

BOARD OF CORRECTION

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Board of Correction is considering promulgating a rule which would authorize the establishment of a new form of inmate housing, known as enhanced supervision housing, for certain inmates in the custody of the Department of Correction.

When and where is the Hearing? The Board will hold a public hearing, at which the public and interested parties are invited to submit comments and testimony on the proposed rule, at 9 a.m. on December 19, 2014. This hearing will be held at 125 Worth Street, third floor, New York, NY.

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

- **Mail.** You can mail written comments to the Board of Correction, at 51 Chambers Street, room 923, New York, NY 10007.
- **Fax.** You can fax written comments to the Board of Correction at 212-788-7860.
- **Email.** You can email written comments to amasters@boc.nyc.gov.
- **Website.** You can submit comments to the Board of Correction through the NYC rules Web site at www.nyc.gov/nycrules.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before either hearing by calling 212-788-7845. You can also sign up in the hearing room before the session begins at 9 a.m. on December 19, 2014.

Is there a deadline to submit written comments? Yes, you must submit written comments by the close of business on December 19, 2014.

Do you need assistance to participate in the Hearing? You must tell the Board of Correction if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-788-7845. You must tell us by December 12, 2014.

Can I review the comments made on the proposed rule? A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the office of the Board of Correction.

What authorizes the Board of Correction to propose this rule? Sections 626 and 1043 of the New York City Charter authorize the Board of Correction to propose this rule. This proposed rule was not included in the Board’s regulatory agenda for this Fiscal Year because the need for it was not contemplated when the Board completed the agenda.

Where can I find the Board’s rules? The Board’s rules are in Title 40 of the Rules of the City of New York.

What requirements govern the rulemaking process? The Board of Correction must meet the requirements of Section 1043 of the New York City Charter when promulgating or amending rules. This notice is made according to the requirements of Section 1043(b) of the New York City Charter.

Statement of Basis and Purpose

These proposed rule revisions would amend the Minimum Standards adopted by the Board of Correction (“the Board”) relating to correctional facilities, set forth in Chapter 1 of Title 40 of the Rules of the City of New York. The purpose of the proposed revisions is to address the dramatic increase in serious inmate violence in New York City jails. Although such violence has many root causes, the Department of Correction (“the Department”) has specifically identified as significant contributing factors gang-related activity and the ready availability of small, concealable blades. Further, the Department has determined that a relatively small number of inmates are disproportionately involved in these violent incidents. The proposed rule amendments described here seek to address these serious concerns and provide the Department with the tools it needs to reasonably control the activities of its most violent inmates. Concurrently, they seek to ensure that the rights of inmates are not unduly burdened and aim to promote humane conditions in New York City jails. To those ends, the proposed rule amendments provide for the creation of “enhanced supervision housing” (ESH) units, specify the Minimum Standards that would be applicable and inapplicable in such units, and provide for procedural safeguards to protect the rights of inmates assigned to ESH. They also place certain limitations on the use of punitive segregation in Department facilities.

The purpose of ESH would be to house inmates posing the most direct security threats, a category that the proposed rule amendments limit to: (1) inmates identified as leaders of, organizers of, or participants in gangs or substantially similar groups; (2) inmates who have committed slashings or stabbings or found in possession of scalpels or scalpel-like weapons; (3) inmates who have committed repeated assaults or have seriously injured another while in custody ; (4) inmates who have engaged in serious or persistent violence or have instigated or participated in a riot while in custody; and (5) inmates who otherwise presents a significant threat to the safety and security of the facility if housed in general population housing. ESH would not be permitted for adolescents -- that is, with respect to the Department’s facilities, those who are 16 and 17 years old – who constitute a particularly vulnerable part of the prison population. Assignment to ESH would activate procedures requiring notice in each case and, upon the inmate’s request, a hearing.

Due to the unique characteristics of the inmate population assigned to ESH, which would consist of some of the Department's most dangerous inmates, the proposed rule revisions would further provide for an increased level of supervision and control in order to ensure the safety and security of inmates and staff. This would include various restrictions on time spent out of cells and in group settings, such as the law library and religious services, and would allow for increased monitoring of non-privileged correspondence. In order to prevent inmates assigned to ESH from obtaining concealed weapons, the proposed rules would place certain restrictions on the receipt of packages and on contact visits, which would be limited to an approved list of visitors. However, the proposed rules seek to balance such restrictions with the rights of inmates and are tailored to the purpose of protecting inmates and staff, rather than punishment for particular infractions.

