

Status Report
by the
***Nunez* Independent Monitor**

July 16, 2025

THE NUNEZ MONITORING TEAM

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INTRODUCTION

The Monitoring Team provides the Court with this joint status report on the work related to Local Law 42 (“LL42”) as directed by the Court during the July 2, 2025 conference and the Court’s July 9, 2025 Order (dkt. 878). As directed by the Court, the Monitoring Team facilitated a meet and confer with counsel for the Plaintiff Class, the Southern District of New York, the Defendants (collectively the “*Nunez Parties*”) as well as with counsel for the New York City Council and the Public Advocate (the “*City Intervenors*”) prior to this filing and also facilitated communications among the group. The joint status report addresses the following four items.

- **Modifications to the Court’s July 2, 2025 Order:** A chart of the Local Law 42 (“LL42”) provisions subject to the Court’s July 2, 2025 Order is included in Appendix A of this Report. The chart identifies a few modifications proposed by the Monitoring Team to the Conflicted Provisions, defined in Paragraph 1 on page 3 of the Court’s July 2, 2025 Order. For the Court’s convenience, the chart includes the relevant references to the Monitor’s January 31, 2025 Report, as well as references to the Mayor’s Emergency Executive Order No. 625 (dated July 27, 2024) attached as Appendix C. Included as Appendix B of this Report is a list of relevant *Nunez* provisions organized by topic.
- **Motion to Intervene:** The City Intervenors propose filing a motion to intervene by July 25, 2025. Counsel for the Plaintiff Class and the Southern District of New York report that they do not oppose the motion. Defendants’ intend to determine their position on the motion to intervene after review of the City Intervenors papers which City Intervenors have agreed to provide to Defendants 48 hours before filing.
- **Proposed Briefing Schedule:** There are three proposals regarding a briefing

schedule. The first proposal contemplates briefing, to the extent necessary, only after the issuance of the Monitor's Report in October 2025. The second proposal by the Plaintiff Class contemplates briefing of a discrete set of issues in advance of the Monitor's Report in October 2025. The third proposal by the City Intervenors contemplates that certain threshold briefing occurs in advance of the Monitor's Report in October 2025. The positions of the *Nunez* Parties, the City Intervenors and the Monitoring Team are outlined in more detail in the next section.

- **Monitor's Report**: The Monitor has proposed issuing a report on October 15, 2025. The Monitor's position includes a recommendation that a written submission by the *Nunez* Parties and the City Intervenors is provided directly to the Monitor in advance of finalizing the Monitor's October Report. Further, the Monitor explains that alteration to the timing of the Monitor's Report may be necessary to the extent that the Court grants briefing in advance of the Monitor's Report and a decision by the Court is not rendered before September 15, 2025. These issues are addressed in more detail in the Monitor's position below.

POSITION OF THE NUNEZ PARTIES, CITY INTERVENOR & THE MONITORING TEAM

Outlined below are the positions provided by the Plaintiff Class, the Southern District of New York, Defendants, the City Intervenors, and the Monitoring Team.

POSITION OF THE PLAINTIFF CLASS

Much of the relief sought by Defendants on July 2 is legally unsupported, and Plaintiffs seek an opportunity to file a brief explaining why. Some of the legal matters are potentially impacted by the Monitor's forthcoming report concerning Local Law 42, and in the interests of judicial economy, we propose those all be briefed after the Monitor's report. However, the temporary relief was overbroad and legally impermissible in some narrow respects that should be addressed more promptly, as Defendants were not entitled to preliminary relief.

First, Defendants are not entitled to immediate relief staying any parts of Local Law 42 that were *not* stayed by the Emergency Executive Order (EEO).¹ Those parts of the law have been in effect for more than a year, and Defendants cannot show they will suffer irreparable harm by *continuing* to be subject to these provisions. That is simply the status quo. For example, Defendants have for more than a year been obligated by Local Law 42 to "provide persons in restrictive housing access to evidence-based therapeutic interventions and restorative justice programs aimed at addressing the conduct resulting in their placement in restrictive housing." §

¹The provisions for which Defendants sought relief in their Temporary Restraining Order but that were not stayed by the EEO are: §§ 9-167(a) (except for the modifications to definitions of de-escalation confinement and pre-hearing temporary restrictive housing that were included in the EEO); 167(c)(5) (parts were suspended by the EEO, others have been in effect); 167(f)(1)(ii) (the right to cross-examination was suspended by the EEO, but other parts have been in effect); 167(f)(1)(v) (parts were suspended by the EEO, but others have been in effect); 167(f)(1)(vi) (same); 167(h)(2) (same); 167(h)(5) (not suspended at all by EEO); 167(h)(6) (parts were suspended by the EEO, but others have been in effect); 167(j)(2) (same).

9-167(h)(5). This requirement was not stayed by the EEO, yet is stayed by Defendants' requested preliminary relief.

Second, the temporary relief should be modified to exclude provisions that ensured due process rights at disciplinary hearings, such as the right to cross-examine witnesses and to have counsel or an advocate.² Pursuant to Local Law 42, individuals awaiting disciplinary hearings are held in pre-hearing confinement in restrictive housing, and thus any delays in hearings do not cause a safety concern. These hearings have gone forward in the state prisons through HALT, with little delay. The Monitor approval provision about restrictive housing cannot reasonably be read to intrude upon due process.

Defendants declined to agree to modify the interim relief as set forth above. Therefore, Plaintiffs propose that they file a brief by August 15 seeking to dissolve the Court's order as to the parts of the law (as detailed in notes 1 and 2) that (a) have not been stayed by the Executive Orders and (b) provide due process rights to incarcerated persons. Plaintiffs propose that the remainder of the preemption issues, if any remain, be briefed after receipt of the Monitor's report. Plaintiffs further request that the Court order Defendants to identify, in collaboration with the Monitor, how they will make progress *towards* implementing Local Law 42, or where they can come *closer* to compliance. For example, a lock-out policy that is deemed unsafe for a housing unit holding 50 people managed by two correction staff may be deemed safe if the house held 10 people and was managed by four staff. If so, then the framework becomes determining how to create these changes, and move towards implementation of the local law. We would ask

² These are: § 9-167 (f)(1)(i) (right to legal counsel or advocate); (f)(1)(ii) (right to present evidence and cross-examine witnesses); § 9-167 (f)(1)(v) (notice); § 9-167 (f)(1)(vi) (adequate time to prepare).

the Monitor to report such progress in its initial report. Local Law 42 is New York's law, and will go into effect at some point, and creating pathways to that future has to begin now.

POSITION OF THE UNITED STATES

The United States does not object to the temporary relief staying the enforcement of certain provisions of Local Law 42 pending the submission of a final report from the Monitor identifying: (i) the provisions the Monitor views as directly related to policies/ procedures/ practices that are specifically subject to the Monitor's approval under the *Nunez* Orders; and (ii) which of those requirements, if followed, would not be approved by the Monitor (or only approved with modifications) and the rationale for that the Monitor's position, keeping in mind the standard for withholding approval set forth in the Consent Judgment. *See* Dkt. No. 249 at Para. XX.2 ("the Monitor's approval shall not be unreasonably withheld"). This report will allow the United States to better assess the extent to which any of the at-issue Local Law 42 provisions are inconsistent with specific provisions of the *Nunez* Orders, and could potentially be preempted and put Defendants in a position where there cannot comply with both the Local Law 42 provision and the *Nunez* Orders. The United States believes it would be most prudent and efficient to brief the issue of preemption after receipt of the Monitor's final report.

POSITION OF THE DEFENDANTS'

Defendants agree with the United States that further briefing on the Defendants' Motion relating to Local Law 42 should await the final report of the Monitor on the matter scheduled for October 15, 2025. That is the most efficient approach; there is no need to burden the Court and the parties with a more urgent briefing schedule, especially while the litigation regarding the potential appointment of a Remediation Manager is ongoing.

The Court is currently considering its most weighty determination in the long history of this case: whether to appoint a Remediation Manager and, if so, who that should be. If appointed, the Remediation Manager would be a federal Court agent to exercise local law enforcement authority over 6,000 uniformed officers and 7,000 people in custody, and be responsible for their lives and safety. Going forward, that question demands the full attention and resources of the Court and the parties.

Waiting until the Monitor's October 15, 2025 report for further briefing would advance judicial economy, because that report is likely to narrow and clarify the issues to be decided, by: (i) providing a more detailed record of why the Monitor cannot approve the Conflicting Provisions; and (ii) possibly narrowing the Conflicting Provisions of Local Law 42 that the Monitor cannot approve for implementation.

The City Council and Public Advocate's Position is Unjustified

The City Council and Public Advocate (the "Purported Intervenors,") who have yet to submit an application to intervene in this case, contend that neither the Monitor nor the Court have authority to preclude implementation of any part of Local Law 42 because the predicates for preemption have not been established under the Prison Litigation Reform Act ("PLRA.") They take this position although nearly a decade has passed since the Consent Judgment first granted

the Monitor approval authority over DOC policies on October 21, 2015.³ Since the Consent Judgment, the Court granted additional control over City policy to the Monitor, including three orders relevant to the pending motion.⁴ *See* Defendants’ Memorandum (ECF No. 872) at 3. The Monitor agrees that each of the Conflicting Provisions is subject to their approval and/or direction under the Court’s Orders. *See* Tr. July 2, 2025, at 8; Monitor’s Status Report, July 2, 2025 (ECF No. 870).

As the Court confirmed on July 2, 2025, each of the Court’s orders granting the Monitor this authority properly abrogated state and local laws which otherwise place that authority with the Commissioner and other elements of City government, including the Mayor and City Council. Therefore, every Order of this Court impacting DOC policies was accompanied by a finding that, *inter alia*, the Monitor’s approval was necessary to remedy a constitutional violation, as required by the 18 U.S.C. § 3636(a)(1); *see* Tr. at 69 (Finding “[t]hat the approval of a Monitor with correctional expertise that I have found appropriate . . . is necessary to ensure that the constitutional standards are not in inadvertently or deliberately further compromised by the implementation of policies.”). Moreover, all of these Orders were known to the City Council and Public Advocate throughout the last decade, and the specific conflict with Local Law 42 has been known to the City Council for over a year and it first appeared before this Court on that subject on July 1, 2024. Despite this long familiarity with the *status quo*, the Purported Intervenor only now challenge this Court’s authority under the U.S. Constitution to direct City practices at Rikers.⁵

³ *See* Consent Judgment (ECF No. 249), ¶¶ IV(1), VII(12), X(1), XIII(1), XVI(3)(6)

⁴ *See* Action Plan (June 24, 2022) (ECF No. 465), First Remedial Order (August 14, 2020) (ECF No. 350) and Order of August 10, 2023 (ECF No. 564).

⁵ Indeed, the City Council Chair and Public Advocate have both called for even greater Court authority over City correctional policy in the form of a receiver. <https://advocate.nyc.gov/press/federal-receivership-2024> (accessed July 11, 2025); <https://council.nyc.gov/press/2025/05/13/2868/> (accessed July 11, 2025)

Legal Aid's Position is Unjustified

Counsel for the plaintiff class wishes to brief in the coming weeks its contention that the Temporary Restraining Order is overbroad with respect to a handful of Conflicting Provisions. Plaintiffs appear to contend that the Monitor should not have authority over procedural rules created by Local Law 42 as applied to Restrictive Housing. As the Court has already concluded, that is contrary to the plain terms of the Court's orders and the Monitor's findings as set forth on the record at least since the Monitor's January 2025 Report. *See* Def. Mem. at 19.

Plaintiffs also contend that the Court erred in finding irreparable harm with respect to certain provisions of LL42. As the Court has already found, compliance with the Conflicting Provisions, or attempts to compel such compliance, would conflict with the Court's Orders requiring Monitor approval of those provisions, and thus would result in irreparable harm if implemented. Moreover, plaintiffs cannot claim surprise or prejudice from the *status quo* regarding DOC's relevant policies and practices.

To the extent plaintiffs wish to brief the issue of whether the Court's order can be narrowed to exclude specific parts of sentences that conform to current City practice, this issue would only benefit from the Monitor's forthcoming analysis of Local Law 42 and does not provide a basis for expedited briefing. Moreover, neither Defendants nor the Court are obligated to rewrite Local Law 42 to conform to the Court's Orders.⁶ Nevertheless, to the extent that Monitor has recommended revisions to the TRO to exclude certain portions of Local Law 42 as to which the Monitor has no objection to implementation, then defendants consent to the proposed revision.

⁶ Upon further review, three definitions, however, are irrelevant and therefore may be safely excluded from the Court's order should the Court wish to narrow it: "Advocate" is not relevant to any unstayed part of Local Law 42 or other rule or law; and "Emergency Lock-In" and "Restraints" conform exactly to DOC's current definitions. The remaining definitions are contrary to current practice, require Monitor approval, and would be harmful if applied in the context of other laws, rules or regulations.

Plaintiffs of course are entitled to brief their contentions, but none are of sufficient weight that they need be heard before October 15, 2025, and certainly not while the Court and parties contend with the myriad of other issues in this case.

If the Court were to nevertheless grant a request for additional briefing prior to the Monitor's October 15, 2025 report, in light of the other pending deadlines Defendants respectfully request a minimum of four weeks to respond to any submissions.

We thank the Court for its consideration of this matter.

POSITION OF THE CITY COUNCIL AND PUBLIC ADVOCATE

The City Council and Public Advocate (“City Intervenors”) believe a two-step briefing schedule is the most sensible plan. The first step is briefing purely legal challenges to the TRO, which will yield much-needed rulings about the constraints of 18 U.S.C. § 3626, an issue where the parties appear to disagree significantly. The second step of briefing, if necessary, will come after the Monitor’s final report and will address the Monitor’s conclusions consistent with that proper interpretation of 18 U.S.C. § 3626.

