mandated services in a non-congregate setting. Such alternative provision of services must be specified in writing, provided to the affected person and the Board and included in the person's behavior and programming plan.

§ 6-24 Data Collection and Review.

The data collection and review requirements in 40 RCNY § 6-17 shall apply to the Department's reporting on Structurally Restrictive Housing units.

Subchapter G: Access to Health Services.

§ 6-25 Daily Rounds.

CHA shall provide daily medical and mental health rounds to all people in custody in all restrictive housing units. Such rounds must be documented in writing.

§ 6-26 Notification to CHA.

The Department shall immediately notify CHA of each placement of a person in custody into restrictive housing. Such notification shall be in writing.

§ 6-27 Clinical Encounters.

Clinical encounters, with the exception of daily rounds described in 40 RCNY § 6-25, shall never occur cell-side. The Department shall ensure that every person who is placed into restrictive housing is brought to the facility clinic for all scheduled appointments.

§ 6-28 Data Collection and Review.

- (a) Each time CHA determines removal of a person from restrictive housing to a therapeutic unit is appropriate, CHA shall notify the Board in writing of the circumstances related to the determination and the reason(s) for the determination (e.g., medical concern, mental health concern, disability);
- (b) 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 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 and percent of medical rounds in restrictive housing and the number and percent of rounds resulting in referrals to other CHA services during the reporting period, in total and disaggregated by type of restrictive housing and facility;
 - (4) Number and percent of mental health rounds in restrictive housing and the number and percent of rounds resulting in referrals to other CHA services during the reporting period, in total and disaggregated by type of restrictive housing and facility;
 - (5) Number of CHA determinations of removal from restrictive housing to a therapeutic housing unit during the reporting period, in total and disaggregated by type of restrictive housing and facility; and
 - (6) Number and percent of scheduled services by service type and outcome for people housed in restrictive housing during the reporting period, in total and disaggregated by type of restrictive housing and facility.
- (c) CHA shall provide the Board with the data used to prepare the report required in 40 RCNY § 6-28(b).
- (d) The Board and CHA shall jointly develop the reporting templates for the report required by 40 RCNY § 6-28(b).

Subchapter H: Procedural Justice and Due Process

§ 6-29 Purpose.

The following minimum standards in this Subchapter H are intended to ensure that people in custody are placed into restrictive housing in accordance with due process and procedural justice principles.

§ 6-30 Disciplinary Due Process.

The following minimum standards in this section apply to people in custody who are charged with violating Department disciplinary rules and may be placed in restrictive housing if they are found guilty of violating such rules.

(a) Investigations

- (1) When the Department conducts investigations into allegations of a person in custody's violation of Department rules, it shall do so promptly, thoroughly, and objectively.
- (2) Department personnel conducting the investigation must be of the rank of Captain or above and must not have reported, participated in, or witnessed the conduct.
- (3) If the rule violation in question could lead to a subsequent criminal prosecution, the Department must inform the person interviewed that while the Department's investigation is not pursuant to a criminal proceeding, statements made by the person may be used against the person in a subsequent criminal trial. The person must also be informed of the right to remain silent, and that silence will not be used against the person.
- (4) All investigations shall be documented in written reports that include a description of the physical, testimonial, and documentary evidence as well as investigative facts and findings.
- (5) Investigations shall commence within twenty-four (24) hours after the incident.
- (6) The Department shall proceed with adjudication of charges against a person in custody upon a determination that there is reasonable cause to believe the person has committed the infraction charged.

(b) Notice of Infraction

- (1) Prior to the disciplinary hearing provided in 40 RCNY § 6-30(c), 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, details as to the time and place of the rule violations charged, and must include a description of the person's actions and behavior that gave rise to the alleged violations.
- (2) People in custody who are unable to read or understand the notice shall be provided with necessary assistance.