At the same time, the Board believes that punitive segregation, which does address particular infractions committed by an inmate, should be limited in certain circumstances where it does not accomplish, or very imperfectly accomplishes, its deterrent purpose. In particular, punitive segregation presents a serious and unacceptable threat to the physical and mental health of inmates who are adolescents. Furthermore, punitive segregation fails to send a clear deterrent message when it is imposed on an inmate not for an infraction committed by an inmate in his or her present incarceration, but for an infraction committed by the same inmate in a previous incarceration, when the inmate was sentenced to punitive segregation but did not serve, or did not fully serve, that sentence. Punitive segregation for "time owed" from a previous incarceration is often perceived as fundamentally unfair, and therefore does not achieve its intended purpose. For these reasons, the proposed amendments would not allow the use of punitive segregation for inmates who are adolescents after January 1, 2015 or for inmates with "time owed" in punitive segregation from a previous sentence who are admitted to a Department facility after the creation of EHS. Inmates admitted before then to a department facility may have such "time owed" reduced or eliminated if the Department determines that this is warranted in view of the offense for which they were sentenced to punitive segregation during a previous sentence.

Set forth below is a section-by-section description of the proposed rule amendments.

Section 1-05 ("Involuntary lock-in")

This proposed revision would amend paragraph (2) of subdivision (b) to provide that inmates confined to EHS may be locked in during the day for up to nine hours in any 24-hour period, in contrast with the two-hour limit applicable to other inmates. The proposed revision would allow for the creation of schedules such that no more than half of the inmates assigned to a given housing area would be permitted to enter the day room at any given time. The purpose of this revision is to enhance control of the inmate population assigned to ESH without unduly burdening the opportunity to engage in recreation or allowing for disproportionately extended periods of lock-in.

Section 1-06 ("Recreation")

This proposed revision would amend subdivision (g) to allow for increased restriction on the recreation of inmates assigned to ESH. These changes would be the same as restrictions already in place for inmates housed in punitive segregation.

Section 1-07 (“Religion”)

This proposed revision would amend subdivision (h) to allow for inmates assigned to ESH to participate in religious services offered “with appropriate security either with each other or with other prisoners.” The proposed amendment is intended to aid the Department’s efforts to control and prevent gang communication in group settings and to minimize opportunities for negative inmate encounters.

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

This proposed revision would amend paragraph (6) of subdivision (f) to allow for limits on library hours for inmates housed in EHS, provided that an alternative method of access to legal materials is instituted to permit effective legal research. The proposed revision is intended to aid the Department’s efforts to control and prevent gang communications that may occur in the library setting and to minimize opportunities for negative inmate encounters.

Section 1-09 (“Visiting”)

This proposed revision would amend paragraph (1) of subdivision (e) and subdivision (f) in order to allow for greater control of visits with inmates assigned to ESH. The Department would be permitted to limit visits to those on an approved list of visitors in order to prevent the transfer of gang communications or contraband. Further, the proposed revision to subdivision (f) would allow for greater limitations on contact visits in particular.

Section 1-11 (“Correspondence”)

This proposed revision would amend subparagraphs (ii) and (iii) of paragraph (6) of subdivision (c), as well as clauses (ii) and (iii) of subparagraph (a) of paragraph (1) of subdivision (2) to allow for increased monitoring of non-privileged correspondence sent to inmates assigned to ESH.

Section 1-12 (“ESH Packages”)

This proposed revision would amend subdivision (a) to implement restrictions on the contents of incoming ESH packages in order to prevent the introduction into the facility of contraband from outside sources.

Section 1-13 (“Publications”)

This proposed revision would amend subdivision (a) to allow limitations to be placed on the sources from which inmates assigned to ESH may order publications. The proposed change is also aimed at decreasing the opportunity for contraband to be introduced into the facilities.

Section 1-16 (“Enhanced Supervision Housing”)

This proposed revision would add a new section outlining the limits on the assignment of inmates to ESH and requiring that the inmates be afforded an opportunity to respond when the Department makes such assignments. EHS assignments would be limited to: (1) inmates identified as leaders of, organizers of, or participants in gangs or substantially similar groups; (2) inmates who have committed slashings or stabbings or found in possession of scalpels or scalpel-like weapons; and (3) inmates who have committed repeated assaults or have seriously injured another while in custody; (4) inmates who have engaged in serious or persistent violence or have instigated or participated in a riot while in custody; and (5) inmates who otherwise presents a

significant threat to the safety and security of the facility if housed in general population housing. ESH would not be permitted for adolescents. The proposed new section would additionally require that determinations of ESH placement include meaningful notice (consisting of the grounds relied on to assign each inmate to ESH) and informing the inmate of rights to submit a written response or request an in-person hearing to review the determination. Further, the proposed new section would provide that an in-person hearing be held if requested and that it consist of a review of the facts on which the Department relied in making the ESH assignment and a determination of whether such facts support that assignment.