A two-step briefing schedule is particularly appropriate here—and arguably *necessary*—because of the Prison Litigation Reform Act’s clear time limits on preliminary relief. Under 18 U.S.C. § 3626(b)(2), a preliminary injunction suspending a state or local law “automatically expire[s]” after 90 days, unless the Court makes the requisite need-narrowness-intrusiveness findings under Section 3626(a)(1) and converts the injunction from a preliminary injunction into a “final” one. 18 U.S.C. § 3626(b)(2).

What this means is that the current TRO will expire before the Monitor plans to issue his final report, unless the Court converts the TRO to final relief. This fact alone weighs heavily in favor of permitting the parties to brief important legal issues regarding the Court’s injunctive powers under Section 3626 while the TRO is pending, and in advance of the issuance of the Monitor’s final report. At least three legal infirmities with the current TRO—which do not hinge in any way on the Monitor’s final report—are (1) Section 3626 does not authorize a defendant to seek injunctive relief enjoining a state or local law; (2) the TRO is not narrowly tailored to the alleged constitutional harms; and (3) the City and DOC, who have simply refused to implement any provisions of Local Law 42, face no imminent irreparable harm absent a TRO.

The City Intervenors believe that addressing these threshold legal issues separately from any briefing regarding the Monitor's assessment of the Local Law is the most prudent path and would reduce the ongoing prejudice to the rights of the City Intervenors. This is particularly true where the Monitor will need to be guided by Section 3626 in making its recommendations rather than wholesale accepting or rejecting provisions of Local Law 42.

We propose making a motion to intervene on July 25, 2025, and we propose submitting our opposition to the present motion for a preliminary injunction on August 15, 2025.

POSITION OF THE MONITOR

The *Nunez* Parties and the Monitoring Team are currently engaged in the most complex work since the inception of the Consent Judgment. This includes a significant and thoughtful review of the Court's Remediation Manager Order. Further, work is underway to identify potential candidates for the role of Remediation Manager. Recently, the Monitoring Team, the *Nunez* Parties, and the City Intervenors have also been engaged in expedited discussions regarding the potential implications of LL42. The Monitoring Team has been working to facilitate the discussions of these complicated and complex questions among a diverse group of individuals. The Monitoring Team and the Defendants are also simultaneously continuing to work on a multitude of issues related to advancing the *Nunez* Reforms.

This all goes to emphasize the Court's statement at the July 2, 2025 hearing that "the same handful of people [are] engaging in very important and very complex work, the grand point of which is to bring the jails more quickly and more effectively to a point of safety [and the importance that the work] on the ground not be impeded." *See* July 2, 2025 Transcript at pg. 52: 13:23.

The Monitoring Team's position on the issues outlined herein reflects realistic and practical recommendations on how to proceed while balancing the many competing interests and ongoing work that must be completed.

Modifications to the Definition of Conflicted Provisions of the Court's July 2, 2025 Order

The Monitoring Team has closely reviewed the definition of Conflicted Provisions, ¶ 1 of the Court's July 2, 2025 Order. The Monitor recommends that the Court modify the definition of Conflicted Provisions with respect to five provisions of LL42: § 9-167(a); § 9-

167 (f)(1)(ii); § 9-167 (f)(1)(v); § 9-167 (h)(5) and § 9-167 (j)(2) as outlined in the chart in Appendix A.⁷ Accordingly, the Monitor recommends that the definition of Conflicted Provisions in the Court’s July 2, 2025 Order be modified as follows (and consistent with the chart in Appendix A):

- 9-167(a) – limited to the definitions of “cell”, “De-escalation Confinement”, “Out-of-cell”, “Pre-hearing temporary restrictive house”, “Restrictive Housing”, “Solitary Confinement”
- § 9-167 (b)
- § 9-167 (c)(4)
- § 9-167 (c)(5)
- § 9-167 (c)(6)
- § 9-167 (e)(1)
- § 9-167 (e)(2)
- § 9-167 (f)(1)(i)
- § 9-167 (f)(1)(ii) - only to the extent that “cross examine witnesses” requires anything beyond what is required by SCOC 7006.8(d), SCOC 7006.8(e) and SCOC 7006.8(f)
- § 9-167 (f)(1)(v) - only with respect to the clause “and their legal counsel or advocate”
- § 9-167 (f)(1)(vi)
- § 9-167 (f)(2)
- § 9-167 (h)(1)
- § 9-167 (h)(2)
- § 9-167 (h)(3)
- § 9-167 (h)(4)
- § 9-167 (h)(5) – limited to the two sentences “The department shall provide persons in restrictive housing with access to core educational and other programming comparable to core programs in the general population. The department shall also provide persons in restrictive housing access to evidence-based therapeutic interventions and restorative justice programs aimed at addressing the conduct resulting in their placement in restrictive housing. Such programs shall be individualized and trauma-informed, include positive incentive behavior modification models, and follow best practices for violence interruption.”
- § 9-167 (h)(6)
- § 9-167 (i)(1)
- § 9-167 (i)(2)

⁷ If the modifications are to be adopted, the definitions of “advocate”, “restraint”, “emergency lock-in”, “suicide prevention aide”, “Violent 1 Grade Offense” pursuant to 9-167(a) would no longer be defined as Conflicted Provisions. Further, the definition of Conflicted Provision would only apply to specific portions of 9-167(f)(1)(ii); 9-167(f)(1)(v); 9-167(h)(5); and 9-167(j)(2) as enumerated below.

- § 9-167 (j)(1)
- § 9-167 (j)(2) –limited to the clause “every fifteen (15) minutes” and “Throughout an emergency lock-in, other than in a department-wide emergency lock-in or a facility emergency lock-in, each person locked in shall have access to a tablet or other device that allows the person to make phone calls both outside of the facility and to medical staff in the facility.”

Monitor’s Report

- *Content of the Monitor’s Report:* The Monitor’s forthcoming report on LL42 will address, among other things: (i) the provisions of LL42 the Monitor views as directly related to policies/ procedures/ practices that are specifically subject to the Monitor’s approval under the *Nunez* Orders; and (ii) which of the requirements of LL42, if adopted, would not be approved⁸ by the Monitor (or only approved with modifications) and the rationale for the Monitor’s position.
- *Written Submission to the Monitor by the Nunez Parties & City Intervenors:* Given the issues that have been raised by the *Nunez* Parties and the City Intervenors and in order to facilitate the Monitor’s work and limit potential disputes to be raised with the Court, the Monitor believes the *Nunez* Parties and the City Intervenor should provide written submissions to the Monitor no later than September 15, 2025 that addresses the following issues:
 - Recommended issues that the Monitor should address as part of his reporting⁹
 - Substantive feedback regarding the matters on which the Monitor has

⁸ As required by the Consent Judgment, § XX, ¶ 26.

⁹ The Monitoring Team believes that the *Nunez* Parties may have various items they wish to be addressed in the Monitor’s Report. While it is premature to determine the scope of issues to be addressed, beyond those identified in this Report, the Monitoring Team is open to feedback as has always been the case, from the *Nunez* Parties and the City Intervenors on potential additional items for inclusion.

previously reported regarding LL42,¹⁰

- Scope of the Monitor's authority – including identification of the specific provisions that are the basis for any questions or concerns, the substance of those concerns, and any limitations that the Parties believe there are on the Monitor's approval authority or work more generally.
- Any additional relevant considerations the Monitor should consider in rendering decisions of approval regarding LL42.

The Monitor will consider and address, as appropriate, the matters identified before filing the Monitor's Report.

- *Timing of the Monitor's Report:* The Monitoring Team has proposed issuing its report on October 15, 2025. As noted, the timing of the Report may need to change if the Court were to grant the Plaintiff Class or City Intervenors the opportunity to file briefs in advance of the Monitor's Report.

Proposed Briefing Following Issuance of Monitor's October Report

The Monitoring Team recommends that any briefing should occur *after* the issuance of the Monitor's Report in October for the reasons outlined in the proposal by counsel for the Southern District of New York. This approach represents the most prudent administration of these issues given the variety of complex matters currently pending before the Court. Following the issuance of the Monitor's Report, the Monitor recommends the Court direct the following:

- The *Nunez* Parties, the City Intervenors, and the Monitor must meet and confer within

¹⁰ Including, but not limited to, the Monitor's October 24, 2024 Report (dkt. 789), the Monitor's November 22, 2024 Report (dkt. 802), and the Monitor's January 31, 2025 Report (dkt. 814).

21 days of the issuance of the Monitor's Report to identify whether any issues raised by the Monitor's Report require further intervention by the Court. To the extent that is the case, the Parties shall identify the specific issues to be raised with the Court, the basis for those contentions, and a proposed briefing schedule.

- To the extent that one of the *Nunez* Parties, the City Intervenor, or the Monitor determines that additional intervention by the Court is necessary following the meet and confer, the Monitor shall file a joint report with the Court within 5 business days following the conclusion of the meet and confer. The Monitor's submission shall identify each Parties' respective position, including, the extent to which briefing may be necessary, the specific items requiring briefing, and a proposed timeline for such briefing.

Proposed Briefing in Advance of the Monitor's October Report

While the Monitoring Team recommends that briefing, if necessary, should only occur after the issuance of the Monitor's Report, to the extent that the Court permits briefing regarding one or both of the matters proposed by the Plaintiff Class or the City Intervenors, the Monitor will necessarily require an opportunity to be heard to the extent that either brief relates to the scope of the Monitor's work and considerations relating to the Monitor's approval authority. Further, to the extent that the Court determines that briefing is necessary in advance of the Monitor's Report, then the timing for the issuance of the Monitor's Report will necessarily need to occur *after* any determination by the Court on the matters proposed for briefing.

- *Plaintiff Class Requests:* With respect to the proposed briefing by the Plaintiff Class,

it appears that one of the matters¹¹ the Plaintiff Class seek to brief relates to the scope of the Monitor's work and/or approval authority as it relates to consideration of due process rights and other legal obligations.¹² While it appears pre-mature to address this issue before the Monitor has determined what may or may not be approved, to the extent that the Court determines that such briefing should occur now then the Monitor will necessarily need an opportunity to respond to any briefing regarding the scope of the Monitor's work and/or what information may or may not constrain the considerations of the Monitor.

- *City Intervenor Briefing:* With respect to the proposed briefing by the City Intervenor, it is unclear the extent to which such briefing may address the scope of the Monitor's work or authority.¹³ To the extent that such briefing may address issues related to the work of the Monitor, or others issues that would impact the work of the Monitor, the Monitor will necessarily require an opportunity to be heard.
- *Alternative Timing for Monitor's Report:* An adjustment to the timing of the Monitor's Report is likely necessary if the Court grants the briefing requests by the Plaintiff Class or the City Intervenor and the Court does not render a decision on that briefing by September 15, 2025. While the Monitoring Team recommends that briefing should only occur *after* the issuance of the Monitor Report, if the Court

¹¹ To the extent that the Court modifies the definition of the Conflicted Provisions as recommended by the Monitoring Team, it appears that at least some of the concerns raised by the Plaintiff Class regarding the scope of the Court's July 2, 2025 Order may be addressed.

¹² The Action Plan requires the Department to comply with New York State's HALT Act pursuant to Action Plan § E, ¶ 4. The Monitor has and will continue to make such considerations in its work. A copy of the HALT Act is attached as Appendix D.

¹³ The Monitoring Team remains uncertain about the scope of the issues that may be addressed in this briefing and, as such, must reserve the right to respond.

determines otherwise then the Monitor's Report must necessarily consider the Court's determination on the briefing *before* issuing the report. Accordingly, if the Court's resolution of the briefing by the Plaintiff Class and/or the City Intervenors occurs after September 15, 2025 then an extension of the time for the Monitor to issue the Monitor's Report will be necessary. In particular, the Monitoring Team will require at least 4 weeks following the issuance of an order from the Court (if it occurs after September 15, 2025) on these matters before filing a report with the Court.

Monitor Recommendations to the Court

In summary, the Monitoring Team respectfully recommends that the Court:

- (1) Modify the definition of the Conflicted Provisions as described in the "Modifications to the Definition of Conflicted Provisions of the Court's July 2, 2025 Order" discussion above.
- (2) Direct the Parties to provide the Monitor with a written submission no later than September 15, 2025, with the four enumerated items described in the "Written Submission to the Monitor by the *Nunez* Parties & City Intervenors" section above.
- (3) Direct the Parties to meet and confer within 21 days following the issuance of the Monitor's October 15, 2025 Report to determine whether additional Court intervention is necessary. Within 5 business days of the conclusion of the meet and confer, the Monitoring Team shall be directed to file a status report with the position of the Monitoring Team, the *Nunez* Parties and the City Intervenors regarding the enumerated issues described in the section "Proposed Briefing Following Issuance of Monitor's October Report" described above.

To the extent that the Court determines that the Plaintiff Class or City Intervenors may file briefing in *advance* of the Monitor's October 15, 2025 Report, then the Monitor respectfully requests the Court grant the following:

- (1) The Monitor shall be permitted, if necessary,¹⁴ an opportunity to file a response to the briefing by the Plaintiff Class or City Intervenor by September 26, 2025.¹⁵

Further, given certain briefing may implicitly or explicitly seek to challenge a provision(s) of the *Nunez* Orders, the Monitor respectfully recommends that the Court also consider whether the *Nunez* Parties may be required to respond to the proposed briefing pursuant to Consent Judgment § XXI, ¶ 13.¹⁶

- (2) Extend the date for submission of the Monitor's Report *beyond* October 15, 2025 to a date 4 weeks after any decision is rendered by the Court in response to the requested briefing, to the extent the Court's decision on such briefing is rendered any time after September 15, 2025.

¹⁴ The Monitoring Team only intends to file a reply brief if the briefs submitted address issues regarding the work of the Monitor.