- (3) Notice of the infraction shall be served upon any person placed in pre-hearing detention within twenty-four (24) hours of such placement, absent extenuating circumstances.
- (4) Notice of the infraction shall be served upon a person not placed in pre-hearing detention as soon as practicable but in no event later than three (3) business days after the incident, absent extenuating circumstances.
- (5) Any member of DOC staff, except those who participated in the incident may serve the person charged with the notice of infraction. The person will be asked to sign the notice as proof of receipt. 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 shall be videotaped.
- (7) If the person is charged with a Grade I violent offense, the notice of infraction shall be transmitted, via email or fax, to the person's criminal defense counsel at the same time it is served on the person.

(c) Disciplinary Hearing

(1) Hearing Adjudicators

Infraction hearings shall be conducted by DOC staff of the rank of Captain or above. Hearing adjudicators shall not be DOC staff who initially recommended the person for adjudication or otherwise provided evidence to support the person in custody's infraction.

(2) Time of Hearing

Within three (3) business days of service of the notice of infraction on the person charged, the Department shall conduct an adjudication hearing.

(3) Due Process Violations

Prior to calling the person charged to the hearing, the Hearing Adjudicator shall review the notice of infraction to determine whether there are any due process violations that may require dismissal of the infraction.

(4) Audiotaping

All disciplinary hearings must be audiotaped.

(5) Videotaping

The refusal of a person in custody to attend his or her hearing must be videotaped 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 appear:* The person charged has the right to appear personally unless the right is waived in writing or the person refuses to attend the hearing.

(ii) *The right to make statements:* 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.

(iii) *The right to present evidence and call witnesses:* The person charged has the right to present evidence and call witnesses.

(iv) *The right to review the Department's evidence:* The person charged shall have the right to review, prior to the infraction hearing, the evidence relied upon by the Department.

(v) *The right to the assistance of a hearing facilitator:* The person charged shall be entitled to the assistance of a hearing facilitator if:

(A) The person is non-English or limited-English proficient;

(B) The person is illiterate;

(C) The person is blind or deaf, low vision, or hard of hearing;

(D) The person has otherwise been unable to obtain witnesses or material evidence.

(vi) The hearing facilitator shall assist a person charged by:

(A) Clarifying the charges;

(B) Explaining the hearing process;

(C) Interviewing witnesses;

(D) Obtaining evidence and/or written statements;

(E) Providing assistance at the hearing;

(F) Providing assistance understanding the waiver of any rights afforded under this section;

(G) Providing assistance in filing an appeal as provided in 40 RCNY § 6-32 of this Chapter.

(vii) The Hearing Adjudicator may adjourn the hearing for the person charged to receive the assistance of a hearing facilitator. If the person requests the assistance of a hearing facilitator and that request is denied by the Adjudicator, the Adjudicator shall state the reasons for denying the request in the hearing record.

(viii) *The right to an interpreter.* In addition to a hearing facilitator, a person has the right to an interpreter in the person's native language if the person does not understand or is not able to communicate in English well enough to conduct the hearing in English.

(ix) *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 § 6-32 of this Chapter.

(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 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 requests additional time to locate witnesses, obtain the assistance of a hearing facilitator, or prepare a defense.

(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.

(d) Determination

(1) Absent extenuating circumstances, the person charged shall be served with a copy of the determination within two (2) business days of the conclusion of the disciplinary hearing.

(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) The evidence relied upon by the Hearing Adjudicator in reaching such finding;

(iii) The sanction imposed, if any;

(3) A summary of each witness’s testimony, including whether the testimony was credited or rejected, with a statement of the reasons therefor.

(4) 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 for sentenced people.

(e) Disciplinary Sanctions

(1) Hearing adjudicators shall impose sanctions that are proportionate to the infraction of which a person was found guilty and fair in light of comparable penalties given other people for the same or similar misconduct.

(2) People in custody must commence serving their sentence in punitive segregation within thirty (30) days of adjudication of guilt. If the Department does not place a person into punitive segregation within this thirty (30)-day period, the Department may not place the person in punitive segregation to serve that sentence at a later time.

§ 6-31 Placement Due Process.

