



**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, other people in custody, and the public.

When and where is the hearing?

The Board of Correction will hold two public hearings on the proposed rules. The public hearings will take place at 9:00 AM on April 13, 2021 and 6:00PM on April 14, 2021. Due to the COVID-19 pandemic, the hearings will be held via video conference. The public will be able to comment via audio and video on WebEx or via audio on the phone. The hearings will also be streamed live on the Board’s website and YouTube page.

April 13, 9:00 AM Public Hearing

[Online Registration](#)

Or

Call-In Number: 1-408-418-9388 and Access Code: 129 509 8952

April 14, 6:00 PM Public Hearing

[Online Registration](#)

Call-In Number: 1-408-418-9388 and Access Code: 129 418 5651

Note – if you plan to use the call-in number (rather than the WebEx registration) and would like to speak at the public meeting, please call 212 669 7900 to sign up to speak.

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: Margaret Egan, 1 Centre Street, Room 2213, New York, NY 10007.
- **Fax.** You can fax comments to the Board at 212-669-7980.
- **Voicemail.** You can call 212-669-7900 and choose option 2 to leave a voicemail comment on the proposed rule.
- **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 via the registration links above or by calling 212-669-7900. Please sign up to speak before the hearings begin. You can speak for up to four (4) minutes.

The public hearings are scheduled for 9:00 AM on April 13, 2021 and 6:00 PM on April 14, 2021.

Is there a deadline to submit comments?

Yes, you must submit comments by the close of business on April 16, 2021.

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 boc@boc.nyc.gov. Please inform us by the close of business on April 9, 2021 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 Board’s website. 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 6 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. Notably, these proposed rules end the inhumane practice of solitary confinement (also referred to as punitive segregation or “PSEG”) in the New York City jails, replacing it with a more humane alternative that still holds people accountable for the commission of serious offenses in custody. In contrast to PSEG, the new model—known as the Risk Management and Accountability System (“RMAS”)—guarantees that people in custody who have committed serious offenses in jail still receive at least 10 hours outside of their cell per day with some opportunity for socialization. The proposed rules also prohibit the Department from routinely shackling people during their time out of cell.

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 (i.e. temporary exceptions) 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 to 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

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”).

adolescents off Rikers Island to the Horizon Juvenile Center in the Bronx, under the joint care of DOC and ACS.⁴

The elimination of punitive segregation for young people led the Department to establish alternative restrictive housing for the young adult jail population: Second Chance Housing Unit (“Second Chance”), Transitional Restorative Unit (“TRU”), Secure Unit (“Secure”), and Young Adult ESH (“YA-ESH”).

During this period of reform, the Department 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 Plan⁵, the PSEG amendments, and the intended purposes of ESH. This retrenchment of the 2014-2015 reforms led to variances and variance conditions, most of which continue to the present day. It also led to the Board’s unanimous vote in 2016 to conduct rulemaking on restrictive housing.⁶

2019 Board Vote on Proposed Rules

On October 31, 2019, the Board voted to formally propose restrictive housing rules (“2019 Rule”), which were the result of extensive fact-finding in 2017-2018. This included 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. Recognizing the importance of capturing the voices of people in custody and uniformed staff about what it was like to reside or work in restrictive housing, in 2019, BOC staff also spoke with correction officers and people in custody in various restrictive housing units as part of the fact finding and rules development process.⁸

⁴ “ACS” is the NYC Administration for Children’s Services. As of October 1, 2020, adolescents are in the sole custody of ACS.

⁵ In 2016, the Department of Correction put forth a plan to account for the developmental differences of the Young Adult population and their overall well-being while in custody. This plan included the following goals: removing all Young Adults from Punitive Segregation; housing Young Adults separately from adults; creating alternatives to Punitive Segregation housing; training all steady officers assigned to Young Adult housing in Safe Crisis Management; training all steady officers assigned to alternative housing units in Cognitive Behavioral Therapy; and providing a minimum of 5 hours of programming per day for Young Adults in the general population.

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.

⁸ Transcript of December 2, 2019 CAPA Hearing, pp. 5-6.

The 2019 Rule⁹ included the following key provisions: (i) the maximum PSEG sentence was reduced from 30 to 15 days (other than for serious assault on staff)¹⁰; (ii) the maximum PSEG sentence for serious assault on staff remained at 60 days, but with the ability to earn a sentence reduction for good behavior¹¹; (iii) expansion of exclusions from PSEG I (defined as 20-hour daily lock-in for people found guilty of Grade I violent offenses)¹²; (iv) elimination of an automatic monetary fine for all guilty infractions¹³; (v) videotaping of people’s refusal to sign their notice of infraction or attend their hearing, and the requirement that DOC place a person in PSEG with 30 days of adjudication of guilt or else the person could not be placed there at a later time¹⁴; (vi) elimination of the routine use of restraints, including restraint desks, by February 2022¹⁵; and (vii) codification of variance conditions and standardization of existing DOC policies governing “transitional/administrative housing” (i.e., non-disciplinary restrictive housing), such as the increase in daily lock-out from seven to 10 hours for young adults, individual behavior support plans, periodic reviews, and a rebuttable presumption of progression within housing levels of a restrictive housing unit or out of the unit, based on specified criteria.¹⁶

2019 CAPA Hearings and the Path to Ending PSEG

The 2019 Rule was subject to the Citywide Administrative Procedure Act (CAPA) rulemaking process,¹⁷ which included two public hearings — on December 2 and December 16, 2019 — for the presentation of oral testimony¹⁸ and a three-month public comment period (November 1,

⁹ The 2019 Rule is available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2019.10.29%20-%20Rule%20and%20Certifications.pdf>. The Rule is comprised of three parts: (i) the Notice of Rulemaking (pp. 1-3); (ii) the Statement of Basis and Purpose (pp. 4-51); and, thereafter, the Proposed Rule (pp. 1-75).

¹⁰ 2019 Rule § 6-07(a)(i).

¹¹ *Id.*, § 6-07(a)(viii).

¹² *Id.*, § 6-07(a)(1)(i).

¹³ *Id.*, § 6-07(c).

¹⁴ 2019 Rule §§ 6-30(b)(7) (“Notice of Infraction”), 6-30(b)(6) (same), 6-30(c)(5) (“Disciplinary Hearing”-“Videotaping”), and 6-30(e)(2) (“Disciplinary Sanctions”).

¹⁵ *Id.*, § 6-36(g).

¹⁶ *Id.*, See, generally, Subchapter E (“Transitional/Administrative Housing”); §§ 6-12(b) (“Young Adults with Ten (10)-Hour Daily Lockout”), 6-14 (“Individual Behavior and Programming Plan”), and 6-14 (“Periodic Review of Placement”).

¹⁷ New York City Charter (“Charter”) § 1401 *et seq.*

¹⁸ Transcripts of the December 2019 hearings are available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/December/NYC-Board-of-Correction-CAPA-Hearing-re-Restrictive-Housing-Proposal-Rule-2019-12-02.pdf> (December 2, 2019 hearing transcript) and <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/December/BOC-Capa-Hearing-Re-Restrictive-Housing-Proposal-Rule-2019-12-16.pdf> (December 16, 2019 hearing transcript).

2019-January 31, 2020) for the submission of written comments.¹⁹ The Board received oral testimony from 59 individuals and 54 written comments.

The vast majority of those who testified and/or submitted written comments — PSEG survivors and their loved ones; mental health, criminal justice, legal, and human rights experts; elected officials²⁰; faith leaders; and community members (collectively, “commentators”) — called for the immediate end to punitive segregation (also referred to as “solitary confinement”) in the New York City jails. Commentators cited numerous studies finding that PSEG/solitary confinement causes severe and long-lasting psychological, emotional, and physical harm and is ineffective in preventing violence²¹. PSEG/solitary confinement survivors, both currently and formerly in DOC custody, described the damaging effects of isolation in moving detail.²² Commentators also cited evidence that solitary confinement is disproportionately inflicted on Black and Latinx people, queer, transgender, and non-conforming people, young people, and people with mental health needs.²³ Some commentators invoked the memory of Layleen Polanco, a 27-year-old Afro-Latinx transgender woman, who died after nine days in the Restrictive Housing Unit (a form of punitive segregation) on Rikers Island on June 7, 2019.²⁴

Commentators called for the City to eliminate PSEG as it currently exists — a punitive approach based on sensory deprivation, lack of normal human interaction, and extreme idleness — and replace it with a disciplinary model that ensures safety through separation and promotes violence reduction/prevention through positive incentives, effective programming targeted at the underlying reason for violent behavior, and meaningful human engagement. Some commentators cited housing programs or models that have proved to be successful alternatives to PSEG in the city jails, such as the Clinical Alternatives to Punitive Segregation (CAPS) program, which CHS operates for seriously mentally ill individuals who have committed a Grade I violent offense.²⁵

¹⁹ The written comments are available at: <https://www1.nyc.gov/site/boc/jail-regulations/rulemaking-2017.page> (see comments listed underneath the heading “Written Comments”).

²⁰ Elected officials who testified and/or submitted comments urging the end to punitive segregation in the jails included NYC Public Advocate Jumaane D. Williams, NYC Council Speaker Corey Johnson, NYC Council Members Daniel Dromm, Bill Perkins, Keith Powers (Chair of Committee on Criminal Justice), Carlina Rivera, Antonio Reynoso, members of the Council’s Progressive Caucus and Women’s Caucus, and NYC Comptroller Scott M. Stringer.

²¹ For discussion of these studies, see “Subchapter D: Elimination of Punitive Segregation,” pp.22-24, below.

²² See, e.g., testimony of Trent Taylor, Marvin Mayfield, Vidal Guzman, Herbert Murray, Harvey Murphy, Evie Litwok, and Candie at the December 2019 CAPA hearings as well as the comments of incarcerated people submitted by advocates.

²³ 1/31/20 comment letter from 63 organizations and 20 individuals endorsing the “Blueprint for Ending Solitary Confinement in NYC Jails” and the enclosed Blueprint, p. 3.

²⁴ See BOC’s 6/23/20 “Report on the Death of Layleen Xtravaganza Cubilette-Polanco, 1991-2019,” available (“Polanco Report”) at: https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06_Polanco/Final_Polanco_Public_Report_1.pdf.

²⁵ See, e.g., Blueprint, p. 4; 1/31/20 Brooklyn Defender Services comment letter (p. 9); 12/16/19 Comptroller Scott Stringer comment letter (p. 2); 12/2/19 CAPA Hearing testimony of: Julia Solomons (Bronx Defenders), p. 73; Public Advocate Jumaane Williams, pp. 78-79; Julia Davis (Children’s Defense

Following the CAPA hearings and public comment period, the Board commenced review of the oral testimony and written comments regarding the 2019 Rule. At the public meeting on March 10, 2020 and at public meetings thereafter, the Board acknowledged the broad consensus among those who testified and/or submitted comments to end PSEG in the City’s jail system. The Board recognized the harmful and long-term impacts of extreme isolation and idleness that have been the hallmarks of punitive segregation in the City jails. At the same time, the Board emphasized that the primary goal of all stakeholders — maintaining the safety of staff and people in custody — could only be achieved by simultaneously ending PSEG and implementing an alternative disciplinary system that keeps all those who work or reside in the jails safe. Moreover, the alternative system must separate violent perpetrators from and limit their engagement with others immediately following a violent incident, hold perpetrators of violence accountable for their misconduct, and provide all necessary supports to address their violent behavior and prevent its reoccurrence.²⁶

On June 29, 2020, the Mayor and Board Chair Jones Austin issued a joint press release calling for the end to PSEG and announcing the formation of a working group to develop an alternative disciplinary system “of accountability with a focus on safety for both staff and detained persons,” “effective and robust programming,” and “investment in training” of staff.²⁷ Led by Board Vice-Chair Stanley Richards and including DOC Commissioner Cynthia Brann, Just Leadership USA President, CEO DeAnna Hoskins, and COBA President Benny Boscio, the Working Group worked over the next three months to produce recommendations to be presented for inclusion in the proposed rules.^{28, 29}

Guided by the Working Group’s recommendations, BOC’s *ad hoc* Rulemaking Committee developed a new Rule, which eliminates punitive segregation and all other forms of restrictive housing except for the Transitional Restorative Unit (“TRU”) and the Second Chance Housing Unit, which are both units for young adults with 14 hours of lock-out. The new Rule replaces the eliminated units with the Risk Management Accountability System (RMAS), an alternative disciplinary model that separates people from general population in response to their commission of an offense, and holds them accountable through a three-level progression model. Since the

Fund), p. 85; 12/16/19 CAPA Hearing testimony of: Council Member Daniel Dromm, p. 10 and Alana Silvin (on behalf of Speaker Corey Johnson), pp. 36-37.

²⁶ Testimony of Interim Chair Jacqueline Sherman at March 10, 2020 public meeting (3/10/20 Hearing Tr., pp.3-5) ; testimony of Chair Jennifer Jones Austin at May 12, 2020 public meeting (5/12/20 Hearing Tr., pp. 4-5); testimony of Chair Jones Austin at July 14, 2020 public meeting (7/14/20 Hearing Tr., pp. 3-4); Minutes of September 14, 2020 public meeting (p. 3); Minutes of October 13, 2020 public meeting (p. 3); and Minutes of November 10, 2020 public meeting. All of the foregoing hearing transcripts and minutes are available on BOC’s website at: <https://www1.nyc.gov/site/boc/meetings/2020-meetings.page>.

²⁷ June 29, 2020 Press Release, available at: <https://www1.nyc.gov/office-of-the-mayor/news/481-20/mayor-de-blasio-board-correction-chair-jennifer-jones-austin-working-group-end>, p. 1.

²⁸ *Id.*, pp. 1-2.

²⁹ COBA President Boscio neither participated in developing nor endorsed any of the Working Group’s recommendations. He has publicly opposed the elimination of punitive segregation.

elimination of punitive segregation and the creation of RMAS represents a significant change from the 2019 Rule, the Board determined to restart the CAPA process and afford the public a full opportunity to testify about and submit written comments on RMAS and other revisions to the proposed Chapter 6 rules.

Following is a descriptive summary of (i) proposed amendments to Chapter 1 Standards to make them consistent with the Chapter 6 rules (Section 1); and (ii) the proposed rules in Chapter 6 (Section II). Chapter 6 includes proposed rules regarding immediate placement responses to violence, restraints and canines, and variances, as well as a chart reflecting proposed dates for implementation of rules that will not be implemented on the Effective Date.³⁰ Chapter 6 also sets forth a comprehensive set of rules addressing key aspects of RMAS, including placement criteria and exclusions; time limitations, periodic reviews, and progression; procedural due process protections; case management and individual behavior support plans; staffing, training, and programming; and out-of-cell time and other conditions.³¹

I. 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:

- Prohibit, with certain exceptions, 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 2015, the Board amended Minimum Standard § 1-02(c) to create a unique category of people in custody — young adults ages 18 through 21 — who were to be housed separately and apart from the adults in the Department's custody (§ 1-02(c)(1))³² and provided age-appropriate

³⁰ See discussion of Subchapter C ("Immediate Placement Responses to Violence"), pp. 16-22, below; Subchapter F ("Restraints and Canines"), pp. 44-47, below; and Implementation Dates, pp. 49-51, below.

³¹ See discussion of Subchapter E (RMAS), pp. 24-44, below.

³² 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."

programming (§ 1-02(c)(2)).³³ These revisions were designed to reduce violence by: (i) segregating developmentally distinct age groups; (ii) fostering age-appropriate rehabilitative opportunities, and (iii) ensuring compliance with federal and local Prison Rape Elimination Act (PREA) standards.

Although the amended rule became effective in July 2016, the Board has continuously passed variances exempting the Department from full compliance. The Board began granting these variances to DOC in fall 2015. The latest iteration of the variance was passed on January 12, 2021 and allowed the Department to house young adults ages 19 through 21 under certain conditions.³⁴ As of December 15, 2020, 89% (n=319) of young adults in DOC custody were housed with their age group; 10% (n=34) were in comingled housing; and 1% (n=4) were housed with adults in specialized medical or mental health housing areas as permitted by other Board variances requested by CHS.

On October 31, 2019, the Board voted to formally propose a restrictive housing rule (i.e., the 2019 Rule) that would codify these variance conditions. During the comment period on the 2019 Rule, advocates and others voiced their opposition to this proposed change on the ground it marked a troubling departure from the DOC's Young Adult Plan and would allow the Department to remove young adults from age-appropriate services, education, and programming. Further, there was no evidence that the practice of housing young adults with adults reduces violence.³⁵

At public meetings during the last quarter of 2020, Board members expressed concern about the unacceptably high percentage of young adults housed with adults and their resulting lack of access to young-adult specific programming. They emphasized that it is precisely young adults who have engaged in violence who would benefit the most from such programming.

³³ 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."

³⁴ Record of Variance Action, with conditions, dated January 12, 2021, available at https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2021/January/2021.01%20-%20Record%20of%20Variance%20Action%20-%20YA%20Co-mingling_final.pdf

³⁵ See, e.g., the following comments on the 2019 Rule: Children's Rights comment letter, December 12, 2019, <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2019-12-16-Public-Comment-Opposing-Restrictive-Housing-Rulemaking-Childrens-Rights.pdf>, pp. 1-2; Children's Defense Fund-New York comment letter, November 27, 2019, <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2019-11-27-FINAL-CDF-Public-Comment-BOC.pdf>, pp. 1-3; Urban Justice Center Mental Health Project, comment letter, January 31, 2020, <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2020-01-31-UJC-MHP-Comments-on-Restrictive-Housing-Rulemaking.pdf>, p. 9; Legal Aid Society comment letter, January 31, 2020, <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2020-01-31-LAS-Comments-on-BOC-Proposed-Rules.pdf>, p. 10; Girls for Gender Equity comment letter, December 18, 2019, <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/Girls-for-Gender-Equity-Comment-on-Restrictive-Housing.pdf>, pp. 1-2.

