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Jennifer Jones Austin  
Chair  
New York City Board of Correction

Margaret Egan  
Executive Director  
New York City Board of Correction

Kate McMahon  
Acting General Counsel  
New York City Board of Correction

Re: Board of Correction Notice of Rulemaking concerning Restrictive Housing in Correctional Facilities

Dear Chair Austin and the Board of Correction,

Thank you for the proposal of this rule concerning the use of restrictive housing, including the solidification of due process, access, and health and mental health into the restrictive housing process. I appreciate the opportunity to submit comment.

I believe that rules representing landmark shifts in rights should be as understandable as possible for those directly affected, whether they have counsel or not. Fortunately, legal drafters are now incorporating this “plain language” ethos more often when they write new laws or rules.

With a lawyer’s eye, the proposed rules are clear, thoughtful, well-organized, and represent a significant shift in rights. However, some provisions, due to their complexity, may be hard for persons without formal legal education to parse quickly. In this comment, I suggest alternative wording choices and sentence structures, with the goal of making the language direct and unambiguous. I have focused primarily on those provisions that directly affect rights of persons in custody.

Where possible, I kept the underlying substantive policy untouched. I did not set a goal to make policy suggestions. In some provisions, I changed terms to make them consistent throughout the proposed RMAS chapter. In others, I needed to make an educated guess about the underlying policy purpose of the proposed rule to be able to make clarifying language suggestions. In Appendix A, I list such substantive edits so that the Board may review these specifically. Appendix B contains all of my suggested revisions.

Thank you again for the opportunity to comment, and for the effort of all the staff to realize this moment.

Sincerely,  
Jimmy Pan

## Appendix A

### **List of substantive changes or recommendations:**

These changes or recommendations are incorporated into the full language redline in Appendix B. They are listed here separately for reference.

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|-------------------------------|---|
| 40 RCNY § 6-05(i):            | Removed as duplicative of 40 RCNY §§ 6-05(g)(3).  |
| 40 RCNY § 6-05(k):            | Changed reference for quarterly report from (k) to (j).   |
| 40 RCNY § 6-05(l):            | Changed reference for individual cell requirements from (d) to (d-e).   |
| 40 RCNY § 6-06(d):            | Suggested language requiring DOC to notify public of visitation cancellations during emergency lock-ins on website <i>and</i> other means, instead of website <i>or</i> other means, to ensure broad and rapid distribution.  |
| 40 RCNY § 6-06(f):            | Suggested language specifying a timeline for medical and mental rounds during longer emergency lock-in to ensure persons in custody are not without assessment for overly long periods.   |
| 40 RCNY §§ 6-13(a-c), § 6-15: | Recommend that the Board devise a way to assess the appropriate maximum number of RMAS extensions so that they are not extended indefinitely. Suggest that the Board can automatically receive notice upon every extension after the first.   |
| 40 RCNY § 6-14(b):            | Suggested language adding a 72-hour maximum to the 24-hour notice requirement for periodic review, so that preparation for the review occurs close in time to the review and relevant evidence is available for the person in custody and their assistance.   |
| 40 RCNY § 6-14(d):            | Suggested language changing the requirement that the report be provided within one business day of the review, to being provided before the maximum time period in RMAS (i.e., 15, 30, etc. days) so that the person in custody is not retained for additional days beyond the § 6-13 maximums. As currently proposed, it is ambiguous whether the Department has time restrictions on when it must produce a redacted copy of the periodic review. Recommend clarifying that the time restrictions apply to redacted and unredacted reports alike. |
| 40 RCNY § 6-14(d):            | Changed reference for specific documented intelligence from “40 §§ (c)(2)-(4)” to “40 RCNY 6-14(c)(1-4)” to include Level 1 progression requirements.   |
| 40 RCNY § 6-15(c):            | Removed reference to subsection (f), which does not currently set forth service procedures. Recommend that Board adds service requirements.   |