The following minimum standards in this section shall apply to people who are placed in transitional/administrative housing, structurally restrictive housing, and any other restrictive housing for non-disciplinary reasons (collectively, “restrictive housing”).

(a) Notice of Initial Placement

(1) Notice of a person in custody’s initial placement into restrictive housing shall be provided to the person within twenty-four (24) hours of such placement.

(2) Such notice shall be in writing and legible, and shall, at a minimum:

(i) State the grounds relied on and the facts that support the person’s placement;

(ii) Inform the person of the individual restrictions the Department intends to impose during the placement;

(iii) Notify the person of the upcoming placement review hearing; and

(iv) Inform the person of the person’s right to:

(A) Review prior to the placement review hearing, the evidence relied upon by the Department;

(B) To appear at the hearing in person;

(C) To submit a written statement for consideration;

(D) To call witnesses; and

(E) To present evidence.

(v) People who are unable to read or understand such notice shall be provided with assistance.

(vi) Any member of DOC staff, except those who participated in the recommendation or decision to place the person in restrictive housing, may serve the person with the notice of initial placement. The person will be asked to sign the notice as proof of receipt. 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 the person’s refusal to sign the notice, shall indicate their name and shield number legibly on the notice.

(b) Placement Review Hearing

(1) Hearing Adjudicators

Hearing Adjudicators shall be of the rank of Captain or above and shall not be Department staff who participated in the recommendation or decision to initially place the person in restrictive housing or to impose individual restrictions on the person.

(2) Time of Hearing

Within three (3) business days of service of the notice of initial placement and related restrictions on a person in custody, the Department shall conduct a placement review hearing to adjudicate the person's placement and the individual restrictions proposed.

(3) Audiotaping

All placement review hearings must be audiotaped.

(4) Rights of the Person in Custody

The Hearing Adjudicator shall advise the person in custody of the following rights at the hearing:

(i) *The right to appear*: The person has the right to appear personally unless the right is waived in writing or the person refuses to attend the hearing.

(ii) *The right to submit a written statement*: The person has the right to submit a written statement. In cases where the grounds relied upon for, or the facts in support of, the placement in question could lead to a subsequent criminal prosecution, the Hearing Adjudicator must inform the person, prior to the person's submission of a written statement, that while the proceeding is not a criminal one, the person's written statement 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.

(iii) *The right to present evidence and call witnesses*: The person charged has the right to present evidence and call witnesses.

(iv) *The right to review the Department's evidence*: The person in custody shall have the right to review, prior to the placement review hearing, the evidence relied upon by the Department.

(v) The right to the assistance of a hearing facilitator: The person in custody shall be entitled to the assistance of a hearing facilitator if:

(A) The person is non-English or limited-English proficient;

(B) The person is illiterate;

(C) The person is blind or deaf, low vision, or hard of hearing;

(D) The person has otherwise been unable to obtain witnesses or material evidence.

(vi) The hearing facilitator shall assist a person in custody by:

(A) Clarifying the basis for the placement determination;

(B) Explaining the hearing process;

(C) Interviewing witnesses;

(D) Obtaining evidence and/or written statements;

(E) Providing assistance at the hearing;

(F) Providing assistance understanding the waiver of any rights afforded under this section;

(G) Providing assistance in filing an appeal as provided in 40 RCNY § 6-32 of this Chapter.

(vii) The right to an interpreter. In addition to a hearing facilitator, a person in custody has the right to an interpreter in the person's native language if the person does not understand or is not able to communicate in English well enough to conduct the hearing in English.

(viii) The right to an appeal. A person in custody whose placement in restrictive housing is upheld at a hearing has the right to appeal that decision, as set forth in 40 RCNY § 6-32.