Consequently, proposed rule § 1-02(b)(3) through (4) require that young adults be housed separate and apart from adults, except when housed in specialized medical housing units, specialized mental health housing, pregnant person housing or the Department nursery.³⁶

Proposed rule § 1-02(c)(3) states that the Department shall comply with the following data reporting requirements on commingling young adults with adults: (i) provide the Board with a monthly public census showing which housing units and facilities house young adults; 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;³⁷ (ii) 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;³⁸ and (iii) provide BOC with monthly public reports on the Department's plans for housing and providing age-appropriate programming and services to young adults (i.e., Young Adult Plan).³⁹

Amendments to Ensure Consistency between Chapter 1 and Chapter 6 Standards

The other proposed amendments to Chapter 1 Standards eliminate specific references to punitive segregation and enhanced supervision housing (ESH) and insert references to RMAS where appropriate.

Section 1-05 (Lock-in)

The proposed amendments to § 1-05 eliminate the reference to punitive segregation and provide that the Chapter 1 Minimum Standards relating to lock-in do not apply to RMAS, where lock-in is governed by proposed rule § 6-16.

Section 1-06 (Recreation)

Section 1-06(g) regarding recreation for people in segregation has been amended to replace the terms punitive segregation and "close custody" with a reference to RMAS.⁴⁰

³⁶ Proposed rule § 1-02(c)(3) through (4). The proposed rules define specialized medical units as "housing units for persons with medical conditions, such as infirmaries and contagious disease units (CDUs), where entry and discharge are determined by CHA according to clinical criteria" (proposed rule § 6-03(b)(14)), and specialized mental health units as "Program for Accelerating Clinical Effectiveness (PACE) units, and Clinical Alternatives to Punitive Segregation (CAPS) units, where entry and discharge are determined by CHA according to clinical criteria" (proposed rule § 6-03(b)(15)). These exceptions were the subject of two continuing variances one granted in November 2015 and the other in July 2016.

³⁷ Proposed rule § 1-02(c)(3)(i).

³⁸ Proposed rule § 1-02(c)(6)(ii).

³⁹ Proposed rule § 1-02(c)(6)(iii).

⁴⁰ Close custody was declared unlawful in *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).

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, 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 proposed amendment replaces "punitive segregation" with a reference to RMAS.

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

Section 1-08(f)(6) is amended to eliminate references to punitive segregation and ESH and permit the Department to reduce or eliminate law library hours in RMAS Levels 1 and 2 provided that an alternative method of access to legal materials is instituted to permit effective legal research.

Section 1-08(j)(1) is amended to eliminate language allowing a person to be excluded from law library following a disciplinary infraction, in keeping with the SCOC guidance provided in the recreation context specifying that essential services cannot be restricted as part of a disciplinary sanction.

Section 1-09 (Visiting)

The proposed amendment to § 1-09(f) permits the Department to impose limitations on contact visits with persons in RMAS according to the criteria in § 1-09(h) and the due process provisions governing disciplinary hearings set forth in proposed rule § 6-24.

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 exempt 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, and instead mandate 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 (EHS) and Section 1-17 (Limitations on the Use of PSEG)

As discussed above, these sections shall be repealed upon implementation of RMAS.

Non-Substantive Language Amendments (§§ 1-05 through 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 as “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.

II. 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.

The first principle⁴¹ seeks to protect the safety of people in DOC custody and the staff who work in DOC facilities⁴² 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 custody⁴³; (iii) placing restrictions on people in custody that are limited to those required to achieve the appropriate objectives for which the restrictions are imposed⁴⁴; and (iv) confining people to the

⁴¹ Proposed rule § 6-01(a)(1)(i) through (iv).

⁴² 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/dag/file/815551/download>.

⁴³ 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>.

⁴⁴ 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/dag/file/815556/download>.

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.⁴⁵

The second core principle⁴⁶ 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.⁴⁷

The third core principle⁴⁸ 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.⁴⁹

The fourth and final core principle⁵⁰ seeks to monitor and track compliance with the proposed rules and the core principles on which they are based by developing compliance metrics and regularly reporting outcomes to the Board and the public.⁵¹ In furtherance of this principle, proposed rules regarding data collection and review are designed to ensure that the Department and CHS track the information necessary to monitor compliance with the rules and promote transparency on compliance through regular reporting.

⁴⁵ 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>.

⁴⁶ Proposed rule § 6-01(a)(2)(i) through (iv).

⁴⁷ 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.

⁴⁸ Proposed rule § 6-01(a)(3)(i) through (iii).

⁴⁹ 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>.

⁵⁰ Proposed rule § 6-01(a)(4)(i) and (ii).

⁵¹ 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.

Chapter 6’s data reporting provisions take a comprehensive and holistic approach toward data collection and review. They require DOC and CHS to publicly report information on compliance and conditions of confinement in restrictive housing and regular data sharing with the Board.⁵² Many of the reporting provisions, such as those related to, RMAS,⁵³ are intended to replace existing rules or codify variance reporting conditions.⁵⁴ Regular reporting required in the proposed rules will ensure the Board, DOC, CHS, and the public have the necessary information from which to measure compliance and progress. The rules related to each report also require that the Board and the Department jointly develop reporting templates for approval by the Board to ensure the necessary compliance metrics are clearly communicated to the public. The rules also require the Department to develop the system(s) necessary to collect accurate, uniform data to track due process requirements and compliance with RMAS rule provisions in a manner that may be analyzed electronically by the Board.⁵⁵

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 has committed to enhancing and developing systems necessary to track the data and produce the reports required by the proposed rules. Investments in comprehensive 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.⁵⁶ With such systems, DOC would be able to determine whether any of its restrictive housing models or restrictions have been effective in preventing or reducing violence in the jails.

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

⁵² See, e.g., proposed rules § 6-04(e) (Pre-Hearing Detention); § 6-05(k) (De-escalation Confinement); and § 6-25 (Data Collection and Review/RMAS).

⁵³ *Id.*

⁵⁴ 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. 13 and 15 through 17, https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/November/2020.11%20-%20%20Record%20of%20Variance%20Action%20-%20YA%20ESH%20AD_final.pdf; and Variance from Min. Std. § 1-02(c)(1) (“Young Adult (YA) Commingling Variance”), Conditions Nos. 9 through 11, https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2021/January/2021.01%20-%20Record%20of%20Variance%20Action%20-%20YA%20Co-mingling_final.pdf

⁵⁵ Proposed rule § 6-24(i)(1) and § 6-25(b).

⁵⁶ 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>.

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.” As noted in Section I, 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.”

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

Generally, § 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. A unit is restrictive if out-of-cell time in the unit or in any other level of the unit is less than 14 hours a day (as is offered to the general population).⁵⁷ A unit is also restrictive for purposes of this rule if it has one or more of the following characteristics: (i) 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;⁵⁸ (ii) a person is housed alone in a unit;⁵⁹ and (iii) the physical design of the unit is such that it only permits a person to congregate in a dayroom area with less than four others in custody.⁶⁰

The Rule’s definition of restrictive housing was developed to address various forms of restrictive housing currently operating in the New York City jails. This includes punitive segregation of three types — PSEG I (also known as CPSU), the Restrictive Housing Unit, and PSEG II — and the Enhanced Supervision Housing or “ESH,” all of which are units where people are held separate and apart from the general population as a consequence of behavior. The Rule’s proposed definition also includes housing units where the physical design of the unit permits people confined in the unit to congregate with a small number of other people in custody, such as units currently found at West Facility, North Infirmity Command (NIC), and Manhattan Detention Complex (MDC). Finally, the restrictive housing definition also encompasses units currently characterized as “solo housing,” previously defined as a temporary individual placement in a housing area after all other feasible alternatives for placement were determined to be unsuitable. The proposed definition does not include units currently operating for young adults where privileges are restricted but daily lockout is 14 hours (Transitional Restorative Unit (“TRU”) and Second Chance Housing Unit).

► Immediate Placement Responses to Violence

⁵⁷ Proposed rule § 6-03(a)(1)).

⁵⁸ Proposed rule § 6-03(a)(2)(i).

⁵⁹ Proposed rule § 6-03(a)(2)(ii).

⁶⁰ Proposed rule § 6-03(a)(2)(iii).

Immediate placement responses to violence, addressed in Subchapter C (§§ 6-04–6-06), include pre-hearing detention — the placement of a person into RMAS Level 1 pending the investigation or adjudication of the person’s disciplinary infraction for a Grade I violent offense. Also subject to Subchapter C rules are de-escalation confinement (§ 6-05), and the emergency lock-in of people in their cells (§ 6-06).

► RMAS

The Risk Management Accountability System, addressed in Subchapter E (§§ 6-08–6-26), is defined as a three-level progression model that separates people from general population in response to their commission of an infraction that currently would render them eligible for PSEG I, RHU, or PSEG II, and holds them accountable through a swift, certain, fair, and transparent process. RMAS promotes prosocial behavior and progression through positive incentives as well as case management services, behavior support plans, and evidence-informed programming, tailored to the person’s individual needs. RMAS includes Levels 1, 2, and 3 with Level 1 being the most restrictive, Level 2 less restrictive than Level 1, and Level 3 less restrictive than Level 2.⁶¹

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 in RMAS Level 1 prior to the infraction hearing shall count toward the person’s placement in RMAS Level 1.⁶² 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, which shall be approved by the Board.

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

⁶¹ Proposed rule § 6-03(b)(13).

⁶² 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.

Closed Housing Units

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, in part, 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 for people who required immediate removal from their housing unit after a violent incident.⁶³ 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 Use of Intake Areas for De-escalation Confinement

At the outset, we note that mention of the Nunez litigation in our Statement of Basis and Purpose is for historical background only, and any requirements stemming from that litigation would supersede local rules. Nothing in our rules is intended to, or could interfere with the orders and related agreements related to the Nunez litigation. 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.⁶⁴ The practice of escorting people in custody to an intake area immediately following a use of force or a person-on-person fight 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, and 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.⁶⁵

In prior monitoring periods, the Department initiated, on a pilot basis, Satellite Intake — a separate facility location where people were placed in individual cells as opposed to intake pens. DOC ceased this practice at the end of June 2018. Since then, the Monitor has continued to emphasize "the importance of a de-escalation tool in managing the immediate aftermath following an incident"

⁶³ BOC Report on Satellite Intake: <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2018.10.19 - Satellite Intake Report.pdf>.

⁶⁴ Ninth Report of the *Nunez* Independent Monitor ("Ninth Report"), <https://www1.nyc.gov/assets/doc/downloads/pdf/9thMonitorsReport052920AsFiled.pdf>, p.19; see also: Fourth Report (pp. 31, 67-68, and 250-252); Fifth Report (pp. 19-20, 60-61, 181-182); Sixth Report (pp. 1, 16, 196-197); Seventh Report (pp. 240-241); Eighth Report (pp. 32, 287); Ninth Report (pp. 22-28, 321-322); Tenth Report (pp. 19, 26-28, 279); All of the Monitor's Reports are posted on DOC's website at <https://www1.nyc.gov/site/doc/media/nunez-reports.page>.

⁶⁵ Ninth Report, p. 19.

and has encouraged the Department to reconsider Satellite Intake or a similar option as a viable strategy for post-incident response.⁶⁶

During the Ninth Monitoring Period (i.e., the last six months of 2019), the Monitoring Team began to more closely scrutinize use of force incidents involving self-harm.⁶⁷ As part of this assessment, the Monitoring Team reviewed a number of self-harm incidents, including evaluation of the high-profile suicide attempt by 18-year-old Nicholas Feliciano, in an intake pen in November 2019.⁶⁸ According to press reports, he had been in an intake cell for approximately six hours before he tried to hang himself from a pipe with a piece of clothing, as several officers stood by without intervening for seven minutes.⁶⁹ As a result, he allegedly suffered permanent brain damage.⁷⁰

In August 2020, the *Nunez* parties entered into a Remedial Consent Order Addressing Non-Compliance which, among other things, requires the Department, in consultation with the Monitor, to develop and implement a de-escalation protocol to be followed after UOF incidents.⁷¹ The protocol, which is subject to the Monitor's approval, must be designed to minimize the use of intake areas to hold people in custody.

Section 6-05 Parameters

The parameters set forth in proposed rule § 6-05 are designed to prevent unregulated use of closed housing units as occurred in 2016 and prevent the dangers associated with the use of intake areas, as discussed in Monitor Reports over the past four years and exemplified by the tragic incident involving Mr. Feliciano.

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;⁷² (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;⁷³ or (3) facilitate the decontamination of people in custody following exposure to chemical spray.⁷⁴

⁶⁶ *Id.*, p. 322.

⁷¹ Remedial Consent Order Addressing Non-Compliance, *Nunez v. City of New York*, 11 Civ. 5845, <https://www.justice.gov/usao-sdny/press-release/file/1301816/download>, p. 3.

⁷¹ Remedial Consent Order Addressing Non-Compliance, *Nunez v. City of New York*, 11 Civ. 5845, <https://www.justice.gov/usao-sdny/press-release/file/1301816/download>, p. 3.

⁷¹ Remedial Consent Order Addressing Non-Compliance, *Nunez v. City of New York*, 11 Civ. 5845, <https://www.justice.gov/usao-sdny/press-release/file/1301816/download>, p. 3.

⁷¹ Remedial Consent Order Addressing Non-Compliance, *Nunez v. City of New York*, 11 Civ. 5845, <https://www.justice.gov/usao-sdny/press-release/file/1301816/download>, p. 3.

⁷¹ Remedial Consent Order Addressing Non-Compliance, *Nunez v. City of New York*, 11 Civ. 5845, <https://www.justice.gov/usao-sdny/press-release/file/1301816/download>, p. 3.

⁷² Proposed rule § 6-05(a)(1).

⁷³ Proposed rule § 6-05(a)(2).

⁷⁴ Proposed rule § 6-05(a)(3).

Proposed rule § 6-05 requires, among other things, that the Department utilize only individual cells for the purpose of de-escalation confinement, and that such cells be located in areas other than intake areas.⁷⁵ Cells used for de-escalation confinement must have the features specified in, and be maintained in, accordance with 40 RCNY § 1-03 and § 1-04.⁷⁶ Meals and snacks must be served to people in de-escalation confinement at or about the same time and of the same quality and quantity as the meals served to people in general population.⁷⁷

The Department must ensure the immediate notification to CHA⁷⁸ 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.⁷⁹ DOC must conduct visual and aural observation of people in de-escalation confinement every 15 minutes.⁸⁰

A person in custody's initial placement in de-escalation confinement shall be no more than six (6) hours, and re-authorization must be based upon written approval up DOC's security chain of command every three (3) hours for a maximum of six (6) hours.⁸¹ The approval for each three-hour authorization must consider the reasons therefor, including what attempts were made by the Department to transfer the person in custody out of de-escalation confinement.⁸² Notwithstanding that de-escalation confinement is limited to a maximum of six (6) hours, should DOC keep a person in de-escalation confinement for more than six (6) hours, it must notify the Board, in writing, of all such instances.⁸³ Such notice must include how long someone was kept there and the reasons why the person was not placed elsewhere. For the purposes of compliance with these time limitations, the length of a person in custody's de-escalation confinement shall be calculated from the time of initial placement in the de-escalation confinement cell or area until the individual is transported to a newly assigned housing area, and shall include the time the person spends in any other subsequent de-escalation confinement cell or area to which the Department moves the individual prior to rehousing.⁸⁴

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

⁷⁵ Proposed rule § 6-05(d).

⁷⁶ Proposed rule § 6-05(e).

⁷⁷ Proposed rule § 6-05(f).

⁷⁸ 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.

⁷⁹ Proposed rule § 6-05(b).

⁸⁰ Proposed rule § 6-05(c).

⁸¹ Proposed rule § 6-05(g)(1) through (2).

⁸² Proposed rule § 6-05(g)(2).

⁸³ Proposed rule § 6-05(g)(3).

⁸⁴ Proposed rule § 6-05(g)(4).

Department jointly develop the reporting templates, which shall be subject to the Board's approval.

Finally, proposed rule § 6-05(l) requires DOC to commence using cells outside of intake areas for de-escalation purposes within six months of the Effective Date. Until then, the Department must operate intake areas used for this purpose in compliance with the other requirements of § 6-05.⁸⁵ Additionally, de-escalation confinement in an intake area must have an adequate number of flush toilets, wash basins with drinking water, and appropriate furnishings for seating and reclining to accommodate the number of people in custody confined there.⁸⁶ Such areas must be maintained in a clean and sanitized manner.⁸⁷

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.

The proposed amendment to § 1-05(a) ("Lock-in"/"Policy") states that except for people confined in RMAS housing 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 the 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.⁸⁸

⁸⁵ Proposed rule § 6-05(l)(1).

⁸⁶ Proposed rule § 6-05(l)(2).

⁸⁷ *Id.*

⁸⁸ 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), <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

The Board's May 2019 report⁸⁹ 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 of all emergency lock-ins (58%, n=768) 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 its most recent analysis of 2019 data, the Board found that the Department had reduced the total number of emergency lock-ins by 46% (from 1,313 in 2018 to 706 in 2019) and maintained the average duration of 11 hours. More than half of all emergency lock-ins (56%, n=393) had resulted in nine (9) or more hours of continuous lock-in time for people in custody.

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 track the impact of lockdowns on services, in a manner that may be analyzed electronically by the Board. Section 6-06 incorporates these recommendations.⁹⁰ The proposed rule further provides: (i) DOC shall limit the scope of emergency lock-ins so that only those housing areas that must be locked down are affected;⁹¹ (ii) as soon as an emergency lock-in occurs, or is extended beyond a regularly scheduled lock-in period, DOC shall notify the Board and CHS, in writing, as to the facilities and specific housing area locations and number of people impacted;⁹² (iii) in all housing areas where lock-ins have continued for more than six (6) consecutive hours or more, CHS shall complete medical and mental health rounds; additionally, DOC shall ensure timely access to medical and mental health care during any lock-in and provide for other delayed or missed services as quickly as possible following the lock-in⁹³ (iv) for lock-ins continuing for 24 hours or more, DOC shall notify the Board, in writing, of the steps taken to address the emergency and lift the lock-in;⁹⁴ and (v) DOC and CHS shall 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.⁹⁵ The directive must include protocols for communication and coordination between DOC and CHS during and after emergency lock-ins.⁹⁶

(April 2018), https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/continuous_lockdowns_report_final.pdf.