¹⁵ The Monitoring Team reserves the right to seek additional time to file its response depending on the scope of the issues raised in the briefing.

¹⁶ "The Parties agree to defend any action challenging any provision of this Agreement. The Parties shall notify each other of any court challenge to this Agreement. In the event any provision of this Agreement is challenged in any local or state court, removal to federal court shall be sought, to the extent that removal is available under applicable law."

APPENDIX A: CHART OF CONFLICTED PROVISIONS

Chart of Conflicted Provisions Pursuant to ¶ 1 of Page 3 of the Court's July 2, 2025 Order

LL42 Provision	Text of LL42 Provision	Proposed Modification to Definition of Conflicted Provisions as defined in July 2, 2025 Order	Category	Citation to Monitor's January 31, 2025 Report	Reference to Mayor's Executive Order	Text of Mayor's Executive Order
§ 9-167 (a)	Advocate. The term "advocate" means a person who is a law student, paralegal, or an incarcerated person.	Remove from definition of Conflicted Provisions		N/A		
§ 9-167 (a)	Cell. The term "cell" means any room, area or space that is not a shared space conducive to meaningful, regular and congregate social interaction among many people in a group setting, where an individual is held for any purpose.		Management of Incarcerated Individuals Following Serious Acts of Violence	See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40		
§ 9-167 (a)	De-escalation confinement. The term "de-escalation confinement" means holding an incarcerated person in a cell immediately following an incident where the person has caused physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons.		De-Escalation	See "Standard for Using De-Escalation" bullet on pg. 51 & See the "Conclusion" of the De-Escalation Confinement section on pg. 53	Section 1(a)	a. The definition of the term "de-escalation confinement" set forth in subdivision a is modified to allow the use of "de-escalation confinement" where an incarcerated person poses a specific risk of imminent serious physical injury to the public, or where the person requires short term separation for their own protection.
§ 9-167 (a)	Emergency lock-in. The term "emergency lock-in" means a department-wide emergency lockin, a facility emergency lock-in, a housing area emergency lock-in, or a partial facility emergency lock-in as defined in section 9-155.	Remove from definition of Conflicted Provisions		N/A		
§ 9-167 (a)	Out-of-cell. The term "out-of-cell" means being in a space outside of, and in an area away from a cell, in a group setting with other people all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction and activity or being in any space during the time of carrying out medical treatment, individual one-on-one counseling, an attorney visit or court appearance.		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Efforts to Eliminate Solitary Confinement through Restrictive Housing Alternatives" section on pgs. 17-22 & See "Definition of Solitary Confinement" bullet on pgs. 35-36 & "Universal Out of Cell Time" bullet on pgs 36-37 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40		

LL42 Provision	Text of LL42 Provision	Proposed Modification to Definition of Conflicted Provisions as defined in July 2, 2025 Order	Category	Citation to Monitor's January 31, 2025 Report	Reference to Mayor's Executive Order	Text of Mayor's Executive Order
§ 9-167 (a)	Pre-hearing temporary restrictive housing. The term "pre-hearing temporary restrictive housing" means any restrictive housing designated for incarcerated persons who continue to pose a specific risk of imminent serious physical injury to staff, themselves, or other incarcerated persons after a period of de-escalation confinement has exceeded time limits established by this section and prior to a hearing for recommended placement in restrictive housing has taken place.		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Managerial Discretion" bullet on pg. 8 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40	Section 1(b)	b. The definition of the term "pre-hearing temporary restrictive housing" set forth in subdivision a is modified to allow the use of pre-hearing temporary restrictive housing based on the risk of imminent serious physical injury to staff, the incarcerated person, other incarcerated persons or to the public.
§ 9-167 (a)	Restraints. For the purposes of this section, the term "restraints" means any object, device or equipment that impedes movement of hands, legs, or any other part of the body.	Remove from definition of Conflicted Provisions		N/A		
§ 9-167 (a)	Restrictive housing. The term "restrictive housing" means any housing area that separates incarcerated persons from the general jail population on the basis of security concerns or discipline, or a housing area that poses restrictions on programs, services, interactions with other incarcerated persons or other conditions of confinement. This definition excludes housing designated for incarcerated persons who are: (1) in need of medical or mental health support as determined by the entity providing or overseeing correctional medical and mental health, 3 including placement in a contagious disease unit, (2) transgender or gender non-conforming, (3) in need of voluntary protective custody, or		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Efforts to Eliminate Solitary Confinement through Restrictive Housing Alternatives" section on pgs. 17-22 & See "Definition of Solitary Confinement" bullet on pgs. 35-36 & "Universal Out of Cell Time" bullet on pgs 36-37 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40		

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	(4) housed in a designated location for the purpose of school attendance.					
§ 9-167 (a)	Solitary confinement. The term "solitary confinement" means any placement of an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for a count not to exceed two hours in any 24-hour period.		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Background on Solitary Confinement" section on pgs. 15-17 & See "Definition of Solitary Confinement" bullet on pgs. 35-36 & "Universal Out of Cell Time" bullet on pgs 36-37 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40		
§ 9-167 (a)	Suicide prevention aide. For the purposes of this section, the term "suicide prevention aide" means a person in custody who has been trained to identify unusual and/or suicidal behavior.	Remove from definition of Conflicted Provisions		N/A		
§ 9-167 (a)	Violent grade I offense. The term "violent grade I offense" shall have the same meaning as defined by the rules of the department of correction as of January 1, 2022.	Remove from definition of Conflicted Provisions		N/A		
§ 9-167 (b)	Ban on solitary confinement. The department shall not place an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for count not to exceed two hours in any 24-hour period, unless for the purpose of de-escalation confinement or during emergency lock-ins.		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Managerial Discretion" bullet on pg. 8 & See "Efforts to Eliminate Solitary Confinement through Restrictive Housing Alternatives" section on pgs. 17-22 & See "Definition of Solitary Confinement" bullet on pgs. 35-36 & "Universal Out of Cell Time" bullet on pgs 36-37 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40	Section 1 (c)	c. Subdivision b is modified to allow the DOC to place an incarcerated person in a cell in accordance with any restrictive housing program approved by the Monitor.

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§ 9-167 (c)(4)	Throughout de-escalation confinement, a person shall have access to a tablet or device that allows such person to make phone calls outside of the facility and to medical staff in the facility.		De-Escalation	See "Access to Items During De-Escalation" bullet on pgs. 52-53 & See the "Conclusion" of the De-Escalation Confinement section on pg. 53	Section 1(d)	d. Paragraph 4 of subdivision c is suspended.
§ 9-167 (c)(5)	A person shall be removed from de-escalation confinement immediately following when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others		De-Escalation	See "Standard for Using De-escalation" on pg. 51 & See the "Conclusion" of the De-Escalation Confinement section on pg. 53	Section 1(e)	e. Paragraph 5 of subdivision c is modified to require that the DOC remove a person from de-escalation confinement as soon as practicable when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others.
§ 9-167 (c)(6)	The maximum duration a person can be held in de-escalation confinement shall not exceed four hours immediately following the incident precipitating such person's placement in such confinement. Under no circumstances may the department place a person in de-escalation confinement for more than four hours total in any 24-hour period, or more than 12 hours in any seven-day period;		De-Escalation	See "Managerial Discretion" bullet on pg. 8 & See "Arbitrary Time Limits" bullet on pgs. 51-52 & "Limitations on Readmission to De-Escalation Confinement" bullet on pg. 52 & See the "Conclusion" of the De-Escalation section on pg. 53	Section 1(f) & Section 1(g)	f. The first sentence of paragraph 6 of subdivision c is modified to allow the DOC to hold a person in de-escalation confinement for more than four hours in exceptional circumstances as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security, or as approved by the Monitor. g. The second sentence of paragraph 6 of subdivision c is suspended to remove the daily and weekly limits on de-escalation confinement.
§ 9-167 (e)(1)	Use of restraints. 1. The department shall not place an incarcerated person in restraints unless an individualized determination is made that restraints are necessary to prevent an imminent risk of self-injury or injury to other persons. In such instances, only the least restrictive form of restraints may be used and may be used no longer than is necessary to abate such imminent harm.		Restraints and Escorts	See "Managerial Discretion" bullet on pg. 8 & See "Routine Restraints" section on pgs. 41-42 & See the "Procedural Requirements for the Use of Routine Restraints" bullet on pgs. 45-47 & the "Standard for Enhanced Restraints" bullet on pg. 47 & the "Prohibition of Enhanced Restraints for Individuals Under the Age of 22" bullet	Section 1(h)	h. Subdivision e is suspended to the extent that it imposes limitations on the DOC's use of restraints, provided that this suspension shall not affect the requirements of subdivision e that only the least restrictive form of restraints may be used and that the DOC is prohibited from engaging in attempts to unnecessarily prolong, delay or

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	Restraints shall not be used on an incarcerated person under the age of 22 except in the following circumstances: (i) during transportation in and out of a facility, provided that during transportation no person shall be secured to an immovable object; and (ii) during escorted movement within a facility to and from out-of-cell activities where an individualized determination is made that restraints are necessary to prevent an immediate risk of self-injury or injury to other persons. The department is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements.			on pgs. 47-48 & See the "Conclusion" of the Restraints section on pg. 48		undermine an individual's escorted movements.
§ 9-167 (e)(2)	The department shall not place an incarcerated person in restraints beyond the use of restraints described in paragraph 1 of this subdivision, or on two consecutive days, until a hearing is held to determine if the continued use of restraints is necessary for the safety of others. Such hearing shall comply with the rules of the board of correction as described in paragraph 1 of subdivision f of this section. Any continued use of restraints must be reviewed by the department on a daily basis and discontinued once there is no longer an imminent risk of self-injury or injury to other persons. Continued use of restraints may only be authorized for seven consecutive days.		Restraints and Escorts	See the "Enhanced Restraints" section on pg. 43 & See the "Procedural Requirements for the Use of Routine Restraints" bullet on pgs. 45-47 & the "Standard for Enhanced Restraints" bullet on pg. 47 & See the "Conclusion" of the Restraint section on pg. 48	Section 1(h)	h. Subdivision e is suspended to the extent that it imposes limitations on the DOC's use of restraints, provided that this suspension shall not affect the requirements of subdivision e that only the least restrictive form of restraints may be used and that the DOC is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements.

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§ 9-167 (f)(1)(i) ¹⁷	An incarcerated person shall have the right to be represented by their legal counsel or advocate;		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Procedures for Placement in Restricted Housing" bullet on pg. 37 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40	Section 1(i) & 1(j)	i. Subdivision f is modified to allow the department to place an individual in restrictive housing without a hearing in circumstances approved by the Monitor. j. Subparagraph (i) of paragraph 1 of subdivision f is suspended.
§ 9-167 (f)(1)(ii)	An incarcerated person shall have the right to present evidence and cross-examine witnesses ;	Limit definition of Conflicted Provision to the text in red to the extent it requires anything beyond what is required by SCOC 7006.8(d), SCOC 7006.8(e) and SCOC 7006.8(f)	Management of Incarcerated Individuals Following Serious Acts of Violence	See "Procedures for Placement in Restricted Housing" bullet on pg. 37 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40	Section 1(i) & Section 1(k)	i. Subdivision f is modified to allow the department to place an individual in restrictive housing without a hearing in circumstances approved by the Monitor. k. Subparagraph (ii) of paragraph 1 of subdivision f is modified to provide that an incarcerated person shall not be allowed to cross examine witnesses, but shall be allowed to submit questions to be asked of witnesses and to respond to testimony of witnesses.
§ 9-167 (f)(1)(v)	The department shall provide the incarcerated person and their legal counsel or advocate written notice of the reason for proposed placement in restrictive housing and any supporting evidence for such placement, no later than 48 hours prior to the restrictive housing hearing;	Limit definition of Conflicted Provision to the text in red	Management of Incarcerated Individuals Following Serious Acts of Violence	See "Procedures for Placement in Restricted Housing" bullet on pg. 37 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40	Section 1(i) & Section 1(l)	i. Subdivision f is modified to allow the department to place an individual in restrictive housing without a hearing in circumstances approved by the Monitor. l. Subparagraph (v) of paragraph I of subdivision f is suspended to the extent that it requires the DOC to provide the legal counsel or advocate for an incarcerated person written notice of the reason for a proposed restrictive housing placement and to the extent it requires the DOC to provide evidence supporting the incarcerated

¹⁷ For context, in evaluating the sub-provisions of § 9-167 (f) addressed in this chart, the overarching § 9-167 (f) requires "Restrictive housing hearing. Except as provided in subdivision g of this section, the department shall not place an incarcerated person in restrictive housing until a hearing on such placement is held and the person is found to have committed a violent grade I offense. Any required hearing regarding placement of a person into restrictive housing shall comply with rules to be established by the board of correction." Further, § 9-167 (f)(1) requires "The board of correction shall establish rules for restrictive housing hearings that shall, at a minimum, include the following provisions:"

LL42 Provision	Text of LL42 Provision	Proposed Modification to Definition of Conflicted Provisions as defined in July 2, 2025 Order	Category	Citation to Monitor's January 31, 2025 Report	Reference to Mayor's Executive Order	Text of Mayor's Executive Order
						person's placement in restrictive housing in advance of the hearing.
§ 9-167 (f)(1)(vi)	The department shall provide the legal counsel or advocate adequate time to prepare for such hearings and shall grant reasonable requests for adjournments		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Procedures for Placement in Restricted Housing" bullet on pg. 37 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40	Section 1(i) & Section 1(m)	i. Subdivision f is modified to allow the department to place an individual in restrictive housing without a hearing in circumstances approved by the Monitor. m. Subparagraph (vi) of paragraph 1 of subdivision f is suspended to the extent that it requires the DOC to provide the legal counsel or advocate for the incarcerated person adequate time to prepare for a restrictive housing hearing, provided however, that the DOC shall provide the incarcerated person adequate time to review the evidence presented, including adjourning the hearing, if needed.
§ 9-167 (f)(2)	Failure to comply with any of the provisions described in paragraph 1 of this subdivision, or as established by board of correction rule, shall constitute a due process violation warranting dismissal of the matter that led to the hearing.		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Procedures for Placement in Restricted Housing" bullet on pg. 37 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40	Section 1(i)	i. Subdivision f is modified to allow the department to place an individual in restrictive housing without a hearing in circumstances approved by the Monitor
§ 9-167 (h)(1)	The department shall not place an incarcerated person in restrictive housing for longer than necessary and for no more than a total of 60 days in any 12 month period		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Managerial Discretion" bullet on pg. 8 & See "Time Frames for Discharge from Restrictive Housing" bullet on pgs. 37-38 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40	Section 1(n) & Section 1(o)	n. The first sentence of subdivision h is modified to allow the DOC to use restrictive housing that complies with policies approved by the Monitor. o. Paragraph 1 of subdivision h is suspended to the extent that it prohibits the DOC from placing an incarcerated person in restrictive housing for more than a total of 60 days in any 12 month period.
§ 9-167 (h)(2)	Within 15 days of placement of an incarcerated person in restrictive housing, the department shall meaningfully review such placement to determine whether the		Management of Incarcerated Individuals Following	See "Time Frames for Discharge from Restrictive Housing" bullet on pgs. 37-38 & See the "Conclusion" of the	Section 1(n) & Section 1(p)	n. The first sentence of subdivision h is modified to allow the DOC to use restrictive housing that complies with policies approved by the Monitor.