(5) The placement review hearing shall consist of the following:

(i) A review of the facts upon which the Department relies to support the placement and any individual restrictions;

- (ii) A determination of whether such facts exist and whether they support, by a preponderance of the evidence, the conclusion that:
 - (A) The person presents a current significant threat to the safety and security of the facility such that the restrictive housing placement is appropriate; and
 - (B) The placement is the least restrictive option necessary for the safety of others.
- (iii) Consideration of the time that has elapsed since the occurrence of the activity or behavior relied on by the Department to support the placement;
- (iv) A review of the individual restrictions proposed by the Department and a determination whether each such restriction is supported by evidence of the legitimate safety and security concerns related to the individual;
- (v) Consideration of any relevant evidence submitted or statements made by the person at the hearing;
- (vi) Consideration of any other evidence deemed relevant to the placement determination or imposition of individual restrictions
- (6) The person in custody shall be permitted to appear at the hearing in person, submit a written statement, call witnesses, and present evidence.

(7) Hearing Time Frame

- (i) Once the hearing has begun, the Hearing Adjudicator shall make reasonable efforts to conclude the hearing in one session.
- (ii) Notwithstanding any adjournments, hearings must be completed within five (5) days, absent extenuating circumstances or unless the person in custody waives this time frame, in writing. The Hearing Adjudicator shall document the reasons for all adjournments in the notice of hearing determination.

(c) Determination

- (1) Absent extenuating circumstances, a determination shall be served on the person in custody within two (2) business days of conclusion of the placement review hearing.
- (2) The decision whether to continue the person's placement in restrictive housing and the individual restrictions must be based upon a preponderance of the evidence submitted, including any evidence submitted by the person in custody.

(3) A copy of the Hearing Adjudicator's determination outlining the bases for such determination, including the basis for each restriction, must be served upon the person within two (2) business days of the conclusion of the hearing.

(4) If it is determined that the placement and each related restriction is supported by a preponderance of the evidence, the placement and each supported restriction may be continued. If it is determined that the placement or imposition of any individual restrictions is unsupported by a preponderance of the evidence, the placement status or unsupported individual restrictions shall be terminated immediately.

§ 6-32 Appeals.

(a) A person who is found guilty at a disciplinary hearing or whose initial placement in restrictive housing is upheld at a placement review hearing has the right to appeal such determinations. The appeal shall be in writing, shall be based on facts already in the record, and shall clearly set forth the basis for the appeal, except the person may raise any newly discovered evidence in the appeal.

(b) People in custody shall have three (3) business days from receipt of a guilty determination to file an appeal, and the Department shall render a decision within two (2) business days of receipt of the appeal.

(c) Individuals in restrictive housing shall have fifteen (15) business days to file an appeal of an adverse determination, and the Department shall render a decision within five (5) business days of receipt of the appeal.

(d) The Department shall provide prompt and adequate access to people in custody to file an appeal.

(e) A person may appeal based on the belief that there was a due process violation, insufficient evidence to support a guilty finding or initial placement finding, or because the Hearing Adjudicator was biased.

(f) The decision on appeal shall be in writing, legible, and state the reasons for granting or denying the appeal. People who are unable to read or understand the decision shall be provided with necessary assistance.

(g) Appeals shall be determined by DOC staff of the rank of Captain or above. Department staff who decide appeals shall not be:

(1) Staff who reported, witnessed, or investigated the incident underlying a guilty determination;

- (2) Staff who recommended the person's initial placement in restrictive housing other than disciplinary housing;
- (3) Staff who recommended that individual restrictions be imposed on the person;
- (4) Staff who presided as the Hearing Adjudicator at the person's disciplinary hearing or placement review hearing.

§ 6-33 Data Collection and Review.