⁸⁹ Annual Lockdown Report (May 2019), https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Lockdown%20Report%202019_5.13.19_FINAL.pdf.

⁹⁰ Proposed rules §§ 6-06(a), (c), (d), (e), (f), and (j).

⁹¹ Proposed rule § 6-06(b).

⁹² Proposed rule § 6-06(c).

⁹³ Proposed rule § 6-06(g).

⁹⁴ Proposed rule § 6-06(h).

⁹⁵ Proposed rule § 6-06(l).

⁹⁶ *Id.*

Section § 6-06 requires quarterly DOC data reporting to the Board on emergency lock-ins to monitor compliance.⁹⁷ 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 share with the Board the data it used to produce the reports.⁹⁸

Subchapter D: Prohibition On The Use Of Punitive Segregation: § 6-07

Between 2012 — when the average daily population (“ADP”) in PSEG reached its peak (n=868) — and 2020 -- when the ADP in PSEG was 108 people⁹⁹ – the average daily PSEG population declined by 88%. As of December 10, 2020, there were 92 individuals held in PSEG.¹⁰⁰ 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 April 16, 2020 DOC considered only 39 “7-day waiver” requests, of which it approved 29 and denied 10.¹⁰¹ The Department’s reliance on the use of “60-day overrides” also has decreased over time.¹⁰² In 2015, DOC requested 114 and approved 94 of such overrides, as compared to 2020, when it requested only 15 and approved only 4.¹⁰³

The Board applauds the Department for its considerable achievements in PSEG reform and proposes the following rules to replace punitive segregation and other forms of restrictive housing with RMAS — an alternative disciplinary model to ensure safety, accountability, and support in the NYC jails.

Proposed rule § 6-07(a) recognizes that punitive segregation (also known as solitary confinement):

⁹⁷ Proposed rule § 6-06(m).

⁹⁸ Proposed rule § 6-06(o).

⁹⁹ This number – 108 – represents the combined population in PSEG I, RHU, and PSEG II.

¹⁰⁰ 61 individuals in PSEG I, 28 individuals in RHU, and 3 individuals in PSEG II.

¹⁰¹ 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 repeatedly approved renewal of this variance subject to certain conditions. The Department has not considered or approved a 7-day waiver request since October 26, 2018. Moreover, this variance was last approved by the Board on January 16, 2020 and expired on April 16, 2020, after which the Department did not request to renew it.

¹⁰² 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.

¹⁰³ BOC reports on punitive segregation: <https://www1.nyc.gov/site/boc/reports/BOC-Reports/punitive-segregation-reports.page>.

imposes significant risks of psychological and physical harm on people in custody. These risks are intensified for those with pre-existing mental illness or medical conditions and young adults. The risk of self-harm and potentially fatal self-harm is also strongly associated with solitary confinement. The hallmarks of solitary confinement — social deprivation and enforced idleness — create these serious health risks and are antithetical to the goals of social integration and positive behavioral change.

Proposed rule § 6-07(b) requires that the Department eliminate punitive segregation — PSEG I, RHU, and PSEG II — in all its existing and future facilities and implement RMAS by November 1, 2021. Thereafter, as prescribed in § 6-07(c), the only form of restrictive housing permitted in DOC facilities will be RMAS housing pursuant to proposed rules § 6-08 through § 6-26.

The scientific evidence is well-established that punitive segregation's extreme isolation and deprivation of positive environmental stimulation places people in custody at significant risk of serious psychological harm.¹⁰⁴ A Rikers study by Drs. Homer Venters, Ross MacDonald, and Daniel Selling, among others, found that people who had spent time in PSEG were almost seven times more likely to attempt to commit acts of self-harm “ during the days they were not in solitary confinement,” relative to people who were never placed there.¹⁰⁵ A study of over 200,000 individuals who were incarcerated and released from the North Carolina prison system from January 2000 to December 2015 found that those held in solitary confinement were more likely to die in the first year after release from incarceration, especially from suicide or homicide; more likely to die of an opioid overdose in the first two weeks after release; and more likely to be reincarcerated.¹⁰⁶

There is little evidence that punitive segregation is necessary to ensure safety or that without it, more violence would occur.¹⁰⁷ The Vera Institute of Justice reports that “[s]ubjecting incarcerated people to the severe conditions of segregated housing and treating them as the ‘worst of the

¹⁰⁴ Craig Haney (2018), “Restricting the Use of Solitary Confinement,” *Annual Review of Criminology* (2018) (“Haney”) (pp. 286-299), <https://www.annualreviews.org/doi/full/10.1146/annurev-criminol-032317-092326>; Stuart Grassian, “Psychiatric Effects of Solitary Confinement,” 22 *Wash. U. J. L. & Pol’y* 325 (2006), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy.

¹⁰⁵ Kaba F., Lewis A., Glowa-Kollisch S., et al., “Solitary Confinement and Risk of Self-Harm Jail Inmates,” *American Journal of Public Health*. Vol. 104(3): 442-447, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/>.

¹⁰⁶ Brinkley-Rubinstein L., Sivaraman J., Rosen D., et al., “Association of Restrictive Housing During Incarceration with Mortality After Release,” *JAMA Network Open*, 2019;2(10):e1912516, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350>.

¹⁰⁷ Shames, A., Wilcox, J. & Subramanian, R., “Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives,” Vera Institute of Justice, May 2015, pp. 18-20, https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf.

worst' can lead them to become more, not less, violent.¹⁰⁸ Studies show that people who have been placed in solitary confinement are more likely to commit crimes after their release than those who were not in solitary.¹⁰⁹ In contrast, states that have reduced their use of solitary confinement have demonstrated little or no increase in prison violence.¹¹⁰

As described below, RMAS — the disciplinary model that will replace PSEG in the jails — will eliminate the harmful effects of punitive segregation while ensuring the safety of staff and people in custody, holding those who commit violence accountable for their misconduct, and providing the supports necessary to address the root causes of violence and thereby prevent it.

Subchapter E: Risk Management Accountability System (RMAS) §§ 6-08 through 6-25

Purpose (§ 6-08)

Proposed rule § 6-08 states that the purpose of RMAS is to: (i) separate from the general population a person in custody in response to the person's recent commission of an offense, which significantly threatens the safety and security of other people in custody and staff; (ii) hold incarcerated individuals accountable for their misconduct through swift, certain, fair, and transparent processes; (iii) promote prosocial behavior and progression back to general population through utilization of positive incentives, case management services, and behavior support plans, and individualized evidence-based programming; and (iv) provide people in custody with meaningful opportunities to socially engage with others and pursue productive activities.

¹⁰⁸ *Id.*

¹⁰⁹ Butler B., Simpson M. & Robertson R., "A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas, ALU (Feb. 2015), p. 8, https://www.aclutx.org/sites/default/files/field_documents/SolitaryReport_2015.pdf (Of all those who were released from Texas prisons in 2006, 48.8% were re-arrested within three years. For those who were released from isolation units, 60.8 percent were rearrested during that period); Lowell D., Johnson C., & Cain K., "Recidivism of Supermax Prisoners in Washington State," *Crime & Delinquency* 53(4): 633-656 (Oct 1, 2007) (Study found higher felony recidivism rates among people released directly from supermax units in Washington State compared to those in the general population), https://www.studyool.com/uploads/questions/262416/20170124233153article_for_review_9.3.pdf; "Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons, Vera Institute of Justice (May 2006), https://www.vera.org/downloads/Publications/confronting-confinement/legacy_downloads/Confronting_Confinement.pdf (finding that solitary confinement was related to higher-than-average recidivism rates, especially when people are released into the community directly from solitary confinement).

¹¹⁰ Shames, A., Wilcox, J. & Subramanian, R., "Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives," Vera Institute of Justice, May 2015, pp. 18-20, https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf ("In Colorado, for example, the state has reduced its use of solitary confinement by 85%, and assaults on staff are at their lowest point since 2006. . . In addition, other states, including Illinois, Maine, New Mexico and Washington have reduced their use of solitary confinement, opting to use alternative strategies. Evidence to date suggests there has been little or no increase in prison violence as a result").

Exclusions (§ 6-09)

Proposed rule § 6-09(a) excludes from RMAS: (i) people with a mental disorder that qualifies as a serious mental illness; (ii) people diagnosed with an intellectual disability (expanding the current mental illness exclusion for PSEG, in conformity with CHS's current practice)¹¹¹; and (iii) pregnant persons, persons within eight (8) weeks of pregnancy outcome, or persons caring for a child in the Department nursery program.¹¹²

The proposed rule emphasizes CHS's authority in determining which of its patients fit the exclusionary criteria, as well as CHS's authority to remove patients from RMAS to specialized medical units at any time.¹¹³ Finally, proposed rule § 6-09(d) ensures that people who are excluded from RMAS at one time are not able to be placed in RMAS at a later date for the same infraction.

Placement Criteria (§ 6-10)

Under proposed rule § 6-10(a), a person may be confined in RMAS Level 1 only in PHD following a Grade I offense or upon a finding, after a disciplinary hearing, that the person is guilty of having committed a Grade I violent offense; the placement must occur within 30 days of adjudication of guilt.¹¹⁴ A Grade I violent offense is one which under existing Minimum Standard § 1-17, would have rendered the person eligible for placement in PSEG I. Grade I violent offenses include violent conduct such as a stabbing or slashing or assault of a person causing serious injury.

Under proposed rule § 6-10(b), a person may be placed directly into RMAS Level 2 only upon a finding, after a disciplinary hearing, that the person is guilty of having committed a Grade I non-violent or a Grade II offense; the placement must occur within 30 days of adjudication of guilt.¹¹⁵ Such offenses are those which under Minimum Standard § 1-17 would have rendered a person eligible for placement in PSEG II. Grade II infractions include non-violent conduct such as making,

¹¹¹ Compare Min. Std. § 1-17(b)(iii) (people with "serious mental disabilities or conditions" shall be excluded from PSEG) with proposed rules § 6-09(a)(1) through (2) (excluding from RMAS people "with a mental disorder that qualifies as serious mental illness," and those "diagnosed with an intellectual disability").

¹¹² 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").

¹¹³ Proposed rule §§ 6-09 (b) and (c).

¹¹⁴ See also proposed rule 6-24(g).

¹¹⁵ Id.

possessing, selling or exchanging any amount of a narcotic, narcotic paraphernalia or other controlled substance.

Proposed rule § 6-10(c) prohibits placement of people directly into RMAS Level 3; in other words, a person would enter Level 3 only upon advancement to Level 3 from Level 2.

In furtherance of the central tenets of due process and procedural justice, proposed rule § 6-10(d) requires that a person's sentence after being found guilty of an offense at a disciplinary hearing must be proportionate to the infraction charge. Additionally, pursuant to proposed rule § 6-10(e), the Department must provide the Board with a written penalty grid describing, among other things, each offense that would render a person eligible for placement in RMAS Level 1 or 2 and the sentence range for each offense. DOC must share the penalty grid with the Board within 3 months of the Effective Date of the Rule.

Case Management (§ 6-11)

Proposed rule § 6-11(a) requires the assignment of a case manager to each person in custody upon the person's placement into RMAS Level 1 or direct entry into Level 2. To ensure continuity of engagement and support, the assigned case manager will remain the person's case manager throughout the person's stay in RMAS to the extent practicable.¹¹⁶ Additionally, case managers must possess a combination of credentials and experience that render them particularly qualified to assist people through the various levels of RMAS.¹¹⁷

Individual Behavior Support Plan (§ 6-12)

Proposed rule § 6-12(a) calls for the development of written individual behavior support plans for all people in custody upon their placement in RMAS that: (i) outline program expectations and services to facilitate the person's reintegration into housing in the general population;¹¹⁸ and (ii) tailor plan goals to the individual's age, literacy, education level, and capacity to complete programming.¹¹⁹ The Department shall review and update the person's progress toward meeting these goals with the person's participation at each periodic review.¹²⁰

Each individual behavior support plan ("IBSP") must also include a detailed assessment of what led the person to engage in the violent or disruptive behavior, whether the person will be receiving mental health services; what programming and/or services will be provided to address the person's misbehavior and prevent its reoccurrence, whether special security staffing arrangements will be employed to manage the person's behavior, and whether the involvement

¹¹⁶ Proposed rule § 6-11(a).

¹¹⁷ Proposed rule § 6-11(b).

¹¹⁸ Proposed rule § 6-12(a)(1).

¹¹⁹ Proposed rule § 6-12(a)(2).

¹²⁰ Proposed rule § 6-12(a)(3).

of family members, criminal defense counsel, and community resources will be employed to assist the person in meeting the goals of the person's IBSP.¹²¹

Proposed rule 6-12(d) requires enhanced engagement of a person who commits a Grade I violent infraction while in RMAS Level 1. Specifically, the Department must review the person's IBSP and update it to include the strategies DOC will employ to prevent the person from engaging in further violent or disruptive behavior.¹²² Upon approval of the updated plan by the Chief of Department, the plan (and the Chief's approval) will be transmitted to CHS, the Board, the affected person, and the person's criminal defense attorney.¹²³ The person's case manager must also meet with the person at least five days a week to review the person's progress toward meeting the plan's goals and further update the plan if necessary.¹²⁴

Proposed rule § 6-12 expands the purpose and scope of individualized support plans currently used in ESH, TRU, and Second Chance as per DOC policy and is also considered a best practice in other jurisdictions.¹²⁵

Progression (§ 6-13)

¹²¹ Proposed rule § 6-12(a)(4)(i) through (v).

¹²² Proposed rule § 6-12(d)(1).

¹²³ Proposed rule § 6-12(d)(2) through (3).

¹²⁴ Proposed rule § 6-12(d)(4).

¹²⁵ At the Middlesex County Adult Correction Center in New Jersey, weekly interdisciplinary restrictive housing meetings comprised of senior facility staff, classification and intelligence 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-webassets/downloads/Publications/safe-alternatives-segregation-initiative-findingsrecommendations/legacy_downloads/safe-alternatives-segregation-initiative-findingsrecommendations-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_liman_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").

Under proposed rule § 6-13, there is a presumption of progression through RMAS except at the Level 1 30- and 45-day reviews, where people are nevertheless still afforded an opportunity to advance to Level 2 so long as they have not been found guilty of violence against staff.¹²⁶ Subject to the periodic review process in § 6-14, a person may not be held in RMAS Level 1 for more than 60 days unless (i) they have committed another Grade I violent infraction while in Level 1; or (ii) there is specific documented intelligence that the person will engage in violence if they progress.¹²⁷ There is no such cap on Level 2, however, there is a presumption of advancement and a person may only be held in Level 2 past 15 days subject to the periodic review process if (i) there is specific intelligence that a person will engage in violence in Level 3; or (ii) there is evidence that the person has consistently and willfully refused to participate in programming. In both cases, the burden is on the Department to demonstrate, through robust documentation, that a person should not progress.¹²⁸ Similarly, a person should not be held in RMAS Level 3 more than 15 days unless, during the current review period, the Department can establish through robust documentation that there is (i) specific intelligence that a person may engage in violence in Level 3; or (ii) evidence that the person has consistently and willfully refused to participate in programming.¹²⁹ The Department may not keep someone in Level 3 past 30 days without documented intelligence that the person may engage in violence upon return to general population.¹³⁰ Finally, whenever the Department determines to progress someone to a less restrictive level or unit, the Department must move the person within 48 hours.¹³¹

Periodic Review of Placement (§ 6-14)

Proposed rule § 6-14 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. This section also requires: (i) periodic reviews every 15 days for people in RMAS (except for Level 1, where periodic reviews begin at 30 days and then occur every 15 days thereafter)¹³²; (ii) 24 hours' notice to incarcerated individuals of their review, the right to participate in the review, and to submit a written statement;¹³³ and (iii) a multidisciplinary team, including DOC program staff and the person's case manager, to consider various factors to determine whether the person should continue or be released from RMAS.¹³⁴ As described in § 6-13(a), people in Level 1 who have been found guilty of violence against staff are not eligible for progression to Level 2 until 60 days; the multidisciplinary team must nevertheless still convene at 30- and 45-days to discuss the person's individual behavioral support plan. Following all periodic

¹²⁶ Proposed rule § 6-13(a).

¹²⁷ *Id.*

¹²⁸ Proposed rule § 6-13(b).

¹²⁹ Proposed rule § 6-13(c).

¹³⁰ Proposed rule § 6-13(c).

¹³¹ Proposed rule § 6-13(d).

¹³² Proposed rule § 6-14(a)(1)-(3).

¹³³ Proposed rule § 6-14(b).

¹³⁴ Proposed rule § 6-14(c).

reviews, the team's conclusions are to be recorded in a written report and made available to the person within one business day of the review, subject to security redactions.¹³⁵

If the person's placement in RMAS is to continue (i.e. the multidisciplinary team has determined that the person should not progress under the progression criteria set forth in § 6-13), the person's IBSP must be updated to reflect each action or behavioral change the person needs to take to further rehabilitative goals, advance to a less restrictive RMAS level, or return to general population.¹³⁶

Recognizing that this new periodic review process marks a significant departure from past practices, the Mayor's Office has committed to funding a formal evaluation of the process by a third-party auditor and contracted independent auditor after 3 months, 6 months, and annually thereafter. The purpose of such audit would be to analyze outcomes, to determine the process's efficacy, and to recommend any necessary changes.