- 40 RCNY § 6-24(d)(6)(vii) & (ix): Suggested language requiring DOC to document in writing efforts taken to inform the person charged of their right to a facilitator or interpreter, and whether the person accepted or refused the facilitator or interpreter.
- 40 RCNY § 6-24(e)(3): Recommend that this provision be changed to 40 RCNY § 6-24(e)(2)(iv).
- 40 RCNY § 6-24(h)(7)(ii): Suggested language changing the criteria of staff are barred from determining an appeal, to bring it closer to the perceived purpose.
- 40 RCNY § 6-24(h)(7)(v-vi): Recommend that these be 40 RCNY § 6-24(h)(7)(iii-iv) instead.
- 40 RCNY § 6-24(i)(2)(iii): Suggested language adding “or on audio” to be consistent with the requirement to record a refusal to attend a hearing on video or audio, § 6-24(d)(5).
- 40 RCNY § 6-27(g)(4): Recommend rewording this provision on removing non-individualized restraints after periodic review to make clear how it interacts with (g)(3), and clarifying the language.
- 40 RCNY § 6-27(k): Recommend rewording this provision to reduce potential ambiguities for this provision about restraints for persons with impaired hearing or vision.

## Appendix B

### **Full Language Sessions:**

Suggesting alternative wording choices and sentence structures for the proposed Chapter 6 with the goal of making the language direct and unambiguous. In some cases, direct changes to improve consistency and definition are implicitly included in the language suggestions. In others, they are specifically noted in Appendix A.

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

### **Chapter 6: Restrictive Housing in Correctional Facilities**

#### **Subchapter A: Core Principles**

##### **§ 6-01 Purpose.**

- (a) These Chapter 6 rules are based upon and promote the following core principles:
- (1) Protection of the safety of people in custody and the staff who work in facilities by:
    - (i) Ensuring that all people in custody and all staff who work in facilities are treated with dignity and respect;
    - (ii) Prohibiting restrictions that dehumanize or demean people in custody;
    - (iii) Placing restrictions on people in custody that are limited to those required to achieve the appropriate objectives for which the restrictions are imposed; and
    - (iv) Confining people in custody to the least restrictive setting and for the least amount of time necessary to address the specific reasons for their placement and to ensure their own safety as well as the safety of staff, other people in custody, and the public.
  - (2) Placement of people in custody into restrictive housing or restrictive statuses in accordance with due process and procedural and restorative justice principles by:

- (i) Explaining disciplinary rules and the sanctions for violating them when people are first admitted to Department custody;
  - (ii) Imposing sanctions that are proportionate to the offenses committed;
  - (iii) Applying disciplinary rules and imposing sanctions fairly and consistently; and
  - (iv) Ensuring that people in custody understand the basis for their placement into restrictive housing or a restrictive status other than for an infraction, and that they understand the basis for any individual restrictions imposed in conjunction with their placement in such housing.
- (3) Promotion of the rehabilitation of people in custody and their reintegration into the community by:
- (i) Incentivizing good behavior;
  - (ii) Allowing people placed into restrictive housing as much out-of-cell time and programming participation as practicable, consistent with safety and security; and
  - (iii) Providing necessary programming and resources.
- (4) Monitoring and tracking compliance with these Chapter 6 rules and the core principles on which they are based by:
- (i) Developing performance measures; and
  - (ii) Regularly reporting performance outcomes to the public.

## **Subchapter B: Definitions**

### **§ 6-02 General Definitions.**

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

- (a) “Board” means the New York City Board of Correction.
- (b) “CHA” means the Correctional Health Authority designated by the City of New York as the agency responsible for health and mental health services for people in the care and custody of the Department.
- (c) “Department” means the New York City Department of Correction.

- (d) “Facility” means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) used by the Department for confinement of individuals.
- (e) “Health staff” means a medical health or mental health professional employed by CHA who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice.

"Good Time" shall mean a discretionary reduction of up to one third of the term of commitment for a definite sentence or certain civil commitments, as defined in 39 RCNY § 1-03.

- (f) “Person in custody” means any person confined in a facility.
- (g) “Security staff” means Department employees primarily responsible for the supervision and control of people in custody in housing units, recreational areas, dining areas, and other program areas of the facility.

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

- (a) For the purposes of this Chapter, “restrictive housing” ~~includes means housing~~ units where ~~the Department houses~~ people in custody ~~are housed~~ separately from people housed in the general population, and:
  - (1) ~~The out-of-cell time offered per day in any level of the unit is less than fourteen (14) hours~~The Department provides less than fourteen (14) hours of out-of-cell time per day in any level of the unit; or
  - (2) ~~People in the unit or level within the unit are subject to one or more of the following:~~The Department subjects any person in the unit, or level within the unit, to one or more of the following conditions:
    - (i) ~~Services mandated under other Chapters of the Minimum Standards are provided in a more restricted manner than they are provided to people housed in the general population.~~The Department provides services mandated under other Chapters of the Minimum Standards in a more restricted manner to any person in the unit than to people housed in the general population. This would include, for example, the provision of law library services other than in a facility law library or religious services other than in a facility chapel.
    - (ii) ~~A~~Any person is housed alone in the unit; ~~or;~~

- (iii) ~~The physical design of the unit is such that it only permits a person in custody to congregate in a dayroom with less than four other people in custody~~The physical design of the unit cannot accommodate more than five people in custody congregating in a dayroom together.