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	incarcerated person continues to present a specific, significant and imminent threat to the safety and security of other persons if housed outside restrictive housing. If an individual is not discharged from restrictive housing after review, the department shall provide in writing to the incarcerated person: (i) the reasons for the determination that such person must remain in restrictive housing and (ii) any recommended program, treatment, service, or corrective action. The department shall provide the incarcerated person access to such available programs, treatment and services.		Serious Acts of Violence	Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40		p. Paragraph 2 of subdivision h is modified to require the DOC to review each incarcerated person's placement in restrictive housing every 15 days to determine whether the individual has complied with the program's requirements and whether their status should be changed. The individual shall be present during the review, unless the review committee determines that safety concerns preclude their presence, and shall be promptly informed of its outcome.
§ 9-167 (h)(3)	The department shall discharge an incarcerated person from restrictive housing if such person has not engaged in behavior that presents a specific, significant, and imminent threat to the safety and security of themselves or other persons during the preceding 15 days. In all circumstances, the department shall discharge an incarcerated person from restrictive housing within 30 days after their initial placement in such housing.		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Managerial Discretion" bullet on pg. 8 & See "Time Frames for Discharge from Restrictive Housing" bullet on pgs. 37-38 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40	Section 1(q)	q. Paragraph 3 of subdivision h is suspended.
§ 9-167 (h)(4)	A person placed in restrictive housing must have interaction with other people and access to congregate programming and amenities comparable to those housed outside restrictive housing, including access to at least seven hours per day of out-of-cell congregate programming or activities with groups of people in a group setting all in the same shared space without physical barriers separating such people that is conducive to		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Efforts to Eliminate Solitary Confinement through Restrictive Housing Alternatives" section on pgs. 17-22 & See pg. 28 of the "Alternative Program Models to Reduce the Use of Solitary Confinement" section & See "Prohibitions on Certain Types of Enhanced Restraints" bullet on pgs. 38-39 & See the "Conclusion" of the	Section 1(r)	r. Paragraph 4 of subdivision h is suspended.

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	meaningful and regular social interaction. If a person voluntarily chooses not to participate in congregate programming, they shall be offered access to comparable individual programming. A decision to voluntarily decline to participate in congregate programming must be done in writing or by videotape.			Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40		
§ 9-167 (h)(5)	The department shall utilize programming that addresses the unique needs of those in restrictive housing. The department shall provide persons in restrictive housing with access to core educational and other programming comparable to core programs in the general population. The department shall also provide persons in restrictive housing access to evidence-based therapeutic interventions and restorative justice programs aimed at addressing the conduct resulting in their placement in restrictive housing. Such programs shall be individualized and trauma-informed, include positive incentive behavior modification models, and follow best practices for violence interruption. Staff that routinely interact with incarcerated persons must be trained in de-escalation techniques, conflict resolution, the use of force policy, and related topics to address the unique needs of those in restrictive housing units.	Limit definition of Conflicted Provision to text in Red	Management of Incarcerated Individuals Following Serious Acts of Violence	See "Time Frames for Discharge from Restrictive Housing" bullet on pgs. 37-38 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40		
§ 9-167 (h)(6)	The department shall use positive incentives to encourage good behavior in restrictive housing units and may use disciplinary sanctions only as a last resort in response to		Management of Incarcerated Individuals Following	See "Universal Out of Cell Time" bullet on pgs. 36-37 & "Procedures for Placement in Restricted Housing" bullet on pg. 37 &	Section 1(s)	s. Paragraph 6 of subdivision h is modified to provide that the DOC may use disciplinary sanctions only as a last resort in

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	behavior presenting a serious and evident danger to oneself or others after other measures have not alleviated such behavior.		Serious Acts of Violence	See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pgs. 39-40		response to behavior that is not in compliance with program requirements.
§ 9-167 (i)(1)	Out-of-cell time. 1. All incarcerated persons must have access to at least 14 out-of-cell hours every day except while in de-escalation confinement pursuant to subdivision c of this section and during emergency lock-ins pursuant to subdivision j of this section.		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Managerial Discretion" bullet on pg. 8 & See "Universal Out of Cell Time" bullet on pgs. 36-37 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40	Section 1(t)	t. Paragraph 1 of subdivision i is modified to allow the DOC to limit out-of-cell time pursuant to a restrictive housing program approved by the Monitor.
§ 9-167 (i)(2)	Incarcerated persons may congregate with others and move about their housing area freely during out-of-cell time and have access to education and programming pursuant to section 9-110 of the administrative code.		Management of Incarcerated Individuals Following Serious Acts of Violence	See "Efforts to Eliminate Solitary Confinement through Restrictive Housing Alternatives" section on pgs. 17-22 & See "Prohibitions on Certain Types of Enhanced Restraints" bullet on pgs. 38-39 & See the "Conclusion" of the Eliminating Solitary Confinement and Developing Alternative Programs section on pg. 39-40		
§ 9-167 (j)(1)	Emergency lock-ins. 1. Emergency lock-ins may only be used when the Commissioner, a Deputy Commissioner, or another equivalent member of department senior leadership with responsibility for the operations of security for a facility determines that such lock-in is necessary to de-escalate an emergency that poses a threat of specific, significant and imminent harm to incarcerated persons or staff. Emergency lock-ins may only be used when there are no less restrictive means available to address an emergency circumstance and only as a last resort after exhausting less		Emergency Lock-Ins	See "Managerial Discretion" bullet on pg. 8 & See the "Impact of LL42's Requirements for DOC's Operations of Emergency Lock-Ins" section on pgs. 55-56 & See the "Conclusion" of the Emergency Lock-In section on pgs. 56-57	Section 1(u)	u. Paragraph 1 of subdivision j is modified to allow the DOC to employ emergency lock-ins during searches and to allow emergency lock-ins to last more than four hours when necessary to protect the safety of individuals in custody and DOC staff, as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security.

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	restrictive measures. Emergency lock-ins must be confined to as narrow an area as possible and limited number of people as possible. The department shall lift emergency lockins as quickly as possible. The Commissioner, a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security shall review such lock-ins at least every hour. Such lock-ins may not last more than four hours.					
§ 9-167 (j)(2)	Throughout an emergency lock-in, the department shall conduct visual and aural observation of every person locked in every fifteen (15) minutes, shall refer any health concerns to medical or mental health staff, and shall bring any person displaying any indications of any need for medical documentation, observation, or treatment to the medical clinic. Throughout an emergency lock-in, other than in a department-wide emergency lock-in or a facility emergency lock-in, each person locked in shall have access to a tablet or other device that allows the person to make phone calls both outside of the facility and to medical staff in the facility.	Limit definition of Conflicted Provision to text in red	Emergency Lock-Ins	See the "Impact of LL42's Requirements for DOC's Operations of Emergency Lock-Ins" section on pgs. 55-56 & See the "Conclusion" of the Emergency Lock-In section on pgs. 56-57	Section 1(v)	v. The second sentence of paragraph 2 of subdivision j is suspended.
§ 9-167 (j)(3)	The department shall immediately provide notice to the public on its website of an emergency lock-in, including information on any restrictions on visits, phone calls, counsel visits or court appearances.		Emergency Lock-Ins	See the "Impact of LL42's Requirements for DOC's Operations of Emergency Lock-Ins" section on pgs. 55-56 & See the "Conclusion" of the Emergency Lock-In section on pgs. 56-57	Section 1(w)	w. Paragraph 3 of subdivision j is suspended to the extent that it requires the DOC to immediately notify the public of an emergency lock-in and modified to provide that the DOC shall, as soon as practicable, provide notice to the public on its website of the existence of circumstances at a facility that could result in restrictions on

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						visits, phone calls, counsel visits or court appearances.

APPENDIX B:
SUMMARY OF RELEVANT *NUNEZ*
PROVISIONS

The list below is a non-exhaustive list of the associated provisions to the *Nunez* Court Orders that are implicated by LL42's requirements.

- **Management of Incarcerated Individuals Following Serious Incidents of Violence:**

The *Nunez* Court Orders include a number of requirements related to the Management of Incarcerated Individuals Following Serious Incidents of Violence, including:

- Action Plan, § E, ¶ 4 *Management of Incarcerated Individuals Following Serious Incidents of Violence*;
- Second Remedial Order ¶ 1(i)(e) *Immediate Security Protocols—Post-Incident Management*;
- Action Plan, § D, ¶ 2(h) *Improved Security Protocols—Post-Incident Management Protocol*.
- **Approval of the Monitor:** The Monitor must approve the Management strategy of Incarcerated Individuals Following Serious Incidents of Violence. *See* Action Plan, § E, ¶ 4.
- **Direction of the Monitor:** The Monitor may direct the Department to refine the initiative(s) related to Post-Incident Management Protocol (Action Plan, § D, ¶ 2(h)), among other security initiatives, to ensure compliance with the *Nunez* Court Orders. *See* Action Plan, § D, ¶ 3. Pursuant to Action Plan § D, ¶ 3, the Department must implement the requirements from the Monitor.
- **Restraints and Escorts:** The *Nunez* Court Orders include a number of requirements related to the use of restraints and escort procedures, including:
 - Consent Judgment, § IV, ¶ 3(p) *Use of Force Policy—Restraints*;
 - Second Remedial Order ¶ 1(i)(a) *Security Plan (escorted movement with restraints when required)*;

- Action Plan, § D, ¶ 2(a) *Improved Security Initiatives—Security Plan*;
 - Action Plan, § D, ¶ 2(f) *Improved Security Initiatives—Escort Techniques*;
 - August 10, 2023 Order, § I, ¶ 3 *Revise Escort Procedures*.
- **Approval of the Monitor:** The Monitor must approve the Department’s policies and procedures on restraints and escorts. *See* Consent Judgment, § IV, ¶ 3(p) and August 10, 2023 Order, § I, ¶ 3.
 - **Direction of the Monitor:** The Monitor may direct the Department to refine the initiative(s) regarding the use of restraints and escorted movement (Action Plan § D, ¶ 2(a) and (f))), among other security initiatives, to ensure compliance with the *Nunez* Court Orders. *See* Action Plan, § D, ¶ 3. Pursuant to Action Plan § D, ¶ 3, the Department must implement the requirements from the Monitor.
- **De-escalation:** The *Nunez* Court Orders include a number of requirements related to the use of de-escalation, including:
 - First Remedial Order, § A, ¶ 3 *Revised De-escalation Protocol*;
 - Action Plan, § D, ¶ 2 (b) *Improved Security Initiatives* (first sentence);
 - Action Plan § E, ¶ (4) *Management of Incarcerated Individuals Following Serious Incidents of Violence*.
 - **Approval of the Monitor:** The Monitor must approve the policies and procedures for de-escalation. *See* First Remedial Order, § A, ¶ 3 and Action Plan § E, (4).
 - **Direction of the Monitor:** The Monitor may direct the Department to refine the initiative(s) regarding the use of de-escalation (Action Plan § D, ¶ 2(b)), among other security initiatives, to ensure compliance with the *Nunez* Court Orders. *See* Action Plan, § D, ¶ 3. Pursuant to Action Plan § D, ¶ 3, the Department must implement the requirements from the Monitor.