Extensions (§ 6-15)

As described in proposed rule § 6-13, there are highly exceptional circumstances in which the multidisciplinary team is permitted to extend a person's time in RMAS Level 1 beyond 60 days or a person's time in Levels 2 or 3 beyond 15 days. In such cases, the multidisciplinary team's decision not to progress someone shall be reviewed by the Chief and approved or rejected within two business days.¹³⁷

If a person commits a Grade 1 violent offense while in RMAS Level 1, 2 or 3 and is found guilty of such offense at a disciplinary hearing, DOC may restart the person in Level 1 or return the person to Level 1 to serve the sentence imposed for that infraction up to a maximum of 60 days; in that event, the person's length of stay in Level 1 is to be determined in accordance with progression criteria described in § 6-13(a).¹³⁸ Similarly, if a person commits a Grade 1 non-violent offense or a Grade II offense while in RMAS Level 1, 2, or 3 and is found guilty of such offense at a disciplinary hearing, DOC may restart the person in Level 2 or return the person to Level 2 to serve the sentence imposed for that infraction and that person would be subject to the progression criteria described in § 6-13(b).¹³⁹ As these situations involve sentencing on new offenses, they do not constitute extensions for purposes of this section, and so would not require the Chief's approval.

Pursuant to proposed rule § 6-15(f), the Department may not extend a person's length of stay in RMAS by imposing consecutive lengths of stay regarding multiple offenses for which the incarcerated person was found guilty at a hearing. Instead, the Department must sentence

¹³⁵ Proposed rule § 6-14(d).

¹³⁶ Proposed rule § 6-14(c)(9).

¹³⁷ Proposed rule §§ 6-15 (a) – (c).

¹³⁸ Proposed rule § 6-15(d).

¹³⁹ Proposed rule § 6-15(e).

someone according to the top charge for which they were found guilty.

Required Out-of-Cell Time (§ 6-16)

Proposed rule § 6-16 requires that people in RMAS Level 1 be permitted at least 10 out-of-cell hours per day;¹⁴⁰ people in Level 2 be afforded at least 12 out-of-cell hours each day;¹⁴¹ and people in Level 3 be permitted at least 14 out-of-cell hours per day.¹⁴²

Other Conditions (§ 6-17)

Proposed rule § 6-17 describes the following conditions, which become less restrictive as a person moves through RMAS.

(i) Rounding and Safety

Proposed rule § 6-17(a) requires that security staff conduct visual observations of all persons housed in RMAS every 15 minutes when they are confined to their cells, borrowing from current DOC policy which requires the same in PSEG.¹⁴³ The proposed rule explicitly requires that staff check for and confirm signs of life during these visual observations, a provision borne out of the Board's 2019 death review of Layleen Polanco which found that irregular and superficial rounding practices resulted in staff's failure for several hours to discover that Ms. Polanco had died while locked in her cell in the Restrictive Housing Unit (RHU).¹⁴⁴

The Board's report on Layleen Polanco's death also found that housing area officers' lack of notice about Ms. Polanco's serious medical condition (epilepsy) ultimately compromised her safety in that unit. Consequently, the Board recommended that CHS and DOC develop a protocol to inform all housing area officers when someone in their charge has a serious medical condition where a medical emergency would be more likely to occur than for someone without such a condition. Given patient privacy considerations and confidentiality constraints on CHS, the Board recommended that the agencies design a protocol that would not reveal specific diagnoses or private medical information. As described further in § 6-21(a), the Board's proposed rule seeks to codify this recommendation to create a process whereby people in custody with certain enumerated medical conditions are identified by CHS on a list that is accessible to DOC. The Department is then responsible for ensuring that housing area staff are aware when someone in their custody has a serious medical condition. Proposed rule § 6-17(b) seeks to add an additional level of protection for medically vulnerable people by requiring that at the beginning of every tour, all security staff confirm in their housing area logbooks that they have checked whether anyone on the unit has been identified by CHS as having a serious medical condition.

¹⁴⁰ Proposed rule § 6-16(a).

¹⁴¹ Proposed rule § 6-16(b).

¹⁴² Proposed rule § 6-16(c).

¹⁴³ DOC Directive 4501R-D re "Pre-Hearing Detention and Punitive Segregation Status Inmates," (eff. January 23, 2016), section IV(D)(8), p. 28.

¹⁴⁴ *Supra*, fn. 23.

(ii) Meaningful Engagement

Separation of a person from general population after the person commits a violent offense and limitation on how many people the person may engage with following a violent incident are necessary to ensure the safety of staff and other people in custody. Proposed rule § 6-17(c) balances safety concerns with the opportunity for meaningful engagement in RMAS Level 1. People confined in Level 1 will have the opportunity to meaningfully engage both visually and aurally with at least one other person in custody during lockout in a setting where people can converse without needing to raise their voices to be heard.¹⁴⁵ DOC plans to expand the structurally restrictive housing units at North Infirmery Command (NIC) for this purpose. People housed in RMAS Level 2 will have the opportunity to meaningfully engage both visually and aurally with at least three other people during lockout,¹⁴⁶ as is the case currently in the Secure Unit at George R. Vierno Center (GRVC). The Department plans to expand structurally restrictive housing at GRVC for this purpose. Finally, people confined in RMAS Level 3 shall have the same opportunity to engage with other people confined in their unit as in general population.¹⁴⁷

(iii) Individual Restrictions

Proposed rule § 6-17 states that to the extent the Department imposes individual restrictions on a person in custody confined in RMAS 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 proposed by the person.¹⁴⁸ Individual restrictions must also be imposed in conformity with due process. For example, if DOC wants to limit access to contact visits of a person in custody who is confined in RMAS, a hearing shall be held, as required in 40 RCNY § 6-24(d), which shall address the criteria set forth in 40 RCNY § 1-09(h) with regard to both the incarcerated person and any individual visitors with whom DOC wishes to limit contact.¹⁴⁹

(iv) Law Library Services

Proposed rule § 6-17 permits law library services to be provided in RMAS Level 1 and Level 2 units instead of a law library.¹⁵⁰ Such alternative must, at a minimum, provide access to law library services by means of a law library kiosk and typewriters in each Level 1 and Level 2 unit¹⁵¹; and assign one library coordinator to every two RMAS units at least five times per week¹⁵². The

¹⁴⁵ Proposed rule § 6-17(c).

¹⁴⁶ Proposed rule § 6-17(d).

¹⁴⁷ Proposed rule § 6-17(e).

¹⁴⁸ Proposed rule § 6-17(f).

¹⁴⁹ Proposed rule § 6-17(g). Subdivision (g) is patterned on the same provision in 40 RCNY § 1-16(d)(2) (ESH).

¹⁵⁰ Proposed rule § 6-17(h).

¹⁵¹ Proposed rule § 6-17(h)(1).

¹⁵² Proposed rule § 6-17(h)(2).

coordinator will provide instruction on available research tools and respond to incarcerated people's requests for law library services.¹⁵³

(v) Recreation

Proposed rule § 6-17(g) provides that, to the extent the Department offers people confined in RMAS recreation in outdoor recreation pens or in vacant cells, DOC must equip these pens or cells with exercise equipment such as dip bars, high bars, or pull-up bars.

(vi) Air Conditioning

Proposed rule § 6-17(h) requires that all RMAS Level 1 and Level 2 units be air conditioned.

Staffing (§ 6-18)

Proposed rule § 6-18(a) states that the Department shall retain records sufficient to show accurate, uniform data on the security staff transferring in and out of RMAS 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 § 6-18(b) requires that DOC provide the Board with DOC's staffing plans developed for RMAS and regularly update BOC on any material changes to such plans.

Training (§ 6-19)

Proposed rule § 6-19(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 RMAS units shall receive 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 § 6-19(b) requires the Department to provide hearing adjudicators and other staff involved in RMAS 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.

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

¹⁵³ Proposed rule § 6-17(h)(3).

official documents;¹⁵⁴ (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;¹⁵⁵ and (iii) as discussed below, delays and backlogs in the process, resulting in distrust in disciplinary proceedings and outcomes.¹⁵⁶ To address these issues, Vera recommended, among other things, that all correction officers be trained on due process and procedural justice principles.¹⁵⁷

Proposed rule § 6-19(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 6-20(a) and (b) including, but not limited to the length of each type of training required by DOC, training schedules, and curricula.

Programming (§ 6-20)

Programming is an essential support for people confined in RMAS to assist them in maintaining good behavior while in RMAS and upon release to general population. Proposed rule § 6-20 requires the Department to offer at least five hours of daily programming to people in RMAS.¹⁵⁸ Such programming must include in- and out-of-cell programming which is evidence-informed, age-appropriate, and tailored to each person's individual behavior support plan. Programming must also be aimed at facilitating rehabilitation, addressing the root causes of violence, and minimizing idleness. DOC shall also provide people confined in RMAS with access to both in-cell and out-of-cell productive activities.¹⁵⁹

Proposed rule § 6-20(c) requires the Department to offer at least five hours of daily programming to young adults confined in RMAS, inclusive of school hours.¹⁶⁰ DOC shall also insure that young adults are offered and are able to access three hours of educational services per day.

¹⁵⁴ Vera Report, Finding B12 at 43.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*, Finding B11 at 41.

¹⁵⁷ *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.").

¹⁵⁸ Proposed rule § 6-20(b). Five hours of daily programming is a key component of the Department's Young Adult Plan; see <https://www1.nyc.gov/site/boc/jail-regulations/ya-plan.page>.

¹⁵⁹ Proposed rule § 6-20(a).

¹⁶⁰ This provision is consistent with YA-ESH Variance condition no. 15 (stating that DOC "shall offer five hours of programming to each young adult in YA-ESH each day. For young adults enrolled in school, the five hours of programming can include three hours of school." November 10, 2020 Record of Variance Action (p. 3), https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/November/2020.11%20-%20%20%20Record%20of%20Variance%20Action%20-%20YA%20ESH%20AD_final.pdf).

Proposed rule § 6-20 requires the Department to report data and other information to the Board so that BOC can effectively monitor DOC's compliance with this section. For example, the Department must provide and regularly update the Board with information on program offerings in RMAS;¹⁶¹ document each individual's participation in each program session offered and refusals to participate in programming and the reasons therefor;¹⁶² and provide the Board with quarterly public reports on programming for adults and young adults by RMAS level.¹⁶³ Such reports must contain the data points specified in proposed rule § 6-20(f).

Access to Health Services (§ 6-21)

(i) Serious Medical Conditions

As referenced in proposed rule § 6-17(b), the Board carefully reviewed the 2019 death of Layleen Polanco, who died of a fatal seizure while inside of a cell in the Restrictive Housing Unit (RHU) at Rose M. Singer Center on Rikers Island, and published a report with recommendations on June 2020.¹⁶⁴ One such recommendation was for CHS to develop and implement a clinical instrument to identify people with serious medical conditions at intake and in subsequent clinical encounters who are at elevated risk for negative outcomes if placed in cell housing areas.¹⁶⁵ Prior to proposing the 2019 Rule and to the issuance of the Polanco report, the Board worked with CHS to design such a process in the context of punitive segregation. This new process was meant to advance the Board's goal of protecting medically vulnerable people from increased risk in prolonged isolation, while at the same time addressing CHS's dual loyalty¹⁶⁶ concerns about the existing PSEG exclusion process by having CHS identify medically vulnerable people at intake rather than following a disciplinary hearing. A week after the release of the Board's Polanco report, on June 29, 2020, the Mayor and Board Chair announced that "effective immediately," DOC would exclude individuals with several key medical conditions from being placed in any form of restrictive housing, including people on asthma medication, antiepileptic medications for seizures, or blood thinners, have any history of organ transplant, or have a diagnosis of heart disease, lung disease, or kidney disease.

This proposed Chapter seeks to eliminate solitary confinement in the City jails, replacing it with an alternative disciplinary model (RMAS) that does not rely on the extended periods of isolation that characterize DOC's existing punitive segregation model. As the health risks to people with serious medical conditions stand to be similar whether they are in RMAS or in any other housing

¹⁶¹ Proposed rule § 6-20(d).

¹⁶² Proposed rule § 6-20(e).

¹⁶³ Proposed rule § 6-20(f).

¹⁶⁴ *Supra*, fn. 23.

¹⁶⁵ *Id.*

¹⁶⁶ "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/>.

area in the jail system, it does not follow that medical conditions should exclude someone from RMAS. Rather, the proposed rule builds off the lessons learned in the Polanco death review and from negotiations surrounding the 2019 Rule to ensure that people with serious medical conditions are properly supervised. Accordingly, proposed rule § 6-21(a) requires CHS to identify individuals with serious medical conditions at intake and in clinical encounters, and without disclosing specific diagnoses, make a current list of such individuals available to the Department. The proposed rule then requires the Department to ensure that staff in RMAS units are aware of all people in the unit who have been identified as having a serious medical condition. The goal of this provision—in conjunction with the 15-minute rounding/confirming signs of life required in § 6-17(a) and the daily medical and mental health rounds required in § 6-21(b)—is to ensure adequate supervision of people with serious medical conditions so that medical events can be addressed as quickly as possible.

(ii) Daily Rounds

Proposed rule § 6-21(b) incorporates and amends the requirement for daily CHS medical rounds in ESH per § 1-16(d)(4)¹⁶⁷ and daily mental health rounds in PSEG per § 1-17(d)(6) by requiring daily CHS mental health and medical rounds in RMAS and that such rounds be documented in writing.

(iii) Notification to CHA

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 § 6-21(c) incorporates this requirement.

(iv) Clinical Encounters

Proposed rule § 6-21(d) 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 RMAS are brought to the facility clinic for their scheduled appointments.

(v) Notification of Removal

Proposed rule 6-21(e) states that each time CHS determines removal of a person from RMAS to an alternative housing unit is appropriate, CHS shall notify the Board in writing of the

¹⁶⁷ 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.”

circumstances related to the determination and the reasons for the determination (e.g., medical or mental health concern, disability).

(vi) Data Collection and Review

Proposed rule § 6-21 requires monthly public reports on compliance with the rule's requirements,¹⁶⁸ and data sharing with the Board.¹⁶⁹

Fines (§ 6-22)

Proposed rule § 6-22 adopts a Vera Report recommendation to eliminate the Department's automatic \$25 fine assigned to all guilty infractions because "fines disproportionately impact indigent individuals, and there is little evidence that they lead to behavioral changes."¹⁷⁰ The fine also penalizes infractioned people's families — most of whom are poor — by deducting the \$25 from moneys families have placed in their loved ones' commissary accounts.¹⁷¹ 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.

Disciplinary System Plans (§ 6-23)

Proposed rule § 6-23 requires that, within three months of the Effective Date, the Department submit to the Board a written plan for a disciplinary process, one for young adults and one for adults, that addresses (i) Grade III offenses ("violations"),¹⁷² and (ii) people who are excluded from placement in RMAS under proposed rule § 6-09.¹⁷³

As required by proposed rule § 6-23(b)(1) through (8), each plan shall include: (i) mechanisms for addressing violations without resort to RMAS placement or limitations on individual movement or social interaction, such as positive behavioral incentives and privileges, targeted programming to address problematic behavior, and conflict resolution approaches in response to interpersonal conflict within the jails; (ii) criteria for restricting or affording privileges based on behavior (e.g., commissary); (iii) a process for DOC staff to respond to violations swiftly and consistently; (iv) a plan for communication of the rules of conduct, DOC responses to rule violations, and due process procedures in a clear and understandable manner to people in custody and all DOC staff, including non-uniformed staff who have routine contact with people in custody; (v) training

¹⁶⁸ Proposed rule § 6-21(f)(1) through (7).

¹⁶⁹ Proposed rule § 6-21(g).

¹⁷⁰ 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" (p. 54).

¹⁷¹ See, NYC Comptroller Report, "Fees, Fines and Fairness: How Monetary Changes Drive inequity in New York City's Criminal Justice System" (September 2019), <https://comptroller.nyc.gov/reports/fees-fines-and-fairness/>.

¹⁷² Proposed rule § 6-23(a)(1). Grade III offenses are minor rule violations that currently result in a reprimand but not placement in punitive segregation.

¹⁷³ Proposed rule § 6-23(a)(2).

curricula for uniformed and non-uniformed staff on the disciplinary process and procedures; (vi) assistance to people in custody to understand the disciplinary process and procedures and their rights thereunder; (vii) a process for engaging DOC staff in the plans' development; and (viii) potential housing options for people excluded from RMAS. Upon review of the plans, the Board and the Department shall jointly develop a public reporting template on the disciplinary systems.¹⁷⁴ The template shall be subject to the Board's approval.¹⁷⁵

Due Process and Procedural Justice (§ 6-24)

Proposed rule § 6-24 affords all people in RMAS procedural due process protections including written notice, a hearing, written determination, and right to appeal. Section 6-24's provisions expand and seek 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.

(i) Purpose

As stated in proposed rule § 6-24(a), the protections set forth in this rule are intended to ensure that people in custody are placed into RMAS in accordance with due process and procedural justice principles. These protections 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*."¹⁷⁶ 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."¹⁷⁷ 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 sentences are served swiftly following adjudication of guilt.¹⁷⁸

As discussed below, proposed rule § 6-24 adds new provisions regarding the videotaping of refusals to sign infraction notices and attend disciplinary hearings; written notice to a person's criminal defense counsel of the charges against them; and a process for ensuring people's placement in RMAS follows quickly upon adjudication.

(ii) Investigations

¹⁷⁴ Proposed rule § 6-23(c).

¹⁷⁵ *Id.*

¹⁷⁶ Vera Report at 79 (emphasis in original).

¹⁷⁷ 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>.

¹⁷⁸ Vera Report at 45.