- (a) The Department shall provide the Board with a semi-annual report on Disciplinary Due Process for the Adult and Young Adult population, including but not limited to information on:
 - (1) Notices of Infraction, including the number and percent of Infraction Notices, by Grade of Top Infraction Charge (e.g., Grade I violent, Grade I non-violent, Grade II, Grade III), by whether the person charged signed or refused to sign the Infraction Notice and whether refusal was documented on video; by whether the notice was sent to Defense Counsel of the person charged with a Grade I violent charge; and by whether the person charged requested assistance in reading or understanding their Infraction Notice and whether they were provided such assistance.
 - (2) Hearings and Hearing Determinations, including the number and percent of infractions served, by Top Infraction Charge (i.e., Grade I violent, Grade I non-violent, Grade II, Grade III) by whether a hearing occurred, and by Hearing outcome (Guilty, Not Guilty, Dismissed, e.g. due process violation).
 - (3) Rights of People Charged, including the number and percent of hearings by Top Infraction Charge Grade (i.e., Grade I violent, Grade I non-violent, Grade II, Grade III), by whether the person charged refused to attend their hearing and whether the refusal is documented on video; and by whether the person charged requested a hearing facilitator or interpreter and whether such request was granted.
 - (4) 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), by whether the individual was placed in Disciplinary Housing, 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).
 - (5) Appeals, including the number and percent of guilty determinations appealed by Top Infraction Charge Grade (i.e., Grade I violent, Grade I non-violent, Grade II, Grade III) and by outcome of appeal (e.g., determination upheld, determination reversed,

remanded to redraw charges to address due process violation, dismissed due to discharge from custody);

(b) The Department shall provide the Board with semiannual reports on the due process afforded to people placed in Transitional/Administrative Housing (e.g., ESH, Secure, TRU, Second Chance) and Structurally Restrictive Housing ("SR) for the Adult and Young Adult population, including but not be limited to information regarding:

- (1) Notice of Placement, including time from reason justifying placement to placement date, by type of restrictive housing (e.g., ESH, Secure, TRU, Second Chance, SR);
- (2) Rights of the Person in Custody, including the number and percent of hearings by type of restrictive housing (e.g., ESH, Secure, TRU, Second Chance, SR), and by whether placed person placed attended or refused to attend the hearing; and by whether the person requested a hearing facilitator or interpreter and by whether such request was granted.
- (3) Placement Determinations, including the number and percent of placement hearing by type of restrictive housing (e.g., ESH, Secure, TRU, Second Chance, SR) and by outcome of hearing.
- (4) Appeals, including the number and percent of placement determinations appealed, in total and disaggregated by type of restrictive housing (e.g., ESH, Secure, TRU, Second Chance, SR) and by outcome of appeal.

(c) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY § 6-33(a) and (b).

Subchapter I: Staffing and Training

§ 6-34 Staffing.

(a) Steady Posts

- (1) At least fifty (50) percent of security staff assigned to a restrictive housing unit shall be assigned to steady posts within a specific unit of housing to the extent feasible given leave schedules and personnel changes.
- (2) The Department shall retain records sufficient to show accurate, uniform data on the security staff transferring in and out of 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.

(b) Staffing Plans

(1) The Department shall provide the Board with the Department's staffing plans developed for each type of restrictive housing and regularly update the Board on any material changes to such plans.

§ 6-35 Training.

(a) Security staff assigned to restrictive housing units shall receive forty (40) hours of special training designed to address the unique characteristics 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.

(b) The Department shall provide hearing adjudicators and other staff involved in sentencing and placement decisions training on procedural and restorative justice principles and written policies to guide sentencing and placement decisions.

(c) On at least an annual basis, the Department shall provide the Board with information related to the training to be provided in accordance with 40 RCNY § 6-35 including, but not limited to the length of each type of training required by the Department, training schedules, and curricula.

Subchapter J: Restraints and Canines

§ 6-36 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.

(b) Restraints shall be imposed only 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 imposed only for the time required, and shall be removed as soon as possible after the risks posed by unrestricted movement are no longer present.
- (e) As of March 1, 2022, the Department shall eliminate non-individualized use of restraint desks or other restraints 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 this rule until February 28, 2022, the Department shall not subject any person or group of people to the use of restraint desks or other forms of restraint during lockout periods, unless the person has 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 (e.g., those housed in the enhanced supervision housing unit). 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 this rule to February 28, 2022, at which point the non-individualized use of restraint desks or other restraints shall cease, the Department shall review the placement of people in custody in non-individualized restraint during lockout every seven (7) days.
- (h) At least twenty-four (24) hours prior to such periodic review, people in custody shall be notified of the pending review in writing and of the (i) right to submit a written statement for consideration, and (ii) right to participate in the review. People in custody who are unable to read or understand such notice shall be provided with necessary assistance.
- (i) 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:
 - (1) The justifications for continued placement of the person non-individualized restraint during lockout;
 - (2) The continued appropriateness of the person in a restraint desk or other form of non-individualized restraint during lockout;
 - (3) Information regarding the person's subsequent behavior and attitude since placement of the person in non-individualized restraint during lockout;