- **Emergency Lock-Ins**: The *Nunez* Court Orders include requirements related to the use of emergency lock-ins, including:
 - August 10, 2023 Order, § I, ¶ 4 *Lock-in and Lock-out Procedures*.
 - **Approval of the Monitor**: The Monitor must approve the lock-in policies and procedures. *See* August 10, 2023 Order, § I, ¶ 4

**APPENDIX C:
MAYOR EXECUTIVE
ORDER No. 625**



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

EMERGENCY EXECUTIVE ORDER NO. 625

July 27, 2024

WHEREAS, it is of utmost importance to protect the health and safety of all persons in the custody of the Department of Correction ("DOC"), and of all officers and persons who work in the City of New York jails and who transport persons in custody to court and other facilities, and the public; and

WHEREAS, over 80 provisions in the various Court Orders entered in *Nunez v. City of New York*, 11 CV 5845 (SDNY), require DOC to consult with, and seek the approval of, the *Nunez* Monitor ("Monitor") prior to implementing or amending policies on issues, including but not limited to, matters relating to security practices, the use of restraints, escorts, emergency lock-ins, de-escalation, confinement management of incarcerated individuals following serious acts of violence and subsequent housing strategies, and DOC may be held in contempt of court and sanctioned if it fails to appropriately consult with and obtain approval from the Monitor regarding policies in these areas; and

WHEREAS, the New York City Council ("City Council") has enacted Local Law 42 of 2024, as codified in the Administrative Code of the City of New York at section 9-167 ("Local Law 42"), which is to take effect on July 28, 2024; and

WHEREAS, Local Law 42 severely limits the use of restrictive housing, de-escalation confinement, restraints in movement and transportation, and emergency lock-ins, among other things, for persons in the custody of DOC, and significantly impacts operational procedures regarding, among other things, the management and housing of individuals following serious acts of violence; and

WHEREAS, prior to the passage of Local Law 42, DOC testified before City Council, conveying that terms of the proposed local law conflicted with the *Nunez* Court Orders with which DOC must comply and would remove key tools necessary to mitigate the risk of violence in DOC facilities, endanger DOC staff and persons in custody, and likely result in an increase in violence in DOC facilities; and

WHEREAS, on December 20, 2023, notwithstanding DOC's testimony and public safety concerns, the City Council voted to pass Local Law 42; and

WHEREAS, pursuant to the *Nunez* Court Orders, on January 5, 2024, DOC requested that the Monitor advise and provide feedback to DOC on how the requirements of Local Law 42 would impact DOC's ability to comply with the *Nunez* Court Orders; and

WHEREAS, on January 12, 2024, the Monitor expressed deep concerns about the proposed local law and assessed that implementing Local Law 42 “could impede the Department’s ability to comply with the *Nunez* Court Orders,” and “inadvertently undermine the overall goals of protecting individuals from harm, promoting sound correctional practice and improving safety for those in custody and jail staff” [see 11 CV 5845 (SDNY) Dkt. No. 758-2 at p. 2]; and

WHEREAS, on January 19, 2024, the Mayor vetoed Local Law 42, citing the serious public safety concerns previously identified by DOC and the Monitor;

WHEREAS, despite DOC’s good faith engagement with the City Council, on January 30, 2024, the City Council voted to override the Mayor’s veto of Local Law 42; and

WHEREAS, on June 5, 2024, DOC, through its attorneys at the New York City Law Department, advised the Honorable Judge Laura T. Swain, Chief Judge of the United States District Court for the Southern District of New York, who is the judge presiding over *Nunez*, that because many of the requirements of Local Law 42 conflict with aspects of the *Nunez* Court Orders, the City intended to move for an order suspending the requirements of Local Law 42 until such time as the Monitor approves DOC policies and programs addressing those requirements. The letter also noted DOC’s intent to meet and confer with counsel for the *Nunez* parties in advance of filing the motion [see 11 CV 5845 (SDNY) Dkt. No. 724]. On June 7, 2024, Judge Swain endorsed the June 5 letter and directed the parties to meet and confer [see 11 CV 5845 (SDNY) Dkt. No. 726]; and

WHEREAS, on June 25, 2024, pursuant to Local Law 42, the New York City Board of Correction (“BOC”) adopted rules relating to the implementation of the law; and

WHEREAS, in addition to a meet and confer that took place with the *Nunez* parties, DOC met and conferred with the City Council on several occasions in an effort to reach an agreement to temporarily stay, or to extend outward, the effective date of Local Law 42 in order to allow for further consultation between the *Nunez* parties, the Monitor and the City Council regarding the intersection between Local Law 42 and the City’s obligations under the *Nunez* Court Orders; and

WHEREAS, despite these efforts, and despite the existence of the *Nunez* Court Orders, on July 15, 2024, the City Council informed DOC that it would not agree to any stay of the effective date of Local Law 42; and

WHEREAS, on July 17, 2024, the Monitor assessed Local Law 42 and wrote to DOC [see 11 CV 5845 (SDNY) Dkt. No. 758-3]:

- That “attempting to implement L[ocal] L[aw] 42 at this time ... would be dangerous and would subject incarcerated individuals and staff to further risk of harm” [Dkt. No. 758-3 at p. 2]; and that
- L[ocal] L[aw] 42 includes unprecedented provisions regarding the management of incarcerated individuals following serious acts of violence and eliminates necessary discretion by correctional management in a manner that could actually

result in an increased risk of harm to other incarcerated individuals and staff” [Dkt. No. 758-3 at p. 4]; and that

- “the requirements of [. . . Local Law 42] impose absolute prohibitions on correctional management that remove all discretion in a number of particularized circumstances where *some* degree of latitude and discretion in judgement to manage immediate threats to security are in fact necessary” [Dkt. No. 758-3 at p. 4, emphasis in original]; and that
- DOC is “at present not equipped to safely implement” Local Law 42; that the “truncated implementation timeline” for the significant changes required by Local Law 42 is “unreasonable”; and that the prospect of a rushed implementation of the Law “further heightens” concerns about the associated “risk of harm and the safety of those in the Department’s custody and those working in the Department’s facilities;” [Dkt. No. 758-3 at pgs. 5-6]; and that
- Local Law 42 would “drastically alter . . . [and] impact the Department’s core strategy for addressing violent misconduct—its restrictive housing program” [Dkt. No. 758-3 at p. 8]; and that
- implementing the law as-is would “require[] changes that conflict with standard sound correctional practices . . . and therefore would be dangerous for those incarcerated and [who] work in the jails” [Dkt. No. 758-3 at p. 7]; and that
- approval from the Monitor “is necessary” because Local Law 42’s requirements otherwise “could undercut the Department’s ability to achieve compliance in *Nunez*” [Dkt. No. 758-3 at p. 9]; and that
- in the expert view of the Monitoring Team—which has “over 100 years’ experience” in formulating “reasonable operational practices that ensure adequate protection from harm for incarcerated individuals and staff who work in carceral settings”—additional time and careful work are needed to evaluate which requirements of Local Law 42 could be implemented without violating the *Nunez* Court Orders [Dkt. No. 758-3 at p. 2, 10]; and that
- the task of “[f]ully understanding [. . . the Law’s] requirements and the BOC’s respective rules (which were only just passed) . . . and then comparing them to the respective requirements of the *Nunez* Court Orders is an exceedingly complicated undertaking”; and

WHEREAS, the Monitor therefore proposed:

- that, following the conclusion of the Monitor’s analysis, the parties to the *Nunez* litigation, along with the Monitor and the counsel for the City Council, “must meet and confer” to determine how best to address any divergence between the

requirements of the *Nunez* Court Orders and Local Law 42 [Dkt. No. 758-3 at pgs. 9-10]; and

- that given that “the practices at issue have a direct impact on facility safety,” the Monitor recommends that such work be undertaken between “now and October 24, 2024, at which time the Court can be updated on the status of these issues and the necessity for any potential motion practice” [Dkt. No. 758-3 at p. 10]; and

WHEREAS, DOC Commissioner Maginley-Liddie set forth to the *Nunez* Court, in a 17-page, detailed declaration dated July 22, 2024 [*see* 11 CV 5845 (SDNY) Dkt. No. 758-1] why and how Local Law 42, if implemented as-is and at this time, would pose immediate dangers to public safety, including by:

- preventing DOC from transporting individuals to courts or hospitals in a safe manner because Local Law 42 places insurmountable burdens on DOC’s ability to restrain incarcerated individuals during transport [Dkt. No. 758-1 at para. 34-40]; and
- preventing DOC from escorting individuals through jail, court, hospital and other public facilities in a safe manner Local Law 42 places insurmountable burdens on DOC’s ability to use restraints during escorts [*id.*]; and
- preventing DOC and courthouse personnel from holding persons in custody at courthouses during lengthy court calendars that exceed several hours [Dkt. No. 758-1 at para. 22]; and
- preventing DOC from operating the Enhanced Supervision Housing Program, developed in close consultation with the Monitor for those individuals who have been found guilty after a disciplinary hearing of committing a violent offense, typically a slashing or stabbing or assault on staff [Dkt. No. 758-1 at para. 11-18]; and
- preventing DOC from holding restrictive housing hearings expeditiously by imposing additional requirements for such hearings that are likely to lead to delays in the completion of hearings and in placement of individuals [Dkt. No. 758-1 at para. 15-16]; and
- preventing DOC from providing adequate rehabilitative programming by limiting the time in such housing to 15 days as a general rule [Dkt. No. 758-1 at para. 15]; and
- preventing DOC from operating its Separation Status Housing Unit, which is used in those rare instances when a body scan reveals that an individual has secreted a weapon or drugs on their person and the individual refuses to relinquish the item [Dkt. No. 758-1 at para. 19-21]; and

- preventing DOC from exercising necessary discretion to maintain public safety during facility emergencies and housing area emergencies, in that Local Law 42 inflexibly and arbitrarily restricts the maximum duration of emergency lock-ins to four hours and inflexibly mandates that individuals in custody be allowed to make phone calls during emergency lock-ins notwithstanding that such telephone access threatens to facilitate gang activity and violence within and outside the jails and poses significant safety and security risks [Dkt. No. 758-1 at para. 26-28]; and
- preventing DOC from employing lock-ins during searches, which undermines DOC's ability to perform safe and effective unannounced searches of the facilities, thereby eliminating an essential tool for DOC to rid its facilities of weapons and other contraband [Dkt. No. 758-1 at para. 29]; and
- preventing DOC from exercising necessary discretion in using effective de-escalation practices for the purpose of calming disruptive individuals and victims of violence, in that Local Law 42 inflexibly and arbitrarily restricts the maximum duration of de-escalation confinement to four hours, even though circumstances sometimes arise in which a longer stay is necessary for safety, and it inflexibly mandates that persons in de-escalation confinement be allowed to make phone calls outside the facility, notwithstanding that it is dangerous and unsound correctional policy for a person who has engaged in a violent fight, particularly if the fight is gang-related, to be able to telephone their confederates to spread the word [Dkt. No. 758-1 at para. 30-33]; and

WHEREAS, Local Law 42 imposes significant other procedural requirements relating to the placement of individuals in restrictive housing and other jail operations that would pose a direct threat to the safety of incarcerated individuals and staff in DOC facilities and would, in the Monitor's assessment, "provide myriad opportunities for undue delay by the perpetrator of violence" before the Department could act to address the underlying conduct [see 11 CV 5845 (SDNY) Dkt. No. 758-2 at 7], including procedural requirements that: restrict the use of de-escalation confinement in a manner that would prevent DOC from placing an individual in de-escalation confinement for their own protection when they have been the victim of a violent incident; prevent DOC from operating a safe and effective restrictive housing program by mandating an inflexible 14-hour out-of-cell requirement and limiting restrictive housing to no more than 30 consecutive days and no more than 60 days within any 12-month period; require DOC to immediately alert the public that a facility is on lock-down, notwithstanding that such a procedure would pose a significant threat to security in the facility; and require that an incarcerated individual be allowed to cross-examine witnesses during restrictive housing hearings, notwithstanding that such a procedure could place witnesses in danger; and

WHEREAS, DOC Commissioner Maginley-Liddie's declaration further states that DOC would be in an "inescapable bind" if Local Law 42 were to take effect at this time because "[u]nder the Court's Orders in the *Nunez* case, [DOC] cannot modify its policies on restrictive housing, de-escalation units, emergency lock-ins and restraints without submitting the modification to the Monitor and waiting for his approval. Yet Local Law 42, if implemented, would radically modify our policies in those areas without the Monitor's approval" and in a manner that is dangerous [Dkt. No. 758-1 at para. 41]; and

WHEREAS, on July 22, 2024 DOC, through its attorneys at the New York City Law Department, sent a letter to Judge Swain, providing a status update on the work that had been taking place regarding Local Law 42 since the June 5 letter referenced above and attaching the assessments by both the Monitor and DOC Commissioner of the dangers of implementing Local Law 42 [see 11 CV 5845 (SDNY) Dkt. No. 758], and on July 23, 2024 Judge Swain endorsed the July 22 letter and directed the *Nunez* Defendants and the Monitoring Team to continue their focused analytical work concerning compliance with Local Law 42, as outlined in the July 17, 2024 letter from the Monitoring Team, and further directed the *Nunez* Defendants to file a status update regarding this work by October 25, 2024 [see 11 CV 5845 (SDNY) Dkt. No. 759]; and

WHEREAS, on July 23, 2024, DOC again reached out to the City Council to ask that the City Council stay the effective date of Local Law 42 until these serious issues could be resolved, but in response to an inquiry from legal counsel to DOC, the City Council again informed DOC that it would not agree to any stay of the effective date of Local Law 42; and

WHEREAS, as fully detailed in Emergency Executive Order 579 of 2024, DOC is already experiencing a significant staffing crisis, which poses a serious risk to the health, safety, and security of all people in custody and to DOC personnel; and

WHEREAS, certain sections of Title 40 of the Rules of the City of New York have already been suspended by Emergency Executive Order No. 279, dated November 1, 2021, and remain suspended pursuant to subsequent renewals of such Emergency Executive Order; and

WHEREAS, attempting to comply with many of the provisions of Local Law 42 and the new BOC regulations, such as transporting individuals to court without restraints, would require a massive increase in staff and other resources, which are not available; and

WHEREAS, even if DOC had such additional staffing and resources, that still would not obviate the direct threat to public safety posed by certain provisions of Local Law 42, nor would it obviate the fact that the Monitor has yet to approve implementation of those provisions as required by the *Nunez* Orders, nor would it obviate the fact that additional time would be needed to safely implement those provisions of Local Law 42 eventually approved by the Monitor, because, as the Monitor has expressly cautioned, the safe implementation of any new requirement or reform in DOC facilities requires planning time to “evaluat[e] the operational impact, update[e] policies and procedures, updat[e] the physical plant, determin[e] the necessary staffing complement, develop[] training materials, and provid[e] training to thousands of staff, all of which must occur before the changes in practice actually go into effect” [11 CV 5845 (SDNY) Dkt No. 758-3 at p. 61]; and