Subdivision (b) of § 6-24 states that: (i) disciplinary investigations must be conducted “promptly, thoroughly, and objectively;”¹⁷⁹ (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;¹⁸⁰ (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;¹⁸¹ (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;”¹⁸² (v) all investigations must commence within 24 hours after the incident¹⁸³; and (vi) 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 committed the infraction charged.¹⁸⁴

(iii) Notice of Infraction

Proposed rule § 6-24(c) requires that prior to the disciplinary hearing: (i) people in custody must receive written notice detailing the charges against them;¹⁸⁵ (ii) people who are unable to read or understand the notice shall be provided with assistance;¹⁸⁶ (iii) the notice must be served upon any person placed in pre-hearing detention within 24 hours of such placement¹⁸⁷ and upon people not in pre-hearing detention no later than two (2) business days after the incident, absent extenuating circumstances;¹⁸⁸ (iv) any member of DOC staff, except those who participated in the incident, may serve the person charged with the notice of infraction;¹⁸⁹ (v) all refusals to sign the notice shall be videotaped;¹⁹⁰ and (vi) if the person is charged with a Grade I violent offense, the person’s criminal defense counsel shall be notified within one business day of notifying the person; notice to counsel should not include specific details concerning the alleged offense, only that a person has been charged with a Grade I offense that would make them eligible for RMAS Level 1.¹⁹¹ This requirement to provide notice to counsel will ensure that defense counsel can

¹⁷⁹ Proposed rule § 6-24(b)(1) is consistent with 40 RCNY § 5-30(a) which also states that all PREA investigations into allegations of sexual abuse and sexual harassment must be conducted “promptly, thoroughly, and objectively.”

¹⁸⁰ Proposed rule § 6-24(b)(2).

¹⁸¹ Proposed rule § 6-24(b)(3).

¹⁸² Proposed rule § 6-24(b)(4) incorporates 40 RCNY § 5-30(f)(2)’s PREA requirement of written reports in PREA investigations.

¹⁸³ Proposed rule § 6-24(b)(5).

¹⁸⁴ Proposed rule § 6-24(b)(6).

¹⁸⁵ Proposed rule § 6-24(c)(1) incorporates the same language in Minimum Standard § 1-17(c)(1) (PSEG).

¹⁸⁶ Proposed rule § 6-24(c)(2) incorporates the same language in Minimum Standard § 1-17(c)(1) (PSEG).

¹⁸⁷ Proposed rule § 6-24(c)(3).

¹⁸⁸ Proposed rule § 6-24(c)(4).

¹⁸⁹ Proposed rule § 6-24(c)(5).

¹⁹⁰ Proposed rule § 6-24(c)(6).

¹⁹¹ Proposed rule § 6-24(c)(7).

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, while also ensuring that people in custody maintain agency in deciding what information to share with counsel.

(iv) Disciplinary Hearing

Proposed rule § 6-24(d) 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.¹⁹² Additionally, the Department has the burden of proof in all disciplinary proceedings, and a person's guilt must be shown by a preponderance of the evidence.¹⁹³ Section 6-24(d) 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.¹⁹⁴ Finally, people's refusal to attend their hearing must be videotaped and made a part of the hearing record; if a person refuses to participate while at the hearing, then an audiotaped refusal at the hearing will suffice for purposes of this provision.¹⁹⁵

(v) Disciplinary Sanctions – Addressing the Backlog

The Department reported that, as of September 30, 2020, 743 people in custody were waiting to be held in PSEG I, PSEG II, and RHU.¹⁹⁶ 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.”¹⁹⁷

¹⁹² Proposed rule § 6-24(d)(6)(i) through (vi).

¹⁹³ Proposed rule § 6-24(d)(7).

¹⁹⁴ Proposed rule § 6-24(d)(1), (3), and (8); § 6-24(h) (right to appeal).

¹⁹⁵ Proposed rule § 6-24(d)(5).

¹⁹⁶ DOC 60-Day Report on Punitive Segregation for the period 8/1/2020-9/30/2020, <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/PSEG-60-DAY/60-Day-PSEG-Report-August-and-September-2020.pdf>

¹⁹⁷ 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”).

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.¹⁹⁸ 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 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 PSEG¹⁹⁹; 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.²⁰⁰

To address this issue, proposed rule § 6-24(g) requires that placement in RMAS Level 1 or Level 2 occur within 30 days of adjudication of guilt. If the Department does not place a person into RMAS within this 30-day period, DOC may not place the person in RMAS 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.”²⁰¹

(vi) Disciplinary Due Process Reporting

To ensure compliance with the requirements of proposed rule § 6-24, subdivision (i) of the rule requires the Department to: (i) develop the system(s) necessary to collect accurate, uniform data on these requirements;²⁰² (ii) provide public semiannual reports on the procedural due process protections provided to people placed in RMAS,²⁰³ and share the data used to create the reports with the Board;²⁰⁴ and (iii) to jointly develop with the Board the reporting template for these reports, which shall be subject to the Board’s approval.²⁰⁵

Data Collection and Review (§ 6-25)

To ensure compliance with the proposed rules on RMAS, § 6-25 requires that the Department: (i) maintain and update as necessary a list of the type and specific location of all RMAS units (including the opening and closing dates of all such units), and notify the Board in writing when any new RMAS units open, close, or change level;²⁰⁶ (ii) maintain and develop the system(s) necessary to collect accurate, uniform data on RMAS and the requirements of 40 RCNY

¹⁹⁸ For the purposes of the Vera Report, “PSEG” included PSEG I, PSEG II, and RHU.

¹⁹⁹ 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.

²⁰⁰ Vera Report at 41-42.

²⁰¹ *Id.* at 45; n. 72.

²⁰² Proposed Rule § 6-24(i)(1).

²⁰³ Proposed Rule § 6-24(i)(2)(i) through (vi).

²⁰⁴ Proposed Rule § 6-24(i)(3).

²⁰⁵ Proposed Rule § 6-24(i)(4).

²⁰⁶ Proposed rule § 6-25(a).

Subchapter E, and to centrally store related documentation, in a manner that may be analyzed electronically by the Board;²⁰⁷ (iii) provide the Board with monthly public reports with information on RMAS including, among other things, placements, exclusions, periodic reviews, and lengths of stay;²⁰⁸ (iv) produce monthly public reports of time spent out of cell; access to law library; access to showers; participation in recreation; and time spent participating in programming for each individual in RMAS;²⁰⁹ (v) on a monthly basis, share data with the Board used to create the public reports required by 40 RCNY § 6-24(b)(2) and (3) and all RMAS placement, review and IBSP documentation;²¹⁰ and (vi) jointly develop with the Board reporting templates for the required reports.²¹¹ These templates shall be subject to the Board's approval.²¹² The requirement that DOC maintain and store data 'in a manner that may be analyzed electronically by the Board' is an effort to move the Department away from using paper-based systems to analyze and monitor compliance and to ensure the Board has the data necessary to efficiently analyze compliance with RMAS. Practically speaking, this would mean that the Department provide the Board with usable data, rather than scans of forms and logbooks, so that the Board can easily verify reported information. Finally, pursuant to proposed rule § 6-24(g), the Board shall review the information provided by the Department and any other information it deems relevant to the assessment of RMAS. No later than 18 months after implementation of RMAS, the Board shall meet to discuss the effectiveness of RMAS. The Board's discussion shall address but not be limited to findings regarding the conditions of confinement in RMAS and the impact on the mental health of people housed therein.

Transition (§ 6-26)

Proposed rule § 6-26 requires that pending implementation of RMAS and within prescribed timelines, the Department take the following action: (i) provide the Board with architectural renderings for RMAS housing units prior to their submission to the New York State Commission of Correction (SCOC);²¹³ the Department shall provide the Board with architectural renderings for such units as approved by SCOC within two (2) business days of SCOC's approval;²¹⁴ (ii) within one (1) month of the Effective Date, provide a comprehensive transition plan, in writing to the Board, which shall include specified documents and information concerning the elimination of punitive segregation and the implementation of RMAS;²¹⁵ (iii) starting the first business day of July 2021 and until RMAS implementation is complete, provide monthly progress reports regarding the elimination of current PSEG units (e.g. PSEG I/CPSU, PSEG II, RHU) and reduction in existing restrictive housing units (e.g., EHS, etc.), construction and opening of new RMAS units, including explanations for unanticipated delays, and development of policies governing the

²⁰⁷ Proposed rule § 6-25(b).

²⁰⁸ Proposed rule § 6-25(c)(i) through (x).

²⁰⁹ Proposed rule § 6-25(d).

²¹⁰ Proposed rule § 6-25(e).

²¹¹ Proposed rule § 6-25(f).

²¹² *Id.*

²¹³ Proposed rule § 6-26(a).

²¹⁴ *Id.*

²¹⁵ Proposed rule § 6-26(b)(1) through (5).

operation of RMAS, implementation of training on RMAS, and the provision of services such as recreation, visits,²¹⁶ and privileges in the general population which exceed the requirements of the Minimum Standards outlined in Chapter 1 of Title 40 of the Rules of the City of New York.²¹⁷

Subchapter F: Restraints and Canines, §§ 6-27 and 6-28

Restraints (§ 6-27)

Proposed rule § 6-27(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;²¹⁸ (ii) the immediate use of restraints to prevent a person in custody from self-harm, harming others, or causing serious property damage;²¹⁹ or (iii) the routine use of restraints for movement, escort, and transportation purposes.²²⁰

(i) Limitations

Section 6-27(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;²²¹ (ii) the method of restraint shall be the least intrusive necessary to control a person in custody's movement;²²² 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.²²³ Limitations are also imposed on the use of restraints with respect to people who are in a wheelchair;²²⁴ visually impaired;²²⁵ deaf, hearing impaired, or have impaired speech and communicate with hand gestures.²²⁶ Of note, New York Correction Law § 611 already places limitations on the use of

²¹⁶ Proposed rule § 6-26(c)(1) through (5).

²¹⁷ Proposed rule § 6-26(c)(6). The Department plans to incentivize good behavior in, and progression through RMAS by increasing privileges from level to level. To accomplish this, DOC intends to increase the privileges that people in general population receive so that individuals who are placed into RMAS could earn back these privileges by refraining from violence and engaging in good behavior. DOC would also accomplish this by increasing the minimum services people in custody must receive pursuant to the Board's Minimum Standards (e.g., increasing daily lock-out in general population, the hours of daily recreation, and the number/length of visits and telephone calls).

²¹⁸ Proposed rule § 6-27(a)(1).

²¹⁹ Proposed rule § 6-27(a)(2).

²²⁰ Proposed rule § 6-27(a)(3).

²²¹ Proposed rule § 6-27(b).

²²² Proposed rule § 6-27(c).

²²³ Proposed rule § 6-27(d).

²²⁴ Proposed rule § 6-27(j).

²²⁵ *Id.*

²²⁶ Proposed rule § 6-27(k).

restraints to people in custody who are in labor, admitted to a hospital for delivery, or recovering after giving birth.

(ii) Prohibitions

Proposed rule 6-27(h) states that restraints must never be used to cause unnecessary physical pain or discomfort,²²⁷ e.g., applied as punishment or retaliation,²²⁸ or used inside 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.²²⁹ These prohibitions are enumerated in DOC policy.

(iii) Restraint Desks

In November 2016, the Department introduced restraint desks in ESH Level 1 for adults and young adults. People have their ankles shackled to a desk. The use of restraint desks in ESH magnifies what is already a highly restrictive environment,²³⁰ 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 2016.²³¹ 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 conditions²³² — 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.

Between 2017 and 2019, 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

²²⁷ Proposed rule § 6-27(h)(4).

²²⁸ Proposed rule § 6-27(h)(1).

²²⁹ Proposed rule § 6-27(h)(5).

²³⁰ 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.

²³¹ YA-ESH Variance.

²³² *Id.*, Condition Nos. 2, 5-8; Secure Variance, Condition Nos. 2 and 3.

desks 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.

As of October 13, 2020, there were 13 young adults in ESH of which three were in Level 1 (with restraint desks). 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. This also led the Board, at the November 10, 2020 public meeting, to vote to approve a condition to the YA-ESH Variance, requiring the Department to discontinue the non-individualized use of restraints, including restraint desks, by Apr 15, 2021.²³³

For the foregoing reasons, proposed rule § 6-27(e) states that the Department shall eliminate non-individualized use of restraint desks or other restraints during lockout in all facility housing units by November 1, 2021. 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.²³⁴ Until then, subdivisions (f) through (g) of § 6-27 set forth conditions for the routine use of restraint desks, which are derived from Minimum Standard § 1-16²³⁵ and conditions in the YA-ESH Variance.²³⁶ This includes that: (i) the Department shall place a person in a restraint desk or other form of non-individualized restraint during lockout only 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;²³⁷ (ii) DOC shall review the placement of people in custody in routine restraint during lockout every seven (7) days;²³⁸ 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 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.²³⁹

(ii) Restraint Statuses

²³³ YA-ESH Record of Variance, November 10, 2020, Condition No. 19 (p. 4), https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/November/2020.11%20-%20%20Record%20of%20Variance%20Action%20-%20YA%20ESH%C2%AD_final.pdf.

²³⁴ Proposed rule § 6-27(e).

²³⁵ Min. Std. 1-16(h).

²³⁶ YA-ESH Variance Condition Nos. 2, 6, and 7.

²³⁷ Proposed rule § 6-27(f).

²³⁸ Proposed rule § 6-27(g).

²³⁹ Proposed rule § 6-27(g)(3).

Proposed rule § 6-27(m) 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 statuses²⁴⁰ and (ii) the Board and the Department to jointly develop the reporting templates, which are subject to the Board’s approval.²⁴¹

Canines (§ 6-28)

Proposed rule § 6-28 is based on a variance condition prohibiting the stationing of canines in ESH units that house young adults.²⁴² Consistent with DOC policy, § 6-28 permits the use of canines inside the secure perimeter of a facility only for searches,²⁴³ and canines must never be used to extract people in custody from their cells, as a use of force, or for purposes of intimidation.²⁴⁴

Subchapter G: Variances § 6-29

Proposed rule § 6-29 permits the Department and CHS 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 **June 15, 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.

²⁴⁰ Proposed rule § 6-27(m).

²⁴¹ Proposed rule § 6-27(n).

²⁴² YA-ESH Variance, Condition No. 9.

²⁴³ Proposed rule § 6-28(a).

²⁴⁴ Proposed rule § 6-28(b)-(c).

<u>SECTION</u>	<u>IMPLEMENTATION</u>
<p>(a) The use of all forms of punitive segregation as defined in 40 RCNY § 6-03(b)(10) shall be prohibited in all existing and future DOC facilities.</p> <p>(b) Upon the Department’s elimination of punitive segregation, the only form of restrictive housing permitted in DOC facilities will be RMAS housing pursuant to 40 RCNY § 6-08 through § 6-26.</p>	November 1, 2021
<p>§ 6-10: Placement Criteria (e) Written penalty grid.</p>	Within 3 months of Effective Date
<p>§ 6-12: Case Management</p>	Within 3 months of Effective Date
<p>§ 6-18: Staffing</p> <p>(a) (Semiannual report on staffing in restrictive housing)</p> <p>(b) (Staffing plans)</p>	<p>Within 6 months of RMAS implementation</p> <p>November 1, 2021</p>
<p>§ 6-19: Training</p> <p>(a) (training for hearing adjudicators and staff involved in sentencing and placement decisions)</p> <p>(c) (information to the Board re: Training)</p>	November 1, 2021
<p>§ 6-20: Programming (f) (Quarterly public reports)</p>	Within 3 months of RMAS implementation
<p>§ 6-21 Access to Health Services (f) CHS monthly public reports</p>	Within 1 month of RMAS Implementation
<p>§ 6-23: Disciplinary System Plans</p>	Within 3 months of the Effective Date
<p>§ 6-24 Due Process and Procedural Justice</p> <p>(c)(6) (videotaping of refusals to sign notice of infraction)</p> <p>(d)(5) (recording of refusal to attend hearing)</p>	November 1, 2021

<u>SECTION</u>	<u>IMPLEMENTATION</u>
(i)(1) system to track due process requirements and documentation (i)(2) Semiannual public report	Within 1 year of Effective Date
§ 6-25: RMAS Data Collection and Review (b) (system to track RMAS placements and RMAS documentation) (c) (monthly public data reports) (d) (monthly public reports)	Within 1 year of Effective Date Within 1 month of RMAS implementation Within 1 month of RMAS implementation
§ 6-26: Transition (b) (comprehensive transition plan) (c) (monthly public progress reports)	Within 1 month of Effective Date First business day of July 2021
§ 6-27: Restraints (m) (Semiannual public report)	Within 1 year of Effective Date

VERSION 2.0
NEW 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 upon implementation of RMAS.

§ 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;]

[(v) nursery;]

[(vi) adolescent housing areas;]

(i) RMAS housing units, defined in 40 RCNY § 6-03(b)(13);

(ii) Specialized medical housing units, defined in 40 RCNY § 6-03(b)(14);

(iii) Specialized mental health housing, defined in 40 RCNY § 6-03(b)(15);

(iv) pregnant person housing and the Department nursery; and

[(vii)] (v) housing areas designated for [inmates] people ages 18 to 21 inclusive.

(2) Where sentenced [inmates] individuals are housed with [inmates] people awaiting trial or examination in the housing areas listed in subparagraphs (i) through [(vii)] (v) 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), and subject to the exceptions set forth in 40 RCNY § 1-02(b)(4), 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) iii] female adults, ages 22 and over;

[(v)iv] female young adults, ages 18 to 21 inclusive[;].

[(vi) female minors, ages 16 and 17.]

(4) Young adults shall be housed separate and apart from adults, except when housed in:

(i) specialized medical housing units, as defined in 40 RCNY § 6-03(b)(14);

(ii) specialized mental health housing, as defined in 40 RCNY § 6-03(b)(15);

(iii) pregnant person housing and the Department nursery.

(c) *Inmates ages 18 to 21 inclusive*

(1) No later than [October 15, 2015] six (6) months after the Effective Date, the Department shall implement the requirement of paragraph [2](3) of subdivision (b) of this section that [inmates] people in custody ages 18 through 21 be housed separately and apart from [inmates] people over the age of 21.

(2) Housing for [inmates] people in custody ages 18 through 21 shall provide such [inmates] 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.]

(3) Data Collection and Review.