- (4) Any written statement the person submitted for consideration or any oral statement the person made at his or her periodic review;
 - (5) Any other factors that may favor retaining the person or removing the person from non-individualized restraint during lockout; and
 - (6) If the person's placement in non-individualized restraint during lockout is to continue, any actions or behavioral changes that the person might undertake to further rehabilitative goals and facilitate the lifting of the placement in non-individualized restraint during lockout.
- (j) At each periodic review, a person in custody shall advance out of the non-individualized use of restraints during lockout unless:
- a. The person has engaged in disruptive, violent, or aggressive behavior in the previous seven (7) days; or
 - b. There is credible intelligence that the person may engage in violence in a less restrictive level or housing unit.
- (k) 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 lockout, the person shall be moved out of restraint desks or other form of non-individualized restraint during lockout within forty-eight (48) hours of such determination. If the person is not moved out of restraint desks or other form of non-individualized restraint during lockout 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.
- (l) 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.
- (m) 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.

- (n) Limitations on the use of restraints with respect to people in custody who are in labor, admitted to a hospital, institution, or clinic for delivery, or recovering after giving birth shall be governed by NY Correction Law § 611.
- (o) Unless there are articulable and reasonable safety or security risks that dictate otherwise, security staff shall not use handcuffs or leg restraints on people who are paraplegic, quadriplegic, or near death.
- (p) A person in a wheelchair or a visually impaired person may be handcuffed only in front.
- (q) People who are deaf, hearing impaired, or have impaired speech and communicate with hand gestures may be restrained under controlled conditions, and when it is determined safe to do so, in a manner that allows for communication without jeopardizing safety.
- (r) Four- and five-point restraints shall not be used other than pursuant to 40 RCNY § 2-06.
- (s) The Department shall provide the Board with a semiannual 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):
 - (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 people currently classified in the restrictive status as of the last date of the reporting period;
 - (4) Number and percent of periodic reviews conducted by outcome of review (i.e., continued or removed);
 - (5) Number and percent of appeals of placement into restrictive statuses by outcome of appeal;
- (t) The Board and the Department shall jointly develop reporting templates for the report required by 40 RCNY § 6-36(s).

§ 6-37 Canines.

- (a) The Department may use canines inside the secure perimeter of a facility only for searches.

(b) Canines may never be used to extract people in custody from their cells or otherwise as a use of force.

(c) Canines may never be used to harass, threaten or otherwise control people in custody.

Subchapter K: Implementation of Restrictive Housing

§ 6-38 Existing Restrictive Housing.

All DOC and CHA policies developed or updated to facilitate compliance with these Chapter 6 Standards shall be shared with the Board for its review and feedback prior to finalization.

§ 6-39 New Restrictive Housing.

(a) At least two (2) months prior to the Department's implementation of new restrictive housing, the Department shall provide the Board with a written, comprehensive implementation plan that shall include:

(1) A detailed description of such housing, including the housing's purpose and goals, placement criteria, restrictions, physical structure, staffing plans, and anticipated programmatic components;

(2) Written policies to be developed to implement the new housing;

(3) Reporting templates and steps taken to ensure compliance with the Board's existing restrictive housing reporting requirements;

(4) Prescribed date for submission of documents, information, and reporting templates referenced in the implementation plan to the Board;

(5) Prescribed time for the Board to review the written policies, and reporting templates related to the plan;

(6) Post-implementation impact and evaluation report;

(b) The Department shall not implement any new restrictive housing until the Board has had an opportunity to review the plan for such housing and discuss it with the Department.