WHEREAS, to avert immediate dangers to public safety for the limited period while the Monitoring Team completes their work as directed by Judge Swain, and until DOC is in a position to meet both its obligations under the *Nunez* Court Orders and Local Law 42; and

WHEREAS, on July 27, 2024, I issued Emergency Executive Order No. 624, and declared a state of emergency to exist within the correction facilities operated by the DOC, and such declaration remains in effect;

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. I hereby direct that beginning on July 28, 2024, the following provisions of section 9-167 of the Administrative Code of the City of New York are suspended or modified as indicated:

a. The definition of the term “de-escalation confinement” set forth in subdivision a is modified to allow the use of “de-escalation confinement” where an incarcerated person poses a specific risk of imminent serious physical injury to the public, or where the person requires short term separation for their own protection.

b. The definition of the term “pre-hearing temporary restrictive housing” set forth in subdivision a is modified to allow the use of pre-hearing temporary restrictive housing based on the risk of imminent serious physical injury to staff, the incarcerated person, other incarcerated persons or to the public.

c. Subdivision b is modified to allow the DOC to place an incarcerated person in a cell in accordance with any restrictive housing program approved by the Monitor.

d. Paragraph 4 of subdivision c is suspended.

e. Paragraph 5 of subdivision c is modified to require that the DOC remove a person from de-escalation confinement as soon as practicable when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others.

f. The first sentence of paragraph 6 of subdivision c is modified to allow the DOC to hold a person in de-escalation confinement for more than four hours in exceptional circumstances as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security, or as approved by the Monitor.

g. The second sentence of paragraph 6 of subdivision c is suspended to remove the daily and weekly limits on de-escalation confinement.

h. Subdivision e is suspended to the extent that it imposes limitations on the DOC’s use of restraints, provided that this suspension shall not affect the requirements of subdivision e that only the least restrictive form of restraints may be used and that the DOC is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual’s escorted movements.

i. Subdivision f is modified to allow the department to place an individual in restrictive housing without a hearing in circumstances approved by the Monitor.

j. Subparagraph (i) of paragraph 1 of subdivision f is suspended.

k. Subparagraph (ii) of paragraph 1 of subdivision f is modified to provide that an incarcerated person shall not be allowed to cross examine witnesses, but shall be allowed to submit questions to be asked of witnesses and to respond to testimony of witnesses.

l. Subparagraph (v) of paragraph 1 of subdivision f is suspended to the extent that it requires the DOC to provide the legal counsel or advocate for an incarcerated person written notice of the reason for a proposed restrictive housing placement and to the extent it requires the DOC to provide evidence supporting the incarcerated person's placement in restrictive housing in advance of the hearing.

m. Subparagraph (vi) of paragraph 1 of subdivision f is suspended to the extent that it requires the DOC to provide the legal counsel or advocate for the incarcerated person adequate time to prepare for a restrictive housing hearing, provided however, that the DOC shall provide the incarcerated person adequate time to review the evidence presented, including adjourning the hearing, if needed.

n. The first sentence of subdivision h is modified to allow the DOC to use restrictive housing that complies with policies approved by the Monitor.

o. Paragraph 1 of subdivision h is suspended to the extent that it prohibits the DOC from placing an incarcerated person in restrictive housing for more than a total of 60 days in any 12 month period.

p. Paragraph 2 of subdivision h is modified to require the DOC to review each incarcerated person's placement in restrictive housing every 15 days to determine whether the individual has complied with the program's requirements and whether their status should be changed. The individual shall be present during the review, unless the review committee determines that safety concerns preclude their presence, and shall be promptly informed of its outcome.

q. Paragraph 3 of subdivision h is suspended.

r. Paragraph 4 of subdivision h is suspended.

s. Paragraph 6 of subdivision h is modified to provide that the DOC may use disciplinary sanctions only as a last resort in response to behavior that is not in compliance with program requirements.

t. Paragraph 1 of subdivision i is modified to allow the DOC to limit out-of-cell time pursuant to a restrictive housing program approved by the Monitor.

u. Paragraph 1 of subdivision j is modified to allow the DOC to employ emergency lock-ins during searches and to allow emergency lock-ins to last more than four hours when necessary to protect the safety of individuals in custody and DOC staff, as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security.

v. The second sentence of paragraph 2 of subdivision j is suspended.

w. Paragraph 3 of subdivision j is suspended to the extent that it requires the DOC to immediately notify the public of an emergency lock-in and modified to provide that the DOC shall, as soon as practicable, provide notice to the public on its website of the existence of circumstances at a facility that could result in restrictions on visits, phone calls, counsel visits or court appearances.

§ 2. I hereby direct that beginning on July 28, 2024, the following provisions of Title 40 of the Rules of the City of New York are suspended or modified as indicated:

- a. Paragraph 2 of subdivision a of section 1-05 is suspended to the extent it would apply to de-escalation confinement, during emergency lock-ins, and with respect to any restrictive housing program approved by the Monitor.
- b. Paragraph 3 of subdivision a of section 1-05 is suspended to the extent it would apply to de-escalation confinement, during emergency lock-ins, and with respect to any restrictive housing program approved by the Monitor.
- c. Paragraph 2 of subdivision b of section 1-05 is modified to add an exception for restrictive housing programs approved by the Monitor.
- d. The definition of the term “de-escalation confinement” set forth in section 6-03 is modified to allow the use of “de-escalation confinement” where an incarcerated person poses a specific risk of imminent serious physical injury to the public, or where the person requires short term separation for their own protection.
- e. The definition of the term “pre-hearing temporary restrictive housing” set forth in section 6-03 is modified to allow the use of pre-hearing temporary restrictive housing based on the risk of imminent serious physical injury to staff, the incarcerated person, other incarcerated persons or to the public.
- f. Subdivision a of section 6-05 is modified to the extent necessary to allow the use of de-escalation confinement in circumstances allowed pursuant to section 1 of this emergency order.
- g. Subdivision h of section 6-05 is suspended.
- h. Subdivision j of section 6-05 is modified to provide that a person shall be removed from de-escalation confinement as soon as practicable following when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others.
- i. Paragraph 1 of subdivision j of section 6-05 is modified to allow the DOC to hold a person in de-escalation confinement for more than four hours in exceptional circumstances as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security, or as approved by the Monitor and to remove the daily and weekly limits on de-escalation confinement so as to allow holding an individual in de-escalation confinement when required by current circumstances, regardless of whether the

individual was recently held in de-escalation confinement as a result of prior circumstances.

- j. Subdivision a of section 6-06 is modified to allow the DOC to employ emergency lock-ins during searches.
- k. Subdivision e of section 6-06 is modified to allow emergency lock-ins to last more than four hours when necessary to protect the safety of individuals in custody and DOC staff, as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security.
- l. Subdivision g of section 6-06 is suspended to the extent that it requires the DOC to immediately notify the public of an emergency lock-in and modified to provide that the DOC shall, as soon as practicable, provide notice to the public on its website of the existence of circumstances at a facility that could result in restrictions on visits, phone calls, counsel visits or court appearances.
- m. Subdivision i of section 6-06 is suspended to the extent that it prohibits an emergency lock-in lasting more than four hours.
- n. Subdivision k of section 6-06 is suspended.
- o. Subdivision a of section 6-10 is modified to provide that the restriction does not apply to confinement in a restrictive housing program approved by the Monitor.
- p. Section 6-13 is suspended.
- q. Section 6-14 is modified to require the DOC to review each incarcerated person's placement in restrictive housing every 15 days to determine whether the individual has complied with the program's requirements and whether their status should be changed. The individual shall be present during the review, unless the review committee determines that safety concerns preclude their presence, and shall be promptly informed of its outcome.
- r. Section 6-15 is modified to allow the DOC to limit out-of-cell time pursuant to a restrictive housing program approved by the Monitor.
- s. Subdivision c of section 6-16 is suspended.
- t. Subdivision d of section 6-16 is suspended.
- u. Subdivision j of section 6-16 is suspended to provide that the DOC may use disciplinary sanctions only as a last resort in response to behavior that is not in compliance with program requirements.
- v. Subdivision b of section 6-19 is suspended.

- w. Subdivision f of section 6-19 is suspended to the extent it requires more hours of programming than the number of hours approved by the Monitor.
- x. Paragraph 3 of subdivision a of section 6-27 is suspended to the extent it requires an individualized determination regarding use of restraints.
- y. The first and second sentences of subdivision b of section 6-27 are suspended.
- z. Subdivision d of section 6-27 is suspended to the extent that it imposes a limit on the time period for which restraints can be used.
- aa. Subdivision l of section 6-27 is suspended.
- bb. Subdivision m of section 6-27 is suspended.

§ 3. This Emergency Executive Order shall take effect immediately and shall remain in effect for five (5) days unless it is terminated or modified at an earlier date.



Eric Adams
Mayor

APPENDIX D:

HALT ACT

STATE OF NEW YORK

2836

2021-2022 Regular Sessions

IN SENATE

January 25, 2021

Introduced by Sen. SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, in relation to restricting the use of segregated confinement and creating alternative therapeutic and rehabilitative confinement options

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 23 of section 2 of the correction law, as added
2 by chapter 1 of the laws of 2008, is amended to read as follows:

3 23. "Segregated confinement" means the [~~disciplinary~~] confinement of
4 an inmate in [~~a special housing unit or in a separate keeplock housing~~
5 ~~unit. Special housing units and separate keeplock units are housing~~
6 ~~units that consist of cells grouped so as to provide separation from the~~
7 ~~general population, and may be used to house inmates confined pursuant~~
8 ~~to the disciplinary procedures described in regulations]~~ any form of
9 cell confinement for more than seventeen hours a day other than in a
10 facility-wide emergency or for the purpose of providing medical or
11 mental health treatment. Cell confinement that is implemented due to
12 medical or mental health treatment shall be within a clinical area in
13 the correctional facility or in as close proximity to a medical or
14 mental health unit as possible.

15 § 2. Section 2 of the correction law is amended by adding two new
16 subdivisions 33 and 34 to read as follows:

17 33. "Special populations" means any person: (a) twenty-one years of
18 age or younger; (b) fifty-five years of age or older; (c) with a disa-
19 bility as defined in paragraph (a) of subdivision twenty-one of section
20 two hundred ninety-two of the executive law; or (d) who is pregnant, in
21 the first eight weeks of the post-partum recovery period after giving
22 birth, or caring for a child in a correctional institution pursuant to
23 subdivisions two or three of section six hundred eleven of this chapter.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 34. "Residential rehabilitation unit" means a separate housing unit
2 used for therapy, treatment, and rehabilitative programming of incarcer-
3 ated people who have been determined to require more than fifteen days
4 of segregated confinement pursuant to department proceedings. Such units
5 shall be therapeutic and trauma-informed, and aim to address individual
6 treatment and rehabilitation needs and underlying causes of problematic
7 behaviors.

8 § 3. Paragraph (a) of subdivision 6 of section 137 of the correction
9 law, as amended by chapter 490 of the laws of 1974, is amended to read
10 as follows:

11 (a) The inmate shall be supplied with a sufficient quantity of whole-
12 some and nutritious food~~[, provided, however, that such food need not be~~
13 ~~the same as the food supplied to inmates who are participating in~~
14 ~~programs of the facility];~~

15 § 4. Paragraph (d) of subdivision 6 of section 137 of the correction
16 law, as added by chapter 1 of the laws of 2008, is amended to read as
17 follows:

18 (d) (i) Except as set forth in clause (E) of subparagraph (ii) of this
19 paragraph, the department, in consultation with mental health clini-
20 cians, shall divert or remove inmates with serious mental illness, as
21 defined in paragraph (e) of this subdivision, from segregated confine-
22 ment or confinement in a residential rehabilitation unit, where such
23 confinement could potentially be for a period in excess of thirty days,
24 to a residential mental health treatment unit. Nothing in this para-
25 graph shall be deemed to prevent the disciplinary process from proceed-
26 ing in accordance with department rules and regulations for disciplinary
27 hearings.

28 (ii) (A) Upon placement of an inmate into segregated confinement or a
29 residential rehabilitation unit at a level one or level two facility, a
30 suicide prevention screening instrument shall be administered by staff
31 from the department or the office of mental health who has been trained
32 for that purpose. If such a screening instrument reveals that the inmate
33 is at risk of suicide, a mental health clinician shall be consulted and
34 appropriate safety precautions shall be taken. Additionally, within one
35 business day of the placement of such an inmate into segregated confine-
36 ment at a level one or level two facility, the inmate shall be assessed
37 by a mental health clinician.

38 (B) Upon placement of an inmate into segregated confinement or a resi-
39 dential rehabilitation unit at a level three or level four facility, a
40 suicide prevention screening instrument shall be administered by staff
41 from the department or the office of mental health who has been trained
42 for that purpose. If such a screening instrument reveals that the inmate
43 is at risk of suicide, a mental health clinician shall be consulted and
44 appropriate safety precautions shall be taken. All inmates placed in
45 segregated confinement or a residential rehabilitation unit at a level
46 three or level four facility shall be assessed by a mental health clini-
47 cian, within [~~fourteen~~] seven days of such placement into segregated
48 confinement.