(i) The Department shall provide the Board with a monthly public census showing which housing units and facilities house 18-year-olds and 19-21-year-olds. The census shall indicate how many young adults are in each unit, the housing category of each unit (e.g., general population, protective custody, etc.), and whether the unit is a young adult-only unit or a commingled housing unit.

- (ii) 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).
- (iii) The Department shall provide the Board with monthly, public 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, custody status (i.e., detainee, sentenced), and “M” designation, and the percent of young adults in each category out of the total 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 commingled 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 medical and mental health housing units, in total and disaggregated by type of unit (e.g., CAPS, PACE, Detox, and Mental Observation);
 - (F) Number of young adults in restrictive housing units, in total and disaggregated by type and level of housing;
 - (G) Number of active young adult-only housing areas by facility during the reporting month;
 - (H) 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);
 - (I) For each training offered, the number and percent of staff working with young adults, in total (Department-wide) and disaggregated by facility and by status of young adult training received (qualified, trained but expired, never trained);
 - (J) A list and description of young adult program offerings by facility, housing type (young adult-only, commingled), and provider, specifying Department-led programming and programming offered by external providers;

(K) The number and percent of young adults in custody with an Individual Behavioral Support Plan; and

(L) Any other information the Department or the Board deems relevant to assessment of the Young Adult Plan.

(M) The Board and the Department shall jointly develop reporting templates for information required by 40 RCNY § 1-02(c)(3) for approval by the Board.

(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)iii] female adults, ages 22 and over;

[(v)iv] 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 (2) 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 (4) weeks for [detainees] individuals awaiting trial and eight (8) 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 confined in punitive segregation] people confined in RMAS housing 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 (2) 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 (10) 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 (7) 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] people 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] restrictive housing*. [Prisoners] Persons confined in [close custody or punitive segregation] RMAS 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 one business day 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] restrictive housing.*

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

(2) Congregate religious activities by [prisoners] people in [close custody or punitive segregation] Levels 1 and 2 of RMAS housing 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 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 one business day [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] the person's 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 (4) 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] the legal assistant's 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 (5) days per week including at least one (1) weekend day. On each day a law library is open:

(i) in facilities [with] housing more than six hundred (600) [prisoners] people, each law library shall be operated for a minimum of ten (10) hours, of which at least eight (8) shall be during lock-out hours;

(ii) in facilities [with] housing six hundred (600) or fewer [prisoners] people, each law library shall be operated for a minimum of eight (8) and a half hours, of which at least six (6) and a half shall be during lock-out hours;

(iii) in all facilities, the law library shall be operated for at least three (3) 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 (8) 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 (5) 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 (2) 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] Levels 1 and 2 of RMAS 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] Levels 1 and 2 of RMAS 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] the person's 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] people in custody 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 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 one business day [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 (5) 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 (3) days for at least three (3) consecutive hours between 9 a.m. and 5 p.m. Visiting shall be permitted on at least two (2) evenings for at least three (3) 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 (5) 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 (1) evening for at least three (3) 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 (5) 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 (1) 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 (2) visits per week with at least one (1) on an evening or the weekend, as the sentenced [prisoner] individual wishes. [Detainees] People awaiting trial are entitled to at least three (3) visits per week with at least one (1) 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 (3) 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 (2) [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 (4). 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 twenty-four (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 twenty-four (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 sixteen (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 sixteen (16) years of age may be required to be accompanied by a person eighteen (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 sixteen (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] RMA housing in accordance with the procedures and guidelines set forth in 40 RCNY § [1-16] 6-17(g).

(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 do not possess [no] any contraband.

(2) All prospective visitors may be searched prior to a visit solely to ensure that they do not possess [no] any 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 (2) 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 (5) 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 forty-eight (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 (5) 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 twenty-four (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 twenty-four (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;
 - (iii) Placing restrictions on people in custody that are limited to those required to achieve the appropriate objectives for which the restrictions are imposed; and
 - (iv) Confining people in custody 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.
 - (2) Placement of 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 Department custody;
 - (ii) Imposing sanctions that are proportionate to the offenses committed;
 - (iii) Applying disciplinary rules and imposing sanctions fairly and consistently; and
 - (iv) Ensuring that people in custody understand the basis for their placement into restrictive housing or a restrictive status other than for an infraction, and that they understand the basis for any individual restrictions imposed in conjunction with their placement in such housing.
 - (3) Promotion of the rehabilitation of people in custody and their reintegration into the community by:

- (i) Incentivizing good behavior;
 - (ii) Allowing people placed into restricting housing as much out-of-cell time and programming participation as practicable, consistent with safety and security; and
 - (iii) Providing necessary programming and resources.
- (4) Monitoring and tracking compliance with these Chapter 6 rules and the core principles on which they are based by:
- (i) Developing performance measures; and
 - (ii) Regularly reporting performance outcomes to the public.

Subchapter B: Definitions

§ 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) “Person in custody” means any person confined in a facility.
- (g) “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 units where people in custody are housed separately from people housed in the general population, and:
- (1) The out-of-cell time offered per day in any level of the unit is less than fourteen (14) hours; or
 - (2) People in the unit or level within the unit are subject to one or more of the following:
 - (i) Services mandated under other Chapters of the Minimum Standards are provided in a more restricted manner than they are provided to people housed in the general population. This would include, for example, the provision of law library services other than in a facility law library or religious services other than in a facility chapel.
 - (ii) A person is housed alone in the unit.
 - (iii) The physical design of the unit is such that it only permits a person in custody to congregate in a dayroom with less than four other people in custody.
- (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) “General population” or “general population housing” means all housing units that are not restrictive housing units, specialized medical units, or specialized mental health units as defined in this section
 - (3) “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.
 - (4) “Housing area” or “housing unit” means facility housing, including common areas, used to house people in custody.
 - (5) “Infraction” means a violation of Department rules.

- (6) “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.
- (7) “M” Designation” is a designation assigned pursuant to a settlement in *Brad H. v. City of New York*, if the person, during one incarceration event, has engaged with the mental health system at least three (3) times or has been prescribed certain classes of medication.
- (8) “Mandated services” means services mandated under the Board’s Minimum Standards.
- (9) “Pre-hearing detention” means the placement of a person in custody in RMAS Level 1 pending the investigation or adjudication of the person’s disciplinary infraction.
- (10) “PSEG” or “punitive segregation” means the placement of a person in custody in isolation for extended periods of time, separate and apart from the general population, pursuant to a disciplinary sanction imposed after a disciplinary hearing.
- (11) “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) such as restraint chairs and the WRAP restraint device; and restraint desks (school-type desk surface and chair with ankle restraints).
- (12) “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.
- (13) “Risk Management Accountability System” or “RMAS,” pursuant to 40 RCNY § 6-08 through § 6-26, is a three-level progression model that separates people from general population in response to their commission of an offense and holds them accountable through a swift, certain, fair, and transparent process. RMAS promotes prosocial behavior and progression through positive incentives as well as case management services, behavior support plans, and evidence-informed programming, tailored to the person’s individual needs. RMAS includes Levels 1,

2, and 3 with Level 1 being the most restrictive, Level 2 less restrictive than Level 1, and Level 3 less restrictive than Level 2.

- (14) “Specialized medical housing” are housing units for persons with medical conditions, such as infirmaries and contagious disease units (CDUs), where entry and discharge are determined by CHA according to clinical criteria.
- (15) “Specialized mental health housing” are housing units for persons with serious mental illness such as Program for Accelerating Clinical Effectiveness (PACE) units, and Clinical Alternatives to Punitive Segregation (CAPS) units, where entry and discharge are determined by CHA according to clinical criteria. This term does not include Mental Observation (MO) units.
- (16) “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 in RMAS Level 1 if the person is under investigation for or charged with an infraction and meets the following criteria:
 - (1) The person is reasonably believed by the Department to have committed a Grade I violent offense within the past business day; 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 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 sentence to RMAS Level 1.

- (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 infractions, (3) time from placement to hearing, (4) whether people placed in pre-hearing detention were adjudicated for continued placement in RMAS Level 1, 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) for approval by the Board.

§ 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 or have been or are likely to be ineffective.
 - (2) Temporarily place a person in custody for the person's own safety after the person has been assaulted or otherwise victimized by another person in custody.
 - (3) Facilitate the decontamination of people in custody following exposure to chemical spray.
- (b) The Department shall ensure the immediate 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) The Department shall conduct visual and aural observation of people in de-escalation confinement every fifteen (15) minutes.
- (d) The Department shall utilize only individual cells for the purpose of de-escalation confinement. Such cells must be located in areas other than intake areas.

- (e) Cells used for de-escalation confinement must have the features specified in, and be maintained in, accordance with 40 RCNY § 1-03 and § 1-04.
- (f) 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.
- (g) 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 placement in de-escalation confinement shall be no more than six (6) 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 three (3) hours for a maximum of six (6) hours. The approval for each three-hour authorization shall consider the reasons therefor, including what attempts were made by the Department to transfer the person in custody out of de-escalation confinement after each three-hour period.
 - (3) Notwithstanding that de-escalation confinement is limited to a maximum of six (6) hours, should the Department keep a person in de-escalation confinement for more than six (6) hours, it shall notify the Board, in writing, of all such instances within one business day. Such notice shall include how long someone was kept in de-escalation confinement in total, and the reasons why the person was not placed elsewhere. The Department shall include in this notification the initial authorization and reauthorization information specified in 40 RCNY §§ 6-05(g)(1) and (2).
 - (4) For the purposes of compliance with the time limitations in this section, the length of a person in custody's de-escalation confinement shall be calculated from the time of initial placement in the de-escalation confinement cell or area until the individual is transported to a newly assigned housing area, and shall include the time the person spends in any other subsequent de-escalation confinement cell or area to which the Department moves the individual prior to rehousing.
- (h) The Department shall create and regularly update as necessary a list of the specific areas designated to be used for de-escalation purposes at each facility. The Department shall share this list with the Board and update the Board as soon as changes to these designations are made.

- (i) Notwithstanding that de-escalation confinement is limited to a maximum of six (6) hours, should the Department keep a person in such confinement for more than six (6) hours, it shall provide the Board with documentation supporting initial placement, each three-hour authorization of the continued placement, and the reason placement has continued beyond six (6) hours.
- (j) The Department shall provide the Board with a quarterly public report with information related to its use of de-escalation confinement including but not limited to (1) the number of placements in de-escalation confinement, (2) the number whose placement lasted more than three (3) hours, (3) the number whose placement lasted more than (6) hours, (4) the minimum, maximum, mean, and median time spent in de-escalation confinement, and (5) any other information the Department or the Board deems relevant to the Board's assessment of the use of de-escalation confinement in Department facilities. Metrics in the public report shall be reported in total and by facility. The data used to produce the report shall be tracked at the individual placement level and provided to the Board in a manner that may be analyzed electronically by the Board.
- (k) The Board and the Department shall jointly develop the reporting templates for the report required by 40 RCNY § 6-05(k), for approval by the Board.
- (l) The Department shall commence using individual cells outside of intake areas as required by 40 RCNY § 6-05(d) within six (6) months of the Effective Date. Pending such implementation:

 - (1) The Department shall operate intake areas used for de-escalation confinement in accordance with all other requirements set forth in this section..
 - (2) De-escalation confinement in an intake area must have an adequate number of working flush toilets, wash basins with drinking water, including hot and cold water, and appropriate furnishings for seating and reclining to accommodate the number of people in custody confined there. Such areas must be maintained in a clean and sanitized manner.

§ 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) DOC shall limit the scope of emergency lock-ins so that only those housing areas that must be locked down are affected.
- (c) 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.

- (d) 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.
- (e) The Department shall document the locations and reason(s) for each emergency lock-in (e.g., fight, slashing, use of force, missing razor) and the objectives to be accomplished during the lock-in related to those reasons (e.g., investigate use of force, conduct searches to recover contraband) in a manner that may be analyzed electronically by the Board.
- (f) When authorizing an extension of an emergency lock-in beyond a regularly scheduled lock-in period, the Department shall re-evaluate the stated reasons and objectives for the lock-in and shall document reasons as to why the lock-in must be continued (e.g., search still underway, not enough staff on post to lock out housing area).
- (g) In all housing areas where lock-ins have continued for more than six (6) consecutive hours, CHA staff shall complete medical and mental health rounds. DOC shall ensure timely access to medical and mental health care — particularly emergency or time-urgent medical and mental health care — during any lock-in, and must provide for other delayed or missed services as quickly as possible following an emergency lock-in.
- (h) For lock-ins continuing for twenty-four (24) hours or more, the Department shall notify the Board in writing of the steps taken to address the emergency and lift the lock-in.
- (i) For the following services, the Department shall track and record, in a manner that may be analyzed electronically by the Board, whether services were impacted (i.e., cancelled, delayed, or not affected) due to an emergency lock-in and the number of housing areas and people affected:
- (1) Recreation
 - (2) Law library
 - (3) Visits
 - (4) Religious services
 - (5) Educational services
 - (6) Sick call
 - (7) Other Clinic services
 - (8) Medication/pharmacy
 - (9) Scheduled Medical and Mental Health appointments (including on- and off- Island specialty appointments)
 - (10) Medical or Mental health rounds
 - (11) Programming

- (j) If services were delayed or not otherwise affected, the Department shall track and report the time each service was afforded for each housing area impacted by the emergency lock-in.
- (k) 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 of 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;
 - (6) Number of required mental health rounds missed, in total and disaggregated by facility and restrictive housing units affected;
 - (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 six (6) hours of non-scheduled continuous lock-in, in total and disaggregated by facility.
 - (10) Any other information the CHA or the Board deems relevant to the Board's assessment of emergency lock-ins and their impact on access to health and mental health care.
- (n) The Board and CHA shall jointly develop the reporting template for the report required by 40 RCNY § 6-06(m), for approval by the Board.

(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 for approval by the Board.

Subchapter D: Prohibition On The Use Of Punitive Segregation

§ 6-07 Policy.

- (a) Punitive segregation, also known as PSEG or solitary confinement, imposes significant risks of psychological and physical harm on people in custody. These risks are intensified for those with pre-existing mental illness or medical conditions and young adults. The risk of self-harm and potentially fatal self-harm is also strongly associated with solitary confinement. The hallmarks of solitary confinement — social deprivation and enforced idleness — create these serious health risks and are antithetical to the goals of social integration and positive behavioral change.
- (b) By November 1, 2021, the use of all forms of punitive segregation as defined in 40 RCNY § 6-03(b)(10), shall be prohibited in all existing and future DOC facilities.
- (c) Upon the Department’s elimination of punitive segregation and commencing November 1, 2021, the only form of restrictive housing DOC is permitted to operate will be RMAS housing pursuant to 40 RCNY § 6-08 through § 6-26.

Subchapter E: Risk Management and Accountability System (RMAS)

§ 6-08 Purpose.

- (a) The purpose of RMAS is to:

 - (1) Separate from the general population a person in custody in response to the person’s recent commission of an offense, which significantly threatens the safety and security of other people in custody and staff.
 - (2) Hold incarcerated individuals accountable for their misconduct through swift, certain, fair, and transparent processes.

- (3) Promote prosocial behavior and progression back to general population through utilization of positive incentives, case management services, individual behavior support plans, and individualized evidence-based programming.
- (4) Provide people in custody with meaningful opportunities to socially engage with others and pursue productive activities.

§ 6-09 Exclusions.

- (a) The following categories of people in custody shall be excluded from RMAS:
 - (1) People with a mental disorder that qualifies as a serious mental illness;
 - (2) People diagnosed with an intellectual disability;
 - (3) Pregnant persons, persons within eight (8) weeks of pregnancy outcome, and persons caring for a child in the Department nursery program.
- (b) CHA shall determine if a person in custody meets one or more of the above exclusionary criteria in 40 RCNY § 6-09(a)(1) through (3).
- (c) CHA has the authority to determine if any person, after being placed in RMAS, should be removed to a specialized medical or mental health housing unit because the person meets a criterion in 40 RCNY § 6-09(a)(1) through (3) or the housing is medically contraindicated.
- (d) People excluded from RMAS Level 1 or Level 2 at the time of an infraction due to health status pursuant to 40 RCNY § 6-09(a)(1) through (3) shall not be placed in RMAS Level 1 or Level 2 for the same infraction at a later date, regardless of whether their health status has changed.

§ 6-10 Placement Criteria.

- (a) Except for pre-hearing detention as set forth in 40 RCNY § 6-04, a person in custody may be confined in RMAS Level 1 only upon a finding within the past thirty (30) days that the person is guilty of having committed a Grade I violent offense.
- (b) A person in custody may be placed directly into RMAS Level 2 only upon a finding within the past thirty (30) days that the person is guilty of having committed a Grade I non-violent offense or a Grade II offense.

- (c) The Department may not place people in custody directly into RMAS Level 3.
- (d) A person's sentence after being found guilty of an offense at a disciplinary hearing must be proportionate to the infraction charge.
- (e) Within 3 months of the Effective Date of the Rule, the Department shall provide the Board with a written penalty grid:
 - (1) Describing each Grade I violent offense that would render a person eligible for placement in RMAS Level 1;
 - (2) Describing each Grade I non-violent offense and Grade II offense that would render a person eligible for placement in RMAS Level 2;
 - (3) The sentence range for each offense.
- (f) The Department shall immediately notify the Board, in writing, of any material changes to the penalty grid.

§ 6-11 Case Management.

- a) The Department shall assign a case manager to each person in custody upon the person's placement into RMAS Level 1 or upon the person's direct entry into RMAS Level 2. To the extent practicable, the assigned case manager shall remain the person's case manager throughout the person's stay in RMAS.
- b) The Department shall employ case managers with some combination of:
 - (1) Experience in providing case management, counseling, or community services, preferably in a human services or health discipline, and/or preferably to individuals involved in the criminal justice system; and/or
 - (2) Knowledge acquired through education, training, and/or field work, preferably in a correctional setting, of:
 - (i) human behavior and performance;
 - (ii) individual differences in ability, personality, and interest, learning and motivation;
 - (iii) assessment and treatment of behavioral disorders; and

- (iv) group behavior and dynamics and societal trends and influences; and/or
- (3) Demonstrated skills in active listening, conveying information effectively, and engaging empathetically with individuals in a correctional setting, collaborating with them in developing and monitoring treatment or behavioral support plans, and/or providing programming or support services to them.

