



NEW YORK CITY DEPARTMENT OF CORRECTION  
Joseph Ponte, Commissioner

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March 31, 2017

Derrick D. Cephas, Vice Chair & Acting Chair  
NYC Board of Correction  
1 Centre Street, Room 2213  
New York, NY 10007

RE: Restricted Housing Rulemaking

Dear Mr. Cephas:

The Department acknowledges and appreciates the level of Board engagement over the past two years as the Department implemented key components of our reform agenda, including the Young Adult Strategy plan, and the complete elimination of punitive segregation for all adolescents (16 and 17 year olds) and young adults (18 to 21 years old) in our custody. Over the last two years the Department has also fundamentally transformed our use of punitive segregation for adult inmates (ages 22 and up). Adult inmates no longer serve any time that was accrued during a previous incarceration. A tiered system has been established resulting in only serious, violent infractions subject to full punitive segregation time, with those who commit less serious or non-violent infractions receiving seven (7) hours of out-of-cell time each day. Most minor infractions no longer earn any punitive segregation time and, with few exceptions, we have capped the maximum sentence to thirty (30) days. The overall use of punitive segregation has decreased by approximately 85%. These historic changes reflect the Department's shift in our methodology and utilization of punitive segregation as a limited and more meaningful tool.

The Department's reform agenda has purposefully moved away from a one-size-fits-all punishment model that relies primarily on punitive segregation. The Department has focused on adding less restrictive programmatic focused housing options that address the security needs previously addressed by the long-term, repeated, or expansive use of punitive segregation. Over time, the Department has created several appropriate, safe housing alternatives which are progressively more therapeutic and include more structured housing options geared towards incentivizing positive behavior with heightened programming, inmate engagement, and staffing. To date, there are four (4) housing types – Second Chance, Transitional Restorative Unit (TRU), Secure Unit, and Enhanced Supervision Housing (ESH) – for 16-21 year old inmates, and two (2) housing types – ESH and punitive segregation – for inmates age 22 and up.

In support of these efforts, over the past two years the Department has sought, and the Board has granted, several variances. While the Department is appreciative of these variances (and the many renewals), as the Board has previously expressed, the time has come to pursue comprehensive rulemaking on restrictive housing. When considering and developing the content of any eventual, comprehensive, restrictive housing rule the Department proposes that the Board consider the following list of subject matter – some of which are covered by existing BOC variances:

1. Punitive Segregation

- a. Including an existing Variance to Minimum Standard 1-17(d)(2) (Granted January 10, 2017. Allows the Department, in highly exceptional circumstances presenting safety and security concerns, to waive the requirement that inmates be immediately released from punitive segregation for seven (7) days after they have been held in punitive segregation for thirty (30) consecutive days. In effect until July 10, 2017.)

2. Enhanced Supervision Housing (ESH)

- a. Including two existing Variance to Minimum Standard 1-16(c)(1)(ii) (Granted February 14, 2017. Allows the Department a six-month period of time to house 18-21 year old inmates in ESH. In effect until August 14, 2017.)

3. Secure Units

- a. Including an existing Variance to Minimum Standards 1-05 and 1-08 (Granted November 15, 2016. Allows the Department to provide young adults (ages 18 through 21) housed in Secure Units with a minimum lock-out time of ten (10) hours per day and access to law library services by means of a law library kiosk and typewriters in the Secure Units. In effect until May 15, 2017.)

4. Co-mingling of 19-21 year old inmates with inmates ages 22 and older.

- a. Including an existing Variance to Minimum Standard 1-02(c)(1) (Granted January 10, 2017. Extends date by which the Department shall implement the requirement that inmates aged 19-21 be housed separately and apart from inmates over the age of 21. In effect until July 13, 2017.)

5. Individual Security Status

- a. The Department previously explored and would like to visit in this rulemaking process the ability to provide mandated services (barbershop, law library, or religious services) in an individual setting to inmates who are dangerous and pose a significant threat to the inmate's own safety or the safety of other inmates, employees, or visitors.

6. De-Escalation Cells

- a. Currently, violent inmates are escorted to the Intake unit immediately following a use of force. Not only does this require Staff resources for transport, it also creates a risk of harm to both Staff and inmates during transport. Furthermore, given the commotion of the Intake unit, placing a violent inmate in that setting creates a further risk of harm to other inmates and Staff. For these reasons, the Department is exploring the use of temporary cell restriction within the inmate's own housing unit in the immediate aftermath of a use of force or in response to other crisis situations in which an immediate risk of harm is present. This de-escalation tool is part of the generally accepted practice when proper protections are in place to ensure it is used only to respond to legitimate safety threats and to limit its duration. When properly designed and implemented, the use can enhance the safety of both inmates and Staff.

7. Gangs – Identification and Separation

- a. The Department intends to explore the implementing a gang identification and clearance effort where gang members are separate until the proper housing and mix of inmates can be

determined. Certain restrictions of minimum standards for these inmates may be a necessary part of this effort.

The Department remains committed to identifying responses to violence that are effective in holding inmates accountable and that reduce their propensity to commit subsequent violent infractions. The Department's actions over the past two years to eliminate punitive segregation, for certain populations, reduce the use of punitive segregation for all others, and introduce new therapeutic housing options aimed at addressing the underlying causes of inmate violence (Second Chance, TRU, Secure, and ESH) demonstrates this commitment. It follows, therefore, that the Department's goal with respect to restrictive housing rulemaking is to develop a rule that encompasses and builds upon existing effective alternative disciplinary responses<sup>1</sup> by identifying the various levels of violence and security risk that inmates may present and includes a well-developed spectrum of less to more restrictive options that the Department can apply to an inmate in response to the defined behavior.

The Department looks forward to engagement and collaboration with the Board in the advancement of restricted housing rulemaking. In addition, the Department looks forward to the eventual dialogue with key stakeholders as we move forward with rulemaking.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph Ponte".

Joseph Ponte

cc: Martha King, Executive Director

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<sup>1</sup> While not technically classified as "restricted housing," the Department expects that our collaborative efforts to develop comprehensive restricted housing rulemaking will necessarily involve discussions surrounding Second Chance and TRU, since they are available housing options for 16-21 year olds in the Department's continuum of responses to infractions to address mid-level misconduct.