49 (C) At the initial assessment, if the mental health clinician finds
50 that an inmate suffers from a serious mental illness, that person shall
51 be diverted or removed from segregated confinement or a residential
52 rehabilitation unit and a recommendation shall be made whether excep-
53 tional circumstances, as described in clause (E) of this subparagraph,
54 exist. In a facility with a joint case management committee, such recom-
55 mendation shall be made by such committee. In a facility without a joint
56 case management committee, the recommendation shall be made jointly by a

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committee consisting of the facility's highest ranking mental health clinician, the deputy superintendent for security, and the deputy superintendent for program services, or their equivalents. Any such recommendation shall be reviewed by the joint central office review committee. The administrative process described in this clause shall be completed within ~~[fourteen]~~ seven days of the initial assessment, and if the result of such process is that the inmate should be removed from segregated confinement or a residential rehabilitation unit, such removal shall occur as soon as practicable, but in no event more than seventy-two hours from the completion of the administrative process. Pursuant to paragraph (h) of this subdivision, nothing in this section shall permit the placement of an incarcerated person with serious mental illness into segregated confinement at any time, even for the purposes of assessment.

(D) If an inmate with a serious mental illness is not diverted or removed to a residential mental health treatment unit, such inmate shall be diverted to a residential rehabilitation unit and reassessed by a mental health clinician within fourteen days of the initial assessment and at least once every fourteen days thereafter. After each such additional assessment, a recommendation as to whether such inmate should be removed from ~~[segregated confinement]~~ a residential rehabilitation unit shall be made and reviewed according to the process set forth in clause (C) of this subparagraph.

(E) A recommendation or determination whether to remove an inmate from segregated confinement or a residential rehabilitation unit shall take into account the assessing mental health clinicians' opinions as to the inmate's mental condition and treatment needs, and shall also take into account any safety and security concerns that would be posed by the inmate's removal, even if additional restrictions were placed on the inmate's access to treatment, property, services or privileges in a residential mental health treatment unit. A recommendation or determination shall direct the inmate's removal from segregated confinement or a residential rehabilitation unit except in the following exceptional circumstances: (1) when the reviewer finds that removal would pose a substantial risk to the safety of the inmate or other persons, or a substantial threat to the security of the facility, even if additional restrictions were placed on the inmate's access to treatment, property, services or privileges in a residential mental health treatment unit; or (2) when the assessing mental health clinician determines that such placement is in the inmate's best interests based on his or her mental condition and that removing such inmate to a residential mental health treatment unit would be detrimental to his or her mental condition. Any determination not to remove an inmate with serious mental illness from segregated confinement or a residential rehabilitation unit shall be documented in writing and include the reasons for the determination.

(iii) Inmates with serious mental illness who are not diverted or removed from ~~[segregated confinement]~~ a residential rehabilitation unit shall be offered a heightened level of mental health care, involving a minimum of ~~[two]~~ three hours ~~[each day, five days a week,]~~ daily of out-of-cell therapeutic treatment and programming. This heightened level of care shall not be offered only in the following circumstances:

(A) The heightened level of care shall not apply when an inmate with serious mental illness does not, in the reasonable judgment of a mental health clinician, require the heightened level of care. Such determination shall be documented with a written statement of the basis of such determination and shall be reviewed by the Central New York Psychiatric Center clinical director or his or her designee. Such a determination is

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subject to change should the inmate's clinical status change. Such determination shall be reviewed and documented by a mental health clinician every thirty days, and in consultation with the Central New York Psychiatric Center clinical director or his or her designee not less than every ninety days.

(B) The heightened level of care shall not apply in exceptional circumstances when providing such care would create an unacceptable risk to the safety and security of inmates or staff. Such determination shall be documented by security personnel together with the basis of such determination and shall be reviewed by the facility superintendent, in consultation with a mental health clinician, not less than every seven days for as long as the inmate remains in ~~[segregated confinement]~~ a residential rehabilitation unit. The facility shall attempt to resolve such exceptional circumstances so that the heightened level of care may be provided. If such exceptional circumstances remain unresolved for thirty days, the matter shall be referred to the joint central office review committee for review.

(iv) ~~[Inmates with serious mental illness who are not diverted or removed from segregated confinement shall not be placed on a restricted diet, unless there has been a written determination that the restricted diet is necessary for reasons of safety and security. If a restricted diet is imposed, it shall be limited to seven days, except in the exceptional circumstances where the joint case management committee determines that limiting the restricted diet to seven days would pose an unacceptable risk to the safety and security of inmates or staff. In such case, the need for a restricted diet shall be reassessed by the joint case management committee every seven days.]~~

~~(v)~~ All inmates in segregated confinement in a level one or level two facility who are not assessed with a serious mental illness at the initial assessment shall be offered at least one interview with a mental health clinician within ~~[fourteen]~~ seven days of their initial mental health assessment, ~~[and additional interviews at least every thirty days thereafter,]~~ unless the mental health clinician at the most recent interview recommends an earlier interview or assessment. All inmates in ~~[segregated confinement]~~ a residential rehabilitation unit in a level three or level four facility who are not assessed with a serious mental illness at the initial assessment shall be offered at least one interview with a mental health clinician within thirty days of their initial mental health assessment, and additional interviews at least every ninety days thereafter, unless the mental health clinician at the most recent interview recommends an earlier interview or assessment.

§ 5. Subdivision 6 of section 137 of the correction law is amended by adding eight new paragraphs (h), (i), (j), (k), (l), (m), (n) and (o) to read as follows:

(h) Persons in a special population as defined in subdivision thirty-three of section two of this chapter shall not be placed in segregated confinement for any length of time, except in keeplock for a period prior to a disciplinary hearing pursuant to paragraph (l) of this subdivision. Individuals in a special population who are in keeplock prior to a disciplinary hearing shall be given seven hours a day out-of-cell time or shall be transferred to a residential rehabilitation unit or residential mental health treatment unit as expeditiously as possible, but in no case longer than forty-eight hours from the time an individual is admitted to keeplock.

(i) No person may be placed in segregated confinement for longer than necessary and no more than fifteen consecutive days or twenty total days

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1 within any sixty day period. At these limits, he or she must be
2 released from segregated confinement or diverted to a separate residen-
3 tial rehabilitation unit. If placement of such person in segregated
4 confinement would exceed the twenty-day limit and the department estab-
5 lishes that the person committed an act defined in subparagraph (ii) of
6 paragraph (k) of this subdivision, the department may place the person
7 in segregated confinement until admission to a residential rehabili-
8 tation unit can be effectuated. Such admission to a residential rehabili-
9 itation unit shall occur as expeditiously as possible and in no case
10 take longer than forty-eight hours from the time such person is placed
11 in segregated confinement.

12 (j) (i) All segregated confinement and residential rehabilitation
13 units shall create the least restrictive environment necessary for the
14 safety of incarcerated persons, staff, and the security of the facility.

15 (ii) Persons in segregated confinement shall be offered out-of-cell
16 programming at least four hours per day, including at least one hour for
17 recreation. Persons admitted to residential rehabilitation units shall
18 be offered at least six hours of daily out-of-cell congregate program-
19 ming, services, treatment, and/or meals, with an additional minimum of
20 one hour for recreation. Recreation in all residential rehabilitation
21 units shall take place in a congregate setting, unless exceptional
22 circumstances mean doing so would create a significant and unreasonable
23 risk to the safety and security of other incarcerated persons, staff, or
24 the facility.

25 (iii) No limitation on services, treatment, or basic needs such as
26 clothing, food and bedding shall be imposed as a form of punishment. If
27 provision of any such services, treatment or basic needs to an individ-
28 ual would create a significant and unreasonable risk to the safety and
29 security of incarcerated persons, staff, or the facility, such services,
30 treatment or basic needs may be withheld until it reasonably appears
31 that the risk has ended. The department shall not impose restricted
32 diets or any other change in diet as a form of punishment. Persons in a
33 residential rehabilitation unit shall have access to all of their
34 personal property unless an individual determination is made that having
35 a specific item would pose a significant and unreasonable risk to the
36 safety of incarcerated persons or staff or the security of the unit.

37 (iv) Upon admission to a residential rehabilitation unit, program and
38 mental health staff shall administer assessments and develop an individ-
39 ual rehabilitation plan in consultation with the resident, based upon
40 his or her medical, mental health, and programming needs. Such plan
41 shall identify specific goals and programs, treatment, and services to
42 be offered, with projected time frames for completion and discharge from
43 the residential rehabilitation unit.

44 (v) An incarcerated person in a residential rehabilitation unit shall
45 have access to programs and work assignments comparable to core programs
46 and work assignments in general population. Such incarcerated persons
47 shall also have access to additional out-of-cell, trauma-informed thera-
48 peutic programming aimed at promoting personal development, addressing
49 underlying causes of problematic behavior resulting in placement in a
50 residential rehabilitation unit, and helping prepare for discharge from
51 the unit and to the community.

52 (vi) If the department establishes that a person committed an act
53 defined in subparagraph (ii) of paragraph (k) of this subdivision while
54 in segregated confinement or a residential rehabilitation unit and poses
55 a significant and unreasonable risk to the safety and security of other
56 incarcerated persons or staff, the department may restrict such person's

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1 participation in programming and out-of-cell activities as necessary for
2 the safety of other incarcerated persons and staff. If such restrictions
3 are imposed, the department must provide at least four hours out-of-cell
4 time daily, including at least two hours of therapeutic programming and
5 two hours of recreation, and must make reasonable efforts to reinstate
6 access to programming as soon as possible. In no case may such
7 restrictions extend beyond fifteen days unless the person commits a new
8 act defined herein justifying restrictions on program access, or if the
9 commissioner and, when appropriate, the commissioner of mental health
10 personally reasonably determine that the person poses an extraordinary
11 and unacceptable risk of imminent harm to the safety or security of
12 incarcerated persons or staff. Any extension of program restrictions
13 beyond fifteen days must be meaningfully reviewed and approved at least
14 every fifteen days by the commissioner and, when appropriate, by the
15 commissioner of mental health. Each review must consider the impact of
16 therapeutic programming provided during the fifteen-day period on the
17 person's risk of imminent harm and the commissioner must articulate in
18 writing, with a copy provided to the incarcerated person, the specific
19 reason why the person currently poses an extraordinary and unacceptable
20 risk of imminent harm to the safety or security of incarcerated persons
21 or staff. In no case may restrictions imposed by the commissioner extend
22 beyond ninety days unless the person commits a new act defined herein
23 justifying restrictions on program access.

24 (vii) Restraints shall not be used when incarcerated persons are
25 participating in out-of-cell activities within a residential rehabili-
26 tation unit unless an individual assessment is made that restraints are
27 required because of a significant and unreasonable risk to the safety
28 and security of other incarcerated persons or staff.

29 (k) (i) The department may place a person in segregated confinement
30 for up to three consecutive days and no longer than six days in any
31 thirty day period if, pursuant to an evidentiary hearing, it determines
32 that the person violated department rules which permit a penalty of
33 segregated confinement. The department may not place a person in segre-
34 gated confinement for longer than three consecutive days or six days
35 total in a thirty day period unless the provisions of subparagraph (ii)
36 of this paragraph are met.

37 (ii) The department may place a person in segregated confinement
38 beyond the limits of subparagraph (i) of this paragraph or in a residen-
39 tial rehabilitation unit only if, pursuant to an evidentiary hearing, it
40 determines by written decision that the person committed one of the
41 following acts and if the commissioner or his or her designee determines
42 in writing based on specific objective criteria the acts were so heinous
43 or destructive that placement of the individual in general population
44 housing creates a significant risk of imminent serious physical injury
45 to staff or other incarcerated persons, and creates an unreasonable risk
46 to the security of the facility:

47 (A) causing or attempting to cause serious physical injury or death to
48 another person or making an imminent threat of such serious physical
49 injury or death if the person has a history of causing such physical
50 injury or death and the commissioner and, when appropriate, the commis-
51 sioner of mental health or their designees reasonably determine that
52 there is a strong likelihood that the person will carry out such threat.
53 The commissioner of mental health or his or her designee shall be
54 involved in such determination if the person is or has been on the
55 mental health caseload or appears to require psychiatric attention. The

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1 department and the office of mental health shall promulgate rules and
2 regulations pertaining to this clause;

3 (B) compelling or attempting to compel another person, by force or
4 threat of force, to engage in a sexual act;

5 (C) extorting another, by force or threat of force, for property or
6 money;

7 (D) coercing another, by force or threat of force, to violate any
8 rule;

9 (E) leading, organizing, inciting, or attempting to cause a riot,
10 insurrection, or other similarly serious disturbance that results in the
11 taking of a hostage, major property damage, or physical harm to another
12 person;

13 (F) procuring deadly weapons or other dangerous contraband that poses
14 a serious threat to the security of the institution; or

15 (G) escaping, attempting to escape or facilitating an escape from a
16 facility or escaping or attempting to escape while under supervision
17 outside such facility.

18 For purposes of this section, attempting to cause a serious disturb-
19 ance or to escape shall only be determined to have occurred if there is
20 a clear finding that the inmate had the intent to cause a serious
21 disturbance or the intent to escape and had completed significant acts
22 in the advancement of the attempt to create a serious disturbance or
23 escape. Evidence of withdrawal or abandonment of a plan to cause a seri-
24 ous disturbance or to escape shall negate a finding of intent.

25 (iii) No person may be placed in segregated confinement or a residen-
26 tial rehabilitation unit based on the same act or incident that was
27 previously used as the basis for such placement.

28 (iv) No person may be held in segregated confinement for protective
29 custody. Any unit used for protective custody must, at a minimum,
30 conform to requirements governing residential rehabilitation units.

31 (l) All hearings to determine if a person may be placed in segregated
32 confinement shall occur prior to placement in segregated confinement
33 unless a security supervisor, with written approval of a facility super-
34 intendent or designee, reasonably believes the person fits the specified
35 criteria for segregated confinement in subparagraph (ii) of paragraph
36 (k) of this subdivision. If a hearing does not take place prior to
37 placement, it shall occur as soon as reasonably practicable and at most
38 within five days of such placement unless the charged person seeks a
39 postponement of the hearing. Persons at such hearings shall be permitted
40 to be represented by any attorney or law student, or by any paralegal or
41 incarcerated person unless the department reasonably disapproves of such
42 paralegal or incarcerated person based upon objective written criteria
43 developed by the department.