(c) At least one (1) month prior to implementation, the Department shall provide the Board with any new or updated written policies and reporting templates associated with implementation of new restrictive housing for the Board's review and feedback.

Subchapter L: Variances

§ 6-40 Variances.

The Department or CHA may apply for a variance from a specific subdivision or section of these Chapter 6 rules in accordance with the procedures and criteria set forth in 40 RCNY § 1-15.

Effective Date.

The standards in section 1 of this Rule shall take effect February 24, 2020.

Implementation Dates.

The policies, procedures, criteria, programs, plans, reports and forms required by the various sections of these rules shall be developed, approved and implemented by the dates specified or within the time periods stated below. Unless otherwise stated below, all time periods are computed from the effective date of these rules.

<u>SECTION</u>	<u>IMPLEMENTATION</u>
<u>§ 6-04: Pre-Hearing Detention</u> <u>(e) (Semiannual report on Prehearing Detention)</u>	<u>Within 6 months of Effective Date</u>
<u>§ 6-05: De-escalation Confinement</u> <u>(f) (time in de-escalation (4 hours), re-authorization, notice to the Board if confinement exceeds 12 hours)</u> <u>(g) (visual and aural observation of people in de-escalation confinement every 30 minutes)</u> <u>(n) (Quarterly report on De-escalation)</u>	<u>Within 9 months of Effective Date</u> <u>Within 3 months of Effective Date</u> <u>Within 1 year of Effective Date</u>
<u>§ 6-06: Emergency Lock-Ins</u> <u>(d) (documentation of reasons for and objectives to be accomplished during emergency lock-ins)</u> <u>(f) (CHS medical and mental health rounding in housing areas where emergency lock-ins have been in effect for more than 10 hours)</u> <u>(h) (tracking re staff necessary to effectuate lock-ins and staff activities accomplished during lock-ins)</u> <u>(i) and (j) (tracking of services impacted by emergency lock-ins)</u> <u>(m) (DOC an CHS Directives regarding compliance with the requirements of this Subchapter)</u> <u>(e) (CHS Quarterly report re: emergency lock-ins)</u> <u>(g) (DOC data reporting on Emergency lock-ins)</u>	<u>Within 1 year of Effective Date</u> <u>Within 9 months of Effective Date</u> <u>Within 1 year of Effective Date</u>
<u>§6-07: Disciplinary Housing for Adults</u>	

<u>SECTION</u>	<u>IMPLEMENTATION</u>
<p><u>(a)(1)(iv) (one-on-one observation during first 24 hours of placement in PSEG I)</u></p> <p><u>(a)(3)(i) and (a)(3)(ii) (limit of 15 consecutive day sentence for single infraction and time in PSEG I)</u></p> <p><u>(a)(3)(viii) (limit of 60 days for assault of staff infractions, with ability to earn reduction of sentence—one day off sentence for every two without a violent incident)</u></p> <p><u>(a)(4) (elimination of automatic fine for guilty infractions)</u></p> <p><u>(a)(5)(iv) (programming aimed at addressing the root causes of behavior for people who have been held in PSEG 1 longer than 15 consecutive days or more than 60 days within a six-month period)</u></p> <p><u>(b)(1)(iv) (one-on-one observation during first 24 hours of placement in PSEG II)</u></p>	<p><u>Within 9 months of Effective Date</u></p> <p><u>Within 6 months of Effective Date</u></p> <p><u>Within 9 months of Effective Date</u></p>
<p><u>§ 6-08: Data Collection and Review re Disciplinary Housing for Adults</u></p> <p><u>(b) and (c) (Quarterly data reports)</u></p>	<p><u>Within 1 year of Effective Date, with § 1-17 (h) (Reports on Punitive Segregation) remaining in effect until 1 year from the Effective Date</u></p>
<p><u>§ 6-09: Disciplinary System Plan for Young Adults</u></p>	<p><u>Pending Nunez Monitor approval</u></p>
<p><u>§ 6-10: Exclusions from Transitional/Administrative (“T/A”) Housing</u></p> <p><u>(d) (one-on-one observation during first 24 hours of placement in “T/A” Housing)</u></p>	<p><u>Within 9 months of Effective Date</u></p>
<p><u>§ 6-11: Out-of-Cell Time in T/A Housing</u></p> <p><u>(b) (at least 10 hours out of cell time for Young Adults in T/A Housing)</u></p>	<p><u>Within 9 months of Effective Date</u></p>
<p><u>§ 6-14: Individual Behavior and Programming Plans re T/A Housing</u></p>	<p><u>Within 1 year of Effective Date</u></p>
<p><u>§ 6-15: Periodic Review of Placement re T/A Housing</u></p> <p><u>(a) (placement reviews every 15 days, advancement to a less restrictive housing unit unless the factors enumerated in 40 RCNY § 6-15(a)(3)(i) an (ii) militate</u></p>	<p><u>As of Effective Date for Young Adults in ESH and Secure, and within 1 year of Effective</u></p>