§ 6-12 Individual Behavior Support Plans.

- (a) The Department shall develop, in writing, an individual behavior support plan (IBSP) for each person in custody who is placed in RMAS.
 - (1) The plan shall be informed by an evidence-informed assessment and describe specific services and measurable goals for the person while in RMAS to facilitate the person's reintegration into housing in the general population.
 - (2) The plan's goals shall be tailored to the person's age, literacy, education level, and capacity to complete programming.
 - (3) The plan shall be current, reflecting behavior close-in-time to the periodic review required under 40 RCNY § 6-14, and of sufficient specificity to make clear to the person what the person must do to progress to a less restrictive RMAS Level or return to general population.
 - (4) The plan shall include:
 - (i) A detailed assessment of what led the person to engage in the violent or disruptive behavior;
 - (ii) Whether the person will be receiving mental health services;
 - (iii) What programming and/or services shall be provided to address the reasons for the person's violent or disruptive behavior and
 - (iv) Whether special staffing arrangements will be employed to manage the person's behavior;
 - (iv) Whether the involvement of family members, criminal defense counsel, and community resources will be employed to assist the person in meeting the goals of the person's IBSP.
- (b) Within seventy-two (72) hours of a person in custody's placement in RMAS Level 1 or direct entry into RMAS Level 2, a case manager must review the IBSP with the person.

The Department shall review and update a person's IBSP with the person's participation at each periodic review thereafter.

- (c) The date of initial and subsequent reviews with a person in custody and changes to the person's IBSP shall be documented in writing.
- (d) If a person in custody commits and is found guilty of a Grade I infraction while in RMAS, the Department shall:
 - (1) Review the person's IBSP and update the plan to include the strategies the Department shall employ to prevent the person from engaging in further violent or disruptive behavior. The Department shall conduct this review and update the plan accordingly within two business days of the person's being found guilty of a Grade I infraction while in RMAS.
 - (2) The Department shall submit the person's updated IBSP to the Chief of Department for the Chief's approval. Such determination shall be made by the Chief of Department within one business day of receipt of the plan.
 - (3) The updated IBSP with the Chief of Department's approval shall be transmitted to CHS, the Board, the affected person, and the person's criminal defense attorney within one business day of its approval by the Chief of Department.
 - (4) The person's case manager shall meet with the person at least five days a week to review the person's progress toward meeting the goals of the person's updated IBSP and further update the plan if necessary. Within twenty-four (24) hours of being updated, the IBSP shall be shared with the affected person.

§ 6-13 Progression.

- (a) Pursuant to the periodic review process described in 40 RCNY § 6-14, all persons in Level 1 except those found guilty of an offense against staff shall be given an opportunity to progress to Level 2 at their thirty (30) and forty-five (45) day reviews if there is no specific documented intelligence that the person will engage in violence in RMAS Level 2. All persons in Level 1 must progress to Level 2 after sixty (60) days unless (1) they have committed a Grade I violent infraction while in Level 1; or (2) there is specific documented intelligence that the person will engage in violence in RMAS Level 2.
- (b) A person in custody should not be held in RMAS Level 2 more than fifteen (15) days unless, during the current review period, there is (1) specific documented intelligence that the person will engage in violence in RMAS Level 3; or (2) documented evidence that the person has consistently and willfully refused to participate in programming. Such

progression determination must be made pursuant to the periodic review process described in 40 RCNY § 6-14.

- (c) A person in custody should not be held in RMAS Level 3 more than fifteen (15) days unless, during the current review period, there is (1) specific documented intelligence that the person will engage in violence outside RMAS; or (2) documented evidence that the person has consistently and willfully refused to participate in programming. In no case may a person be held in RMAS Level 3 more than thirty (30) consecutive days unless there is specific documented intelligence that a person will engage in violence outside of RMAS. Such progression determinations must be made pursuant to the periodic review process described in 40 RCNY § 6-14.
- (d) If the Department determines through the periodic review process described in 40 RCNY § 6-14 to progress a person to a less restrictive level or unit, that person shall be moved to the less restrictive level or unit within forty-eight (48) hours.

§ 6-14 Periodic Review of Placement.

- (a) The Department shall review the placement of people in custody confined in:
 - (1) RMAS Level 1 at least starting at thirty (30) days and every fifteen (15) days thereafter;
 - (2) RMAS Level 2 at least every fifteen (15) days;
 - (3) RMAS Level 3 at least every fifteen (15) 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 (1) the right to submit a written statement for consideration, and (2) the 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) Periodic review of an individual's RMAS status shall be conducted by a multidisciplinary team, including Department program staff and the person's case manager, and shall consider the following:
 - (1) In the Level 1 reviews, the justifications for continued placement in Level 1, if any, including the specific documented intelligence that the person will engage in violence in RMAS Level 2. This consideration does not apply to people in Level 1 who have been found guilty of an offense against staff until their sixty (60) day review, as set forth in 40 RCNY § 6-13(a);
 - (2) In the Level 2 reviews, the justifications for continued placement in Level 2, if any, including (i) the specific documented intelligence that the person will engage in violence in RMAS Level 3; or (ii) evidence that the person has consistently and willfully

- refused to participate in programming, including schedules and descriptions of offered programs, documented refusals, and program staff notes;
- (3) In the Level 3 fifteen (15) day review, the justifications for continued placement in Level 3, if any, including (i) the specific documented intelligence that the person will engage in violence outside of RMAS; or (ii) evidence that the person has consistently and willfully refused to participate in programming, including schedules and descriptions of offered programs, documented refusals, and program staff notes;
 - (4) In the Level 3 thirty (30) day review and subsequent reviews, the justifications for continued placement in Level 3, if any, including the specific documented intelligence that the person will engage in violence outside of RMAS;
 - (5) The continued appropriateness of each individual restriction on privileges and whether any such individual restrictions on privileges should be relaxed or lifted;
 - (6) Information regarding the person's subsequent behavior and attitude since placement in RMAS began;
 - (7) Any written statement the person submitted for consideration or any oral statement the person made at their periodic review;
 - (8) Any other factors that may favor retaining the person or releasing the person from RMAS or any other factors that may favor the lifting of individual restrictions or continuing to impose individual restrictions on the person; and
 - (9) If the person's placement in any level of RMAS 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 advancement to a less restrictive RMAS level or return to general population. In that event, the Department must update the person's IBSP pursuant to 40 RCNY § 6-13(b) and (c), to specify each such action or behavioral change.
- (d) The conclusions reached in the multidisciplinary team's periodic review, including progression and extension determinations, shall be recorded in a written report. A copy of the report shall be provided to the person in custody within one business day of the review, with the exception of specific documented intelligence in 40 §§ 6-14(c)(2)-(4), which may be redacted on the copy provided to the person in custody if the Department determines that disclosing such information would present a serious safety risk to specific individuals. In such cases, the Department shall inform the person in writing that the information is being redacted due to a specific security risk. The Department shall maintain records of both redacted and unredacted reports.

§ 6-15 Extensions

- (a) In such cases where the Department determines to extend a person's time in RMAS Level 1 beyond sixty (60) days or determines to extend a person's time in RMAS Levels 2 or 3 for more than fifteen (15) days at a time, the extension determination shall be reviewed by the Chief of Department to determine whether such highly exceptional circumstances exist to justify continued placement in the current level, pursuant to the criteria described in 40 RCNY § 6-13.
- (b) Notice of a determination to extend a person's time in Level 1 beyond sixty (60) days or in Levels 2 or 3 for more than fifteen (15) days at a time, along with a copy of such determination, shall be submitted to the Chief of Department for approval or rejection and served upon the affected person within one business day of such determination. The person will be asked to sign the notice as proof of receipt. If the person does not sign the notice, the staff person serving the notice must note the person's refusal on the notice.
- (c) The Chief of Department shall review the extension determination and approve or reject it within one business day of receipt thereof. The Chief's decision and the reasons supporting it shall be stated in writing and sent to the person in custody, the Board, and CHA within one business day of such decision. Service of the decision shall be served upon the affected person in accordance with the procedure set forth in subdivision (f) of this section.
- (d) If a person commits and is found guilty of a Grade I violent offense while in RMAS Level 1, 2, or 3 and is found guilty of such offense at a disciplinary hearing, the Department may restart the person in Level 1 or return the person to Level 1 to serve the sentence imposed for that infraction. In that event, the person's length of stay in Level 1 shall be determined in accordance with the progression criteria described in 40 RCNY § 6-13(a).
- (e) If a person commits and is found guilty of a Grade I non-violent or Grade II offense while in RMAS Level 1, 2, or 3 and is found guilty of such an offense at a disciplinary hearing, the Department may restart the person in Level 2 or return the person to Level 2 to serve the sentence imposed for that infraction. In that event, the person's length of stay in Level 2 shall be determined in accordance with the progression criteria described in 40 RCNY § 6-13(b).
- (f) The Department may not extend a person's length of stay in RMAS by imposing consecutive lengths of stay regarding multiple offenses for which the person was found guilty at a hearing.

§ 6-16 Required Out-of-Cell Time.

All people in custody who are housed in RMAS must be permitted the following out-of-cell hours per day:

- (a) People in Level 1 must be permitted at least ten (10) out-of-cell hours per day.
- (b) People in Level 2 must be permitted at least twelve (12) out-of-cell hours per day.
- (c) People in Level 3 must be permitted at least fourteen (14) out-of-cell hours per day.

§ 6-17 Other Conditions.

- (a) Security staff shall conduct visual observations of all persons housed in RMAS every fifteen minutes (15) when they are locked in their cells. During such observations, security staff must look for and confirm signs of life.
- (b) At the beginning of each tour, security staff in RMAS units shall confirm in the housing area logbook that they have checked which persons in the unit have serious medical conditions, as described in 40 RCNY § 6-21(a).
- (c) The Department shall provide people housed in RMAS Level 1 with the opportunity to lock out at the same time as at least one other person in custody in a setting where individuals can meaningfully engage both visually and aurally. Such lockout setting must allow for individuals to converse easily without the need to raise their voices to be heard.
- (d) The Department shall provide people in custody confined in RMAS Level 2 with the opportunity to lock out at the same time as at least three (3) other people in custody in a setting where individuals can meaningfully engage both visually and aurally. Such lockout setting must allow for individuals to converse easily without the need to raise their voices to be heard. The Department shall not be deemed to be out of compliance with this provision if the facility-wide census of RMAS Level 2 is less than four (4). In such case, the Department shall guarantee that a person in custody confined in RMAS Level 2 has the opportunity to lock out at the same time as at least one other person in custody in the manner described in 40 RCNY 6-17(c).
- (e) People confined in a RMAS Level 3 unit shall have the same opportunity to engage with other people confined in their unit as in general population.
- (f) To the extent the Department imposes individual restrictions on a person in custody confined in RMAS 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.

- (g) To the extent the Department seeks to limit access to contact visits of a person in custody who is confined in RMAS, a hearing shall be held, as required in 40 RCNY § 6-24(d), which shall address the criteria set forth in 40 RCNY § 1-09(h) with regard to both the incarcerated person and any individual visitors with whom the Department wishes to limit contact.
- (h) Law library services may be provided in RMAS Level 1 and Level 2 units instead of 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) Access to law library services shall be provided by means of a law library kiosk and typewriters in each Level 1 and Level 2 unit.
 - (2) There shall be one library coordinator assigned to every two (2) RMAS units at least five (5) times per week; and
 - (3) The law library coordinator will provide instruction on available legal research tools and respond to people in custody's requests for law library services.
- (i) To the extent the Department offers people confined in RMAS recreation in outdoor recreation pens or in vacant cells, the Department shall equip these pens or cells with exercise equipment such as dip bars, high bars, or pull-up bars.
- (j) All RMAS Level 1 and Level 2 units shall be air conditioned.

§ 6-18 Staffing.

(a) *Steady Posts*

The Department shall retain records sufficient to show accurate, uniform data on the security staff transferring in and out of RMAS 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*

The Department shall provide the Board with the Department's staffing plans developed for RMAS and regularly update the Board on any material changes to such plans.

§ 6-19 Training.

- (a) Security staff assigned to RMAS units shall receive training designed to address the unique characteristics and operations of these units and the people in custody who are housed in these units. Such training shall include, but not be limited to recognition and understanding of mental illness and distress, effective communication skills, and conflict de-escalation techniques.
- (b) The Department shall provide hearing adjudicators and other staff involved in RMAS 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, including, but not limited to the length of each type of training required by the Department, training schedules, and curricula.

§ 6-20 Programming.

- (a) The Department shall provide people in RMAS with both in- and out-of-cell programming which is evidence-informed, age-appropriate, and tailored to each person's IBSP. Such programming shall be aimed at facilitating rehabilitation, addressing the root causes of violence, and minimizing idleness. The Department shall also provide people confined in RMAS with access to both in-cell and out-of-cell productive activities.
- (b) The Department shall offer at least five (5) hours of daily programming to people confined in RMAS.
- (c) The Department shall offer young adults who are confined in RMAS with access to at least five (5) hours of daily programming. The 5-hours of access may include programming, activities and/or services provided during school hours by entities or persons other than the Department. For young adults in RMAS who are eligible for educational services provided by or through the New York City Department of Education ("DOE") pursuant to N.Y. Education Law 3202(7) and implementing state regulation, the Department shall offer such young adults access to DOE-provided educational services each school day that DOE's school program is in session during the 10-month school year (or extended school year, if set forth on the student's special education plan), provided that the young adult indicates in writing that they wish to attend and demonstrates their eligibility for such services.
- (d) The Department shall provide and regularly update the Board with information on program offerings in RMAS. The Department shall maintain accurate and up-to-date programming schedules in each RMAS unit.

- (e) The Department shall document by date each individual's participation in each program session offered and any refusals to participate in RMAS programming and the reasons therefor.
- (f) The Department shall provide the Board with quarterly public reports on RMAS programming, including but not limited to the following information for adults and young adults by RMAS level:
 - (1) the name, description, and type of program offered and staff delivering each program offered;
 - (2) the number of sessions of each program offered;
 - (3) the average number of participants per session and the number of unique individuals in RMAS overall and the number of unique individuals participating in each program during the reporting period;
 - (4) the number of programming hours received per day (minimum, maximum, mean, median) by individuals in RMAS during the reporting period.
 - (5) Any other information the Department or the Board deems relevant to the assessment of programming in RMAS.
- (g) The Department shall provide the Board with the individually identified data used to create the public reports required in this section.
- (h) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY §6-21(e), which shall be subject to approval by the Board.

§ 6-21 Access to Health Services.

- (a) Upon intake and in subsequent clinical encounters, CHA shall identify individuals with serious medical conditions, as defined by CHA. Without disclosing specific diagnoses, CHA shall maintain a current list of all such individuals in DOC custody and make that list available to the Department. The Department shall then ensure that staff in RMAS units are aware of all people in the unit who have been identified by CHA as having a serious medical condition.
- (b) CHA shall provide daily medical and mental health rounds to all people in custody in RMAS. Such rounds must be documented in writing.
- (c) The Department shall immediately notify CHA of each placement of a person in custody into RMAS. Such notification shall be in writing.

- (d) Clinical encounters, with the exception of daily rounds described in 40 RCNY § 6-21(b), shall never occur cell-side. The Department shall ensure that every person who is placed into RMAS is brought to the facility clinic for all scheduled appointments.
- (e) Each time CHA determines removal of a person from RMAS to an alternate housing 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);
- (f) CHA shall provide the Board with a monthly, public report. The report shall include but not be limited to:
 - (1) Number of notifications of placement in RMAS 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 RMAS and the number and percent of rounds resulting in referrals to other CHA services during the reporting period, in total and disaggregated by RMAS level and facility;
 - (4) Number and percent of mental health rounds in RMAS and the number and percent of rounds resulting in referrals to other CHA services during the reporting period, in total and disaggregated by RMAS level and facility;
 - (5) Number of CHA determinations of removal from RMAS to an alternate housing unit during the reporting period, in total and disaggregated by RMAS level and facility;
 - (6) Number and percent of scheduled services by service type and outcome for people housed in RMAS during the reporting period, in total and disaggregated by RMAS level and facility; and
 - (7) Any other information CHA or the Board deems relevant to understanding access to health services in RMAS.
- (g) CHA shall provide the Board with the data used to prepare the report required in 40 RCNY § 6-21(f) and any other information CHA or the Board deems relevant to understanding access to health services in RMAS.
- (h) The Board and CHA shall jointly develop the reporting templates for the public report required by 40 RCNY § 6-21(f), subject to approval by the Board.

§ 6-22 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.

§ 6-23 Disciplinary System Plans.

- (a) Within three (3) months of the Effective Date, the Department shall submit to the Board a written plan for a disciplinary process ("plan"), one for young adults and one for adults, that addresses:
- (1) Grade III offenses ("violations"), and
 - (2) People subject to the exclusions in 40 RCNY § 6-09.
- (b) Each plan shall include:
- (1) Mechanisms for addressing violations without resort to RMAS placement or limitations on individual movement or social interaction. Such mechanisms may include, e.g., positive behavioral incentives and privileges, targeted programming to address problematic behavior; and conflict resolution approaches in response to interpersonal conflict within the jails;
 - (2) Criteria for restricting or affording privileges based on behavior (e.g. commissary);
 - (3) A process for Department staff to respond to violations swiftly and consistently;
 - (4) A plan for communicating the rules of conduct, Department responses to rule violations, and due process procedures in a clear and understandable manner to people in custody and to all Department staff, including non-uniformed staff who have routine contact with people in custody.
 - (5) (4) Training curricula for uniformed and non-uniformed staff on the disciplinary process and procedures.
 - (6) (5) 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 process for engaging Department staff in the plans' development.
- (8) Potential housing options for people excluded from RMAS.
- (c) Upon review of the plans required by this section, the Board and the Department shall jointly develop a public reporting template on the Department's disciplinary systems. The template shall be subject to the Board's approval.