Section 1-17 (“Limitations on the Use of Punitive Segregation”)

This proposed revision would add a new section which would prevent adolescents, defined as inmates who are 16 or 17 years old, from serving time in punitive segregation after January 1, 2015. Further, it would prevent an inmate who is admitted to a Department facility after the creation of ESH from serving time in punitive segregation for “time owed” in punitive segregation from a separate and previous incarceration. The Department would submit to the Board certain reports and timelines relating to changes in punitive segregation.

Proposed Rule

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of the Board of Correction, unless otherwise specified or unless the context clearly indicates otherwise.

New material is underlined.

[Material inside brackets indicates deleted material.]

Section 1. Paragraph (2) of subdivision (b) of section 1-05 of Title 40 of the Rules of the City New York is amended to read as follows:

- (2) During the day for count or required facility business that can only be carried out while prisoners 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.

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

(g) *Recreation for prisoners in segregation.* Prisoners confined in close custody, enhanced supervision housing or punitive segregation shall be permitted recreation only in accordance with the provisions of subdivision (c) of this section.

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

(h) *Exercise of religious beliefs by prisoners in segregation.* (1) Prisoners confined in administrative, enhanced supervision housing or punitive segregation shall not be prohibited from exercising their religious beliefs, including the opportunities provided for by subdivisions (d) through (g) of this section.

(2) Congregate religious activities by prisoners in close custody, enhanced supervision housing or punitive segregation shall be provided for by permitting such prisoners to attend congregate religious activities with appropriate security either with each other or with other prisoners.

§4. Paragraph (6) of subdivision (f) of section 1-08 of Title 40 of the Rules of the City of New York is amended to read as follows:

(6) The law library hours for prisoners in punitive segregation or enhanced supervision housing may be reduced or eliminated, provided that an alternative method of access to legal materials is instituted to permit effective legal research.

§5. Paragraph (1) of subdivision (e) and subdivision (f) of section 1-09 of Title 40 of the Rules of the City of New York are amended to read as follows:

(e) *Visitor identification and registration.* (1) Consistent with the requirements of this subdivision, any properly identified person shall, with the prisoner's consent, be permitted to visit the prisoner. This paragraph does not apply to prisoners confined in enhanced supervision housing, who may be limited to visits by persons on an approved list of visitors.

- (i) Prior to a visit, a prisoner shall be informed of the identity of the prospective visitor.
- (ii) A refusal by a prisoner to meet with a particular visitor shall not affect the prisoner's right to meet with any other visitor during that period, nor the prisoner's right to meet with the refused visitor during subsequent periods.

(f) *Contact visits.* Physical contact shall be permitted between every prisoner and all of his or her visitors throughout the visiting period, including holding hands, holding young children, and kissing. The provisions of this subdivision are inapplicable to prisoners housed for medical reasons in the contagious disease units or to prisoners in enhanced supervision housing.

§6. Subparagraphs (ii) and (iii) of paragraph (6) of subdivision (c) of section 1-11 of Title 40 of the Rules of the City of New York is amended to read as follows:

- (ii) The affected prisoner shall be given written notification of the determination and the specific facts and reasons supporting it. The warden may delay notifying the prisoner 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. This requirement shall not apply to prisoners 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, 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 received notification.

§7. Clauses (ii) and (iii) of subparagraph (a) of paragraph (1) of subdivision (e) of section 1-11 of Title 40 of the Rules of the City of New York are amended to read as follows:

- (ii) The affected prisoner 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 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 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, 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 and sender received notification.

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

(a) *Policy.* Prisoners shall be permitted to receive packages from, and send packages to, any person, except when there is a reasonable belief that limitation is necessary to protect public safety or maintain facility order and security. Prisoners confined in enhanced supervision housing may be permitted to receive only incoming packages whose contents are purchased from and mailed to the prisoner by a company whose ordinary business includes the sale and shipping of such items, except that such prisoners shall be permitted to receive from any person packages whose contents consist of clothing appropriate to be worn at court appearances.