44 (m) (i) Any sanction imposed on an incarcerated person requiring
45 segregated confinement shall run while the person is in a residential
46 rehabilitation unit and the person shall be discharged from the unit
47 before or at the time such sanction expires. If a person successfully
48 completes his or her rehabilitation plan before the sanction expires,
49 the person shall have a right to be discharged from the unit upon such
50 completion.

51 (ii) If an incarcerated person has not been discharged from a residen-
52 tial rehabilitation unit within one year of initial admission to such a
53 unit or is within sixty days of a fixed or tentatively approved date for
54 release from a correctional facility, he or she shall have a right to be
55 discharged from the unit unless he or she committed an act listed in
56 subparagraph (ii) of paragraph (k) of this subdivision within the prior

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1 one hundred eighty days and he or she poses a significant and unreason-
2 able risk to the safety or security of incarcerated persons or staff. In
3 any such case the decision not to discharge such person shall be imme-
4 diately and automatically subjected to an independent review by the
5 commissioner and the commissioner of mental health or their designees. A
6 person may remain in a residential rehabilitation unit beyond the time
7 limits provided in this section if both commissioners or both of their
8 designees approve this decision. In extraordinary circumstances, a
9 person who has not committed an act listed in subparagraph (ii) of para-
10 graph (k) of this subdivision within the prior one hundred eighty days,
11 may remain in a residential rehabilitation unit beyond the time limits
12 provided in this section if both the commissioner and the commissioner
13 of mental health personally determine that such individual poses an
14 extraordinary and unacceptable risk of imminent harm to the safety or
15 security of incarcerated persons or staff.

16 (iii) There shall be a meaningful periodic review of the status of
17 each incarcerated person in a residential rehabilitation unit at least
18 every sixty days to assess the person's progress and determine if the
19 person should be discharged from the unit. Following such periodic
20 review, if the person is not discharged from the unit, program and
21 mental health staff shall specify in writing the reasons for the deter-
22 mination and the program, treatment, service, and/or corrective action
23 required before discharge. The incarcerated person shall be given access
24 to the programs, treatment and services specified, and shall have a
25 right to be discharged from the residential rehabilitation unit upon the
26 successful fulfillment of such requirements.

27 (iv) When an incarcerated person is discharged from a residential
28 rehabilitation unit, any remaining time to serve on any underlying
29 disciplinary sanction shall be dismissed. If an incarcerated person
30 substantially completes his or her rehabilitation plan, he or she shall
31 have any associated loss of good time restored upon discharge from the
32 unit.

33 (n) All special housing unit, keeplock unit and residential rehabili-
34 tation unit staff and their supervisors shall undergo a minimum of thir-
35 ty-seven hours and thirty minutes of training prior to assignment to
36 such unit, and twenty-one hours of additional training annually there-
37 after, on substantive content developed in consultation with relevant
38 experts, on topics including, but not limited to, the purpose and goals
39 of the non-punitive therapeutic environment, trauma-informed care,
40 restorative justice, and dispute resolution methods. Prior to presiding
41 over any hearings, all hearing officers shall undergo a minimum of thir-
42 ty-seven hours and thirty minutes of training, with one additional day
43 of training annually thereafter, on relevant topics, including but not
44 limited to, the physical and psychological effects of segregated
45 confinement, procedural and due process rights of the accused, and
46 restorative justice remedies.

47 (o) The department shall publish monthly reports on its website, with
48 semi-annual and annual cumulative reports, of the total number of people
49 who are in segregated confinement and the total number of people who are
50 in residential rehabilitation units on the first day of each month. The
51 reports shall provide a breakdown of the number of people in segregated
52 confinement and in residential rehabilitation units by: (i) age; (ii)
53 race; (iii) gender; (iv) mental health treatment level; (v) special
54 health accommodations or needs; (vi) need for and participation in
55 substance abuse programs; (vii) pregnancy status; (viii) continuous
56 length of stay in residential treatment units as well as length of stay

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1 in the past sixty days; (ix) number of days in segregated confinement;
2 (x) a list of all incidents resulting in sanctions of segregated
3 confinement by facility and date of occurrence; (xi) the number of
4 incarcerated persons in segregated confinement by facility; and (xii)
5 the number of incarcerated persons in residential rehabilitation units
6 by facility.

7 § 6. Section 138 of the correction law is amended by adding a new
8 subdivision 7 to read as follows:

9 7. De-escalation, intervention, informational reports, and the with-
10 drawal of incentives shall be the preferred methods of responding to
11 misbehavior unless the department determines that non-disciplinary
12 interventions have failed, or that non-disciplinary interventions would
13 not succeed and the misbehavior involved an act listed in subparagraph
14 (ii) of paragraph (k) of subdivision six of section one hundred thirty-
15 seven of this article, in which case, as a last resort, the department
16 shall have the authority to issue misbehavior reports, pursue discipli-
17 nary charges, or impose new or additional segregated confinement sanc-
18 tions.

19 § 7. Subdivision 1 of section 401 of the correction law, as amended by
20 chapter 1 of the laws of 2008, is amended to read as follows:

21 1. The commissioner, in cooperation with the commissioner of mental
22 health, shall establish programs, including but not limited to residen-
23 tial mental health treatment units, in such correctional facilities as
24 he or she may deem appropriate for the treatment of mentally ill inmates
25 confined in state correctional facilities who are in need of psychiatric
26 services but who do not require hospitalization for the treatment of
27 mental illness. Inmates with serious mental illness shall receive thera-
28 py and programming in settings that are appropriate to their clinical
29 needs while maintaining the safety and security of the facility.

30 The conditions and services provided in the residential mental health
31 treatment units shall be at least comparable to those in all residential
32 rehabilitation units, and all residential mental health treatment units
33 shall be in compliance with all provisions of paragraphs (i), (j), (k),
34 and (l) of subdivision six of section one hundred thirty-seven of this
35 chapter. Residential mental health treatment units that are either resi-
36 dential mental health unit models or behavioral health unit models shall
37 also be in compliance with all provisions of paragraph (m) of subdivi-
38 sion six of section one hundred thirty-seven of this chapter.

39 The residential mental health treatment units shall also provide the
40 additional mental health treatment, services, and programming delineated
41 in this section. The administration and operation of programs estab-
42 lished pursuant to this section shall be the joint responsibility of the
43 commissioner of mental health and the commissioner. The professional
44 mental health care personnel, and their administrative and support
45 staff, for such programs shall be employees of the office of mental
46 health. All other personnel shall be employees of the department.

47 § 8. Subparagraph (i) of paragraph (a) of subdivision 2 of section 401
48 of the correction law, as added by chapter 1 of the laws of 2008, is
49 amended to read as follows:

50 (i) In exceptional circumstances, a mental health clinician, or the
51 highest ranking facility security supervisor in consultation with a
52 mental health clinician who has interviewed the inmate, may determine
53 that an inmate's access to out-of-cell therapeutic programming and/or
54 mental health treatment in a residential mental health treatment unit
55 presents an unacceptable risk to the safety of inmates or staff. Such
56 determination shall be documented in writing and such inmate shall be

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1 removed to a residential rehabilitation unit that is not a residential
2 mental health treatment unit where alternative mental health treatment
3 and/or other therapeutic programming, as determined by a mental health
4 clinician, shall be provided.

5 § 9. Subdivision 5 of section 401 of the correction law, as added by
6 chapter 1 of the laws of 2008, is amended to read as follows:

7 5. (a) An inmate in a residential mental health treatment unit shall
8 not be sanctioned with segregated confinement for misconduct on the
9 unit, or removed from the unit and placed in segregated confinement or a
10 residential rehabilitation unit, except in exceptional circumstances
11 where such inmate's conduct poses a significant and unreasonable risk to
12 the safety of inmates or staff, or to the security of the facility and
13 he or she has been found to have committed an act or acts defined in
14 subparagraph (ii) of paragraph (k) of subdivision six of section one
15 hundred thirty-seven of this chapter. Further, in the event that such a
16 sanction is imposed, an inmate shall not be required to begin serving
17 such sanction until the reviews required by paragraph (b) of this subdivi-
18 sion have been completed; provided, however that in extraordinary
19 circumstances where an inmate's conduct poses an immediate unacceptable
20 threat to the safety of inmates or staff, or to the security of the
21 facility an inmate may be immediately moved to [~~segregated confinement~~]
22 a residential rehabilitation unit. The determination that an immediate
23 transfer to [~~segregated confinement~~] a residential rehabilitation unit
24 is necessary shall be made by the highest ranking facility security
25 supervisor in consultation with a mental health clinician.

26 (b) The joint case management committee shall review any disciplinary
27 disposition imposing a sanction of segregated confinement at its next
28 scheduled meeting. Such review shall take into account the inmate's
29 mental condition and safety and security concerns. The joint case
30 management committee may only thereafter recommend the removal of the
31 inmate in exceptional circumstances where the inmate commits an act or
32 acts defined in subparagraph (ii) of paragraph (k) of subdivision six of
33 section one hundred thirty-seven of this chapter and poses a significant
34 and unreasonable risk to the safety of inmates or staff or to the secu-
35 rity of the facility. In the event that the inmate was immediately moved
36 to segregated confinement, the joint case management committee may
37 recommend that the inmate continue to serve such sanction only in excep-
38 tional circumstances where the inmate commits an act or acts defined in
39 subparagraph (ii) of paragraph (k) of subdivision six of section one
40 hundred thirty-seven of this chapter and poses a significant and unrea-
41 sonable risk to the safety of inmates or staff or to the security of the
42 facility. If a determination is made that the inmate shall not be
43 required to serve all or any part of the segregated confinement sanc-
44 tion, the joint case management committee may instead recommend that a
45 less restrictive sanction should be imposed. The recommendations made by
46 the joint case management committee under this paragraph shall be docu-
47 mented in writing and referred to the superintendent for review and if
48 the superintendent disagrees, the matter shall be referred to the joint
49 central office review committee for a final determination. The adminis-
50 trative process described in this paragraph shall be completed within
51 fourteen days. If the result of such process is that an inmate who was
52 immediately transferred to [~~segregated confinement~~] a residential reha-
53 bilitation unit should be removed from [~~segregated confinement~~] such
54 unit, such removal shall occur as soon as practicable, and in no event
55 longer than seventy-two hours from the completion of the administrative
56 process.

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§ 10. Subdivision 6 of section 401 of the correction law, as amended by chapter 20 of the laws of 2016, is amended to read as follows:

6. The department shall ensure that the curriculum for new correction officers, and other new department staff who will regularly work in programs providing mental health treatment for inmates, shall include at least eight hours of training about the types and symptoms of mental illnesses, the goals of mental health treatment, the prevention of suicide and training in how to effectively and safely manage inmates with mental illness. Such training may be provided by the office of mental health or the justice center for the protection of people with special needs. All department staff who are transferring into a residential mental health treatment unit shall receive a minimum of eight additional hours of such training, and eight hours of annual training as long as they work in such a unit. All security, program services, mental health and medical staff with direct inmate contact shall receive training each year regarding identification of, and care for, inmates with mental illnesses. The department shall provide additional training on these topics on an ongoing basis as it deems appropriate. All staff working in a residential mental health treatment unit shall also receive all training mandated in paragraph (n) of subdivision six of section one hundred thirty-seven of this chapter.

§ 11. Section 401-a of the correction law is amended by adding a new subdivision 4 to read as follows:

4. The justice center shall assess the department's compliance with the provisions of sections two, one hundred thirty-seven, and one hundred thirty-eight of this chapter relating to segregated confinement and residential rehabilitation units and shall issue a public report, no less than annually, with recommendations to the department and legislature, regarding all aspects of segregated confinement and residential rehabilitation units in state correctional facilities including but not limited to policies and practices concerning: (a) placement of persons in segregated confinement and residential rehabilitation units; (b) special populations; (c) length of time spent in such units; (d) hearings and procedures; (e) programs, treatment and conditions of confinement in such units; and (f) assessments and rehabilitation plans, procedures and discharge determinations.

§ 12. Section 45 of the correction law is amended by adding a new subdivision 18 to read as follows:

18. Assess compliance of local correctional facilities with the terms of paragraphs (h), (i), (j), (k), (l), (m), (n) and (o) of subdivision six of section one hundred thirty-seven of this chapter. The commission shall issue a public report regarding all aspects of segregated confinement and residential rehabilitation units at least annually with recommendations to local correctional facilities, the governor, the legislature, including but not limited to policies and practices regarding: (a) placement of persons; (b) special populations; (c) length of time spent in segregated confinement and residential treatment units; (d) hearings and procedures; (e) conditions, programs, services, care, and treatment; and (f) assessments, rehabilitation plans, and discharge procedures.

§ 13. Section 500-k of the correction law, as amended by chapter 2 of the laws of 2008, is amended to read as follows:

§ 500-k. Treatment of inmates. 1. Subdivisions five and six of section one hundred thirty-seven of this chapter, except paragraphs (d) and (e) of subdivision six of such section, relating to the treatment of inmates in state correctional facilities are applicable to inmates confined in county jails; except that the report required by paragraph (f) of subdi-

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1 vision six of such section shall be made to a person designated to
2 receive such report in the rules and regulations of the state commission
3 of correction, or in any county or city where there is a department of
4 correction, to the head of such department.

5 2. Notwithstanding any other section of law to the contrary, subdivi-
6 sion thirty-four of section two of this chapter, and subparagraphs (i),
7 (iv) and (v) of paragraph (j) and subparagraph (ii) of paragraph (m) of
8 subdivision six of section one hundred thirty-seven of this chapter
9 shall not apply to local correctional facilities with a total combined
10 capacity of five hundred inmates or fewer.

11 § 14. This act shall take effect one year after it shall have become a
12 law.