<u>SECTION</u>	<u>IMPLEMENTATION</u>
<p><u>otherwise, movement to less restrictive unit within 48 hours, and Board notification if not moved)</u></p>	<p><u>Date for all other T/A Housing Units.</u></p> <p><u>§ 1-16(h) (45-Day Periodic Reviews of Placement) shall remain in effect for adults in ESH until 1 year from Effective Date</u></p>
<p><u>§ 6-17: Data Collection and Review re T/A Housing and Structurally Restrictive Housing</u></p> <p><u>(c) (Quarterly reports)</u> <u>(d) (Quarterly reports)</u></p>	<p><u>As of Effective Date for YAs in ESH and Secure and Within 1 year of effective date for adults in ESH and for Young Adults in all other forms of T/A Housing.</u></p> <p><u>§ 1-16(i)(1) (Board Review of ESH Implementation, 60-Day reports) shall remain in effect for the adult population until 1 year from the effective date of the new rule.</u></p>
<p><u>§ 6-19: Placement criteria for Structurally Restrictive Housing</u></p>	<p><u>Within 9 months of Effective Date</u></p>
<p><u>§ 6-20: Placement approval re Structurally Restrictive Housing</u> <u>(a), (b), (c) (authorization, determinations, copy to person in custody)</u></p>	<p><u>Within 9 months of Effective Date</u></p>
<p><u>§ 6-21: Individual Behavior and Programming Plans for People in Structurally Restrictive Housing</u></p>	<p><u>Within one year of Effective Date</u></p>
<p><u>§ 6-22: Periodic Review of Placement in Structurally Restrictive Housing</u></p>	<p><u>Within 9 months of Effective Date</u></p>

<u>SECTION</u>	<u>IMPLEMENTATION</u>
<u>(a)(1) (at least 50 percent of security staff in restrictive housing assigned to steady posts to the extent feasible given leave schedules and personnel changes)</u> <u>(a)(2) (Semiannual report on staffing in restrictive housing)</u> <u>(b)(1) (15:2 staffing ratios in restrictive housing)</u>	<u>Within 6 months of Effective Date</u> <u>Within 1 year of Effective Date</u>
<u>§ 6-35: Training</u> <u>(b) (training for hearing adjudicators and staff involved in sentencing and placement decisions)</u>	<u>Within 1 year of Effective Date</u>
<u>§ 6-36: Restraints</u> <u>(e) (elimination of non-individualized use of restraints during lockout in all housing areas)</u> <u>(s) (Semiannual public report)</u>	<u>By February 28, 2022</u> <u>Within 1 year of Effective Date</u>

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Rulemaking Concerning Restrictive Housing in Correctional Facilities

REFERENCE NUMBER: BOC-5

RULEMAKING AGENCY: Board of Correction

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Aaron Friedman
Mayor's Office of Operations

October 28, 2019
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Minimum Standards Concerning Restrictive Housing

REFERENCE NUMBER: 2019 RG 087

RULEMAKING AGENCY: Board of Correction

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: October 28, 2019