§9. Subdivision (a) of section 1-13 of Title 40 of the Rules of the City of New York is amended to read as follows:

(a) *Policy.* Prisoners are entitled to receive new or used publications from any source, including family, friends and publishers, except when there is substantial belief that limitation is necessary to protect public safety or maintain facility order and security. Prisoners confined in enhanced supervision housing may be permitted to receive only publications which are purchased from and mailed to the prisoner by a company whose ordinary business includes the sale and shipping of such items.

§10. Chapter 1 of Title 40 of the Rules of the City of New York is amended by adding new sections 1-16 and 1-17, to read as follows:

§1-16 Enhanced Supervision Housing.

(a) Policy. A prisoner may be confined in enhanced supervision housing if: (1) he or she has been identified as a leader of, organizer of or participant in a gang or substantially similar entity;

(2) he or she has, while in custody, committed a slashing or stabbing or has been found in possession of a scalpel or scalpel-like weapon;

(3) he or she has, while in custody, committed repeated assaults or has seriously injured another prisoner, visitor or facility employee;

(4) he or she has, while in custody, engaged in serious or persistent violence or has instigated or participated in a riot; or

(5) he or she otherwise presents a significant threat to the safety and security of the facility if housed in general population housing.

Provided, however, that an adolescent, as defined in section 1-17 of this chapter, may not be confined in enhanced supervision housing.

(b) Procedure. (1) When it is determined that a prisoner should be confined in enhanced supervision housing, that prisoner shall be given written notice of such determination. Such notice shall:

(i) state the grounds relied on and the facts that support such determination;

(ii) inform the prisoner that he or she may submit a written response or may request an in-person hearing to review such determination.

(2) An in-person hearing shall be held if requested by the prisoner. At such hearing, the hearing officer shall review the facts relied on in making such determination to determine whether such facts exist and, further, shall determine whether such facts support such determination.

§1-17 Limitations on the Use of Punitive Segregation

(a) Policy. Punitive segregation is a severe penalty that should not be used under certain circumstances in the Department's facilities. In particular, punitive segregation represents a serious threat to the physical and psychological health of adolescents, with respect to whom it should not be imposed. Moreover, punitive segregation is intended to address a particular offense committed in the course of an inmate's incarceration, and should not be imposed in connection with an offense committed by the same inmate during a separate and previous incarceration.

(b) Definitions. For the purposes of this chapter, (1) "punitive segregation" shall mean the involuntary confinement of an inmate to a cell for twenty or more hours per day, and

(2) “adolescent” shall mean a person who is 16 or 17 years old.

(c) *Adolescents.* Adolescents shall not be placed in punitive segregation. This prohibition will take effect no later than January first, 2015.

(d) *Time in punitive segregation owed from a previous incarceration.* No inmate admitted to a Department facility after creation of the enhanced supervision housing provided for in section 1-16 of this chapter shall be assigned to punitive segregation for any time from a separate and previous incarceration for which such inmate was sentenced to but did not serve in punitive segregation. An inmate admitted earlier to a Department facility may be assigned to punitive segregation for such time owed from a separate and previous incarceration, provided, however, that such time may be reduced or eliminated in consideration of the nature and severity of the offense for which such inmate was sentenced to punitive segregation during such separate and previous incarceration.

(e) *Reports.* No later than one hundred eighty days after creation of the enhanced supervision housing provided for in section 1-16 of this chapter, the Department will report to the Board on the status of its efforts to reduce the maximum punitive segregation sentence from ninety days to thirty days. At that time, the Department will also report on the status of its efforts to revise policy so that an inmate must be out of punitive segregation for a minimum of seven days before he or she could be returned to punitive segregation. Following creation of the enhanced supervision housing provided for in section 1-16 of this chapter, the Department will submit to the Board a plan and timeline detailing the steps it will take to reduce punitive segregation sentences from ninety days to thirty days. The Department will report every forty-five days thereafter on its progress toward the goals set forth in its plan.

**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 RULES GOVERNING CORRECTIONAL FACILITIES

REFERENCE NUMBER: BOC-1

RULEMAKING AGENCY: BOARD OF CORRECTION

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

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

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

November 17, 2014
Date

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

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

RULE TITLE: Amendment of Rules Governing Correctional Facilities

REFERENCE NUMBER: 2014 RG 092

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: November 17, 2014