§ 6-24 Due Process and Procedural Justice.

(a) Purpose

- (1) The following minimum standards in this section are intended to ensure that people in custody are placed into RMAS with due process and procedural justice principles.
- (2) The requirements in this section apply to people in custody who are charged with violating Department rules and may be placed in RMAS Level 1 or directly into RMAS Level 2, if they are found guilty of violating such rules.

(b) 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.

(c) Notice of Infraction

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

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

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

(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 two (2) business days prior to the hearing. Failure to do so shall constitute a due process violation warranting dismissal.

(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. Failure of the Department to produce a videotaped refusal and make it part of the hearing record shall constitute a due process violation warranting dismissal.

(7) If the person is charged with a Grade I eligible offense that would render them eligible for placement in RMAS Level 1, notification of such shall be transmitted, via email, to the person's criminal defense counsel within one business day of service on the person. This notification shall not include specific details concerning the alleged offense.

(d) 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 charge.

(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) Refusal to attend or participate

The refusal of people in custody to attend or participate in their hearing must be videotaped or audiotaped 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 has the right to review, prior to the infraction hearing, the evidence relied upon by the Department. Should the Department provide any evidence to the person for the first time at the hearing, the Department shall inform the person at the hearing that they have the right to adjourn the hearing so they can review and prepare their defense.

(v) The right to the assistance of a hearing facilitator: The person charged is 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 § 6-24(h) of this Chapter.

(vii) A person in custody entitled to a hearing facilitator must be provided access to a facilitator at the time the notice of infraction is served, at least two (2) business days prior to the hearing.

(viii) 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.

(ix) 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.

(x) 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 § 6-24(h) 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 RMAS 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.

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

(h) Appeals

- (1) A person who is found guilty at a disciplinary 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.
- (2) 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.
- (3) Individuals in RMAS and other 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.

- (4) The Department shall provide prompt and adequate access to people in custody to file an appeal.
- (5) A person may appeal based on the belief that there was a due process violation, insufficient evidence to support a guilty finding, or because the Hearing Adjudicator was biased.
- (6) 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.
- (7) Appeals shall be determined by DOC staff of the rank of Captain or above. Department staff who decide appeals shall not be:
 - (i) Staff who reported, witnessed, or investigated the incident underlying a guilty determination;
 - (ii) Staff who recommended the person's initial placement in restrictive housing other than disciplinary housing;
 - (v) Staff who recommended that individual restrictions be imposed on the person;
 - (vi) Staff who presided as the Hearing Adjudicator at the person's disciplinary hearing.

(i) Disciplinary Due Process Reporting

- (1) Within one year of the Effective Date, the Department shall develop the system(s) necessary to collect accurate, uniform data on the due process requirements of 40 RCNY §6-24, and to centrally store related documentation, in a manner that may be analyzed electronically by the Board.
- (2) The Department shall provide the Board with a public semiannual report on Disciplinary Due Process for the Adult and Young Adult population, including but not limited to information on:
 - i. 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 the person's infraction notice and whether the person was provided such assistance.

- (ii) 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).
 - (iii) 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.
 - (iv) Disciplinary sanctions, including the number and percent of guilty determinations by top infraction charge Grade (i.e., Grade I violent, Grade I non-violent, Grade II, Grade III), by whether the individual was placed in restrictive housing, including RMAS, and by the reasons not placed (e.g., discharged from custody, excluded due to health contraindication, or placement did not occur within 30 days of adjudication).
 - (v) 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).
 - (vi) Any other information the Department or the Board deems relevant to assessment of RMAS Due Process.
- (3) The Department shall provide the Board with the individually identified data used to create the public reports required in this section and all due process documentation.
 - (4) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY § 6-25(i)(2), which shall be subject to the Board's approval.

§ 6-25 RMAS Data Collection and Review.

- (a) The Department shall maintain and update as necessary a list of the type and specific location of all RMAS units. The list shall include the opening and closing dates of all such units. The Department shall provide this list to the Board on at least a monthly basis and notify the Board in writing when any new RMAS units open, close, or change level.
- (b) The Department shall maintain and develop the system(s) necessary to collect accurate, uniform data on RMAS and the requirements of 40 RCNY Subchapter E, and to centrally

store related documentation, in a manner that may be analyzed electronically by the Board.

- (c) The Department shall provide the Board with a monthly public report with information on RMAS, including but not limited to the following information for the Adult and Young adult populations, overall and by each RMAS Level:
- (1) Number of sentences to RMAS by top offense (Rule Violation Grade Level, Rule Number, Rule Description) and length of sentence;
 - (2) The mean, median, minimum, and maximum time from qualifying incident or violation to placement and from adjudication to placement for all placements in RMAS in the reporting period;
 - (3) The total number of placements and unique people placed during the reporting period; the number and percent of people placed by age, race, ethnicity, gender, and "M" designation status, Security Risk Group, Red ID, and Enhanced Restraint status at time of placement; the average daily population; and the number of adults and young adults currently housed in RMAS as of the last day of the reporting period;
 - (4) Number of determinations to extend a person's time in RMAS Level 1 beyond sixty (60) days or to extend a person's time in RMAS Levels 2 or 3 beyond fifteen (15) days during the reporting period by whether the extension was approved;
 - (5) Number of exits of people from RMAS during the reporting period and their cumulative and consecutive days in RMAS during current incarceration (i.e., minimum, maximum, mean, median days); number of people in RMAS as of the last day of the reporting period and their cumulative and consecutive days in RMAS (i.e., minimum, maximum, mean, median days).
 - (6) The number of periodic reviews required and conducted by outcome of review and whether people attended their review; number of people recommended to progress to a less restrictive level by whether progression occurred within 48 hours of recommendation; number of people not progressing to a less restrictive level or unit by reason not progressed; number of movements to a more or less restrictive level by reason for movement if not related to a review.
 - (7) Average number of out-of-cell hours received per day; and average rate of participation in daily recreation.
 - (8) Numbers and rates of: person-in-custody on person-in-custody fights, slashings/stabbings, assaults on staff, and uses of force, compared to the comparable age group in the general population;

- (9) Any other information the Department or the Board deems relevant to understanding the Department's use of RMAS.
- (d) The Department shall produce monthly public reports of time spent out of cell; access to law library; access to showers; participation in recreation; and time spent participating in programming for each individual in RMAS. Reports shall include the number, length of, and reasons for late lockouts in RMAS units and recommendations or corrective action(s) taken to address report findings related to improving access to and participation in mandated services. Information gathering to prepare this report shall not be conducted by staff regularly assigned to the facilities or units. At least four (4) dates per month shall be selected at random and shall not be previously disclosed to staff with responsibilities related to the units reviewed.
- (e) On a monthly basis, the Department shall provide the Board with the individually identified data used to create the public reports required by 40 RCNY §§ 6-25(c) and (d) and all supporting documentation including but not limited to RMAS placement, review, and IBSP documentation.
- (f) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY §§ 6-25(c) and (d). Such templates shall be subject to the Board's approval. Upon submission and review of the Department's disciplinary system plan submitted pursuant to 40 RCNY § 6-23, the reporting provisions outlined in 40 RCNY § 6-25(c) and associated templates shall be reviewed and revised as necessary.
- (g) The Board shall review the information provided by the Department and any other information it deems relevant to the assessment of RMAS. No later than eighteen months (18) after implementation of RMAS, the Board shall meet to discuss the effectiveness of RMAS. The Board's discussion shall address but not be limited to findings regarding the conditions of confinement in RMAS and the impact on the mental health of people housed therein.

§ 6-26 Transition.

- (a) The Department shall provide the Board with the architectural renderings for RMAS housing units prior to their submission to the New York State Commission of Correction (SCOC). The Department shall provide the Board with the architectural renderings for such units as approved by SCOC within two (2) business days of SCOC's approval.
- (b) Within one (1) month of the Effective Date, the Department shall provide a comprehensive transition plan, in writing to the Board, which shall include the following documents and

information concerning the elimination of punitive segregation and the implementation of RMAS:

- (1) A list of written policies to implement RMAS;
 - (2) Staffing plans for uniform and non-uniform staff who will work in RMAS;
 - (3) Training curricula for uniform and non-uniform staff who will work in RMAS;
 - (4) Programming to be provided to people housed in RMAS;
 - (5) Plans for conducting a process and outcome evaluation with proposed metrics to determine success of the RMAS model.
- (c) Starting the first business day of July 2021 and of each month thereafter until RMAS implementation is complete, the Department shall submit to the Board, on a monthly basis and in writing, a public progress report for the previous month, which shall include the Department's progress toward achieving:
- (1) Progress in reducing the PSEG population (i.e., PSEG I/Central Punitive Segregation Unit (CPSU), PSEG II, Restrictive Housing Unit (RHU));
 - (2) Progress in reducing the population housed in other restrictive housing units, including Enhanced Supervision Housing (ESH) and Secure;
 - (3) Construction, opening, and use of new RMAS housing units, including when plans are submitted to and approved by SCOC and explanations for unanticipated delays;
 - (4) Development of Department policies governing the operation of RMAS disaggregated by the stage of their development, as follows:
 - (i) Commenced drafting;
 - (ii) Signed by DOC and posted on DOC's public website;
 - (iii) Integrated into training of DOC staff.
 - (5) Implementation of training on RMAS, including:
 - (i) Status of curriculum development;
 - (ii) Number of staff scheduled to be trained disaggregated by uniform and non-uniform status;

- (iii) Number of staff who have been trained, disaggregated by uniform and non-uniform status.
- (6) Implementation of programming in RMAS.
- (7) The provision of services such as recreation, visits, and privileges in the general population which exceed the requirements of the Minimum Standards outlined in Chapter 1 of Title 40 of the Rules of the City of New York;
- (8) Any deviations from the detailed timelines and benchmarks set forth in the plan required by 40 RCNY § 6-26(b);
- (9) Any other information the Department or the Board deems relevant to understanding progress toward the elimination of punitive segregation and implementation of the RMAS model.

Subchapter F: Restraints and Canines

§ 6-27 Restraints.

- (a) Nothing in this section shall prohibit:
 - (1) The use of restraints that are reasonable and necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, prevent escape, control a person in custody, or protect staff, other people in custody, and others from injury;
 - (2) The immediate use of restraints to prevent a person in custody from self-harm or harming others or causing serious property damage;
 - (3) The routine use of restraints for movement, escort, and transportation purposes.
- (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 November 1, 2021, 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) As of the Effective Date of the Rule and until November 1, 2021, 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 or people have recently participated in an actual or attempted slashing or stabbing, or engaged in activity that caused serious injury to a staff member or another person. The use of a restraint desk or other restraint must be the least restrictive option necessary for the safety of others.
- (g) As of the Effective Date of the Rule and until November 1, 2021, 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.
- (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'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:
- A. The justifications for continued placement of the person in a form of non-individualized restraint during lockout;
- B. The continued appropriateness of the person in a form of non-individualized restraint during lockout;
- C. Information regarding the person's subsequent behavior and attitude since placement of the person in a form of non-individualized restraint during lockout;
- D. Any written statement the person submitted for consideration or any oral statement the person made at the person's periodic review;
- E. Any other factors that may favor retaining the person or removing the person from non-individualized restraint during lockout; and
- F. 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.

(3) 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 violent 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.

(4) The Department shall determine whether the person shall advance out of restraint desks or other form of non-individualized restraint within twenty-four (24) hours of the person's periodic review. If the Department determines that a person in custody should be moved out of restraint desks or other form of non-individualized restraint during 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.

(h) Restraints shall never be:

(1) Applied as punishment or retaliation;

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

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

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

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

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

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

- (k) 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.
- (l) Four- and five-point restraints shall not be used other than pursuant to 40 RCNY § 2-06.
- (m) The Department shall provide the Board with a semiannual public report on the Department's use of restrictive statuses. The report shall include but not be limited to the following information for each restrictive status (i.e., Enhanced Restraint, Red ID, CMC):
 - (1) Number and percent of recommendations for placement in the restrictive status by age, race, ethnicity, gender, and "M" designation status of the person for which the restrictive status was recommended;
 - (2) Number and percent of people excluded from placement in such status due to a medical or mental health contraindication;
 - (3) Number of unique individuals placed in the restrictive status during the reporting period and the number of people currently classified in the restrictive status as of the last date of the reporting period;
 - (4) Number and percent of periodic reviews conducted, in total and disaggregated by outcome of review (i.e., continued or removed);
 - (5) Number and percent of appeals of placement into restrictive statuses, in total and disaggregated by outcome of appeal;
 - (6) Any other information the Department or the Board deems relevant to the understanding the Department's use of restrictive statuses.
- (n) The Board and the Department shall jointly develop reporting templates for the public report required by 40 RCNY § 6-27(m), for approval by the Board.

§ 6-28 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.
- (d) Canines may not be stationed in restrictive housing units, including RMAS.

Subchapter G: Variances

§ 6-29 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 6/15/2021.

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 therein. These time periods are specified below. Unless otherwise stated therein and 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 8 months of Effective Date</u>
<u>§ 6-05: De-escalation Confinement</u> <u>(g) (time in de-escalation (6 hours), re-authorization (3 hours), notice to the Board if confinement exceeds 6 hours)</u> <u>(c) (visual and aural observation of people in de-escalation confinement every 15 minutes)</u> <u>(k) (Quarterly report on De-escalation)</u>	<u>Within 6 months of Effective Date</u> <u>Within 3 months of Effective Date</u> <u>Within 8 months of Effective Date</u>
<u>§ 6-06: Emergency Lock-Ins</u> <u>(e) (documentation of reasons for and objectives to be accomplished during emergency lock-ins)</u> <u>(g) (CHS medical and mental health rounding in housing areas where emergency lock-ins have been in effect for more than 6 hours)</u> <u>(i) and (j) (tracking of services impacted by emergency lock-ins)</u>	<u>Within 3 months of Effective Date</u>

<u>SECTION</u>	<u>IMPLEMENTATION</u>
<p><u>(l) (DOC and CHS Directives regarding compliance with the requirements of this section)</u></p> <p><u>(m) (CHS Quarterly report re: emergency lock-ins)</u></p> <p><u>(o) (DOC data reporting on Emergency lock-ins)</u></p>	<p><u>Within 6 months of Effective Date</u></p>
<p><u>§ 6-07: Prohibition on the Use of Punitive Segregation</u></p> <p><u>(a) The use of all forms of punitive segregation as defined in 40 RCNY § 6-03(b)(10) shall be prohibited in all existing and future DOC facilities.</u></p> <p><u>(b) Upon the Department’s elimination of punitive segregation, the only form of restrictive housing permitted in DOC facilities will be RMAS housing pursuant to 40 RCNY § 6-08 through § 6-26.</u></p>	<p><u>November 1, 2021</u></p> <p><u>November 1, 2021</u></p>
<p><u>§ 6-10: Placement Criteria</u></p> <p><u>(e) Written penalty grid.</u></p>	<p><u>Within 3 months of Effective Date</u></p>
<p><u>§ 6-12: Case Management</u></p>	<p><u>Within 3 months of Effective Date</u></p>
<p><u>§ 6-18: Staffing</u></p> <p><u>(a)(Semiannual report on staffing in restrictive housing)</u></p> <p><u>(b) (Staffing plans)</u></p>	<p><u>Within 6 months of RMAS implementation</u></p> <p><u>November 1, 2021</u></p>
<p><u>§ 6-19: Training</u></p> <p><u>(a) (training for hearing adjudicators and staff involved in sentencing and placement decisions)</u></p> <p><u>(c) (information to the Board re: Training)</u></p>	<p><u>November 1, 2021</u></p>
<p><u>§ 6-20: Programming</u></p> <p><u>(f) (Quarterly public reports)</u></p>	<p><u>Within 3 months of RMAS implementation</u></p>
<p><u>§ 6-21 Access to Health Services</u></p> <p><u>(e) CHS monthly public reports</u></p>	<p><u>Within 1 month of RMAS Implementation</u></p>
<p><u>§ 6-23: Disciplinary System Plans</u></p>	

<u>SECTION</u>	<u>IMPLEMENTATION</u>
	<u>Within 3 months of the Effective Date</u>
<p><u>§ 6-24 Due Process and Procedural Justice</u> <u>(c)(6) (videotaping of refusals to sign notice of infraction)</u></p> <p><u>(d)(5) (recording of refusal to attend hearing)</u></p> <p><u>(i)(1) system to track due process requirements and documentation</u></p> <p><u>(i)(2) Semiannual public report</u></p>	<p><u>November 1, 2021</u></p> <p><u>Within 1 year of Effective Date</u></p>
<p><u>§ 6-25: RMAS Data Collection and Review</u> <u>(b) (system to track RMAS placements and RMAS documentation)</u></p> <p><u>(c) (monthly public data reports)</u></p> <p><u>(d) (monthly public reports)</u></p>	<p><u>Within 1 year of Effective Date</u></p> <p><u>Within 1 month of RMAS implementation</u></p> <p><u>Within 1 month of RMAS implementation</u></p>
<p><u>§ 6-26: Transition</u> <u>(b) (comprehensive transition plan)</u></p> <p><u>(c) (monthly public progress reports)</u></p>	<p><u>Within 1 month of Effective Date</u></p> <p><u>First business day of July 2021</u></p>
<p><u>§ 6-27: Restraints</u> <u>(m) (Semiannual public report)</u></p>	<u>Within 1 year of Effective Date</u>

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100 CHURCH STREET
NEW YORK, NY 10007
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**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: March 5, 2021

**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: Amendment of Minimum Standards Concerning Restrictive Housing

REFERENCE NUMBER: BOC-6

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 the violations pose significant risks to public health and safety.

/s/ Francisco X. Navarro
Mayor's Office of Operations

March 5, 2021
Date