(b) For the purposes of this Chapter, the following terms related to restrictive housing have the following meanings:

“Business Day” is a period of twenty-four hours, excluding the hours of Saturday, Sunday, or public holiday.

- (1) “Disciplinary hearing” means a hearing on an infraction that the Department has charged with which onto a person in custody has been charged.
- (2) “General population” or “general population housing” means all housing units that are not restrictive housing units, specialized medical units, or specialized mental health units as defined in this section.

“Grade I, II or III offense” means the degree of offense defined in 39 RCNY § 1-03, the Department of Correction Inmate Rule Book. Grade I is the highest grade of offense.

- (3) “Hearing Adjudicator” is a Department employee of the rank of Captain or above who presides at disciplinary hearings or placement review hearings of people in custody.

“Hour” means an hour at any time of the day on any day of the week, including weekends and public holidays, unless otherwise specified.

- (4) “Housing area” or “housing unit” means facility housing, including common areas, used to house people in custody.
- (5) “Infraction” means a violation of Department rules.
- (6) “Intake” or “intake area” is an area designated by a facility to temporarily secure a person in custody while awaiting further assessment of the person for appropriate housing placement.

- (7) “M” Designation is a designation ~~that the Department assigns to a person in custody who assigned pursuant to a settlement in Brad H. v. City of New York, if the person,~~ during ~~one a single~~ incarceration event, has engaged with the mental health system at least three (3) times or has been prescribed certain classes of medication. It is assigned pursuant to a settlement in Brad H. v. City of New York.
- (8) “Mandated services” means services the Department must provide mandated under the Board’s Minimum Standards.
- (9) “Pre-hearing detention” means the placement of a person in custody in RMAS Level 1 pending the investigation or adjudication of the person’s disciplinary infraction.
- (10) “PSEG” or “punitive segregation” means the placement of a person in custody in isolation for extended periods of time, separate and apart from the general population, pursuant to a disciplinary sanction imposed after a disciplinary hearing.
- (11) “Restraints” mean any of the following devices: handcuffs, flex cuffs, waist restraint ~~system systems~~ (consists/consisting of a belt or chain around the waist to which ~~the person in custody’s~~ hands may be chained or handcuffed); leg restraints (shackles ~~)~~ (applied on the ankle area of a person in custody); handcuff safety ~~cover/covers~~ (protective device/devices that covers/covers the locking mechanism of handcuffs to prevent tampering); protective mittens (protective tube-like mittens which cover the hands and ~~is/are~~ is/are secured with handcuffs); ~~gurney/gurneys~~ (wheeled stretcher/stretchers); four-point restraints (type of restraint where restraints that secure both arms and legs ~~are secured~~); five-point restraints (four-point restraint plus the application of an additional restraint across the chest) such as restraint chairs and the WRAP restraint device; and devices which incorporate any of the above, such as restraint desks (school-type desk surface and chair with ankle restraints).
- (12) “Restrictive status” means a status the Department assigns to people in custody who the Department determines require heightened identification, tracking, and/or monitoring for safety and security purposes.
- (13) “Risk Management Accountability System” or “RMAS,” pursuant to 40 RCNY § 6-08 through § 6-26, is a three-level progression model that separates people from general population in response to their commission of an offense and holds them accountable through a swift, certain, fair, and transparent process. RMAS promotes prosocial behavior and progression through positive incentives as well as case management services, behavior support plans, and evidence-informed programming, tailored to the person’s individual needs. RMAS includes Levels 1, 2, and 3 with Level 1 being the most restrictive, Level 2 less restrictive than Level 1, and Level 3 less restrictive than Level 2.



- (14) “Specialized medical housing” are housing units for persons with medical conditions, such as infirmaries and contagious disease units (CDUs). ~~Entry where entry~~ and discharge ~~for specialized medical housing~~ are determined by CHA according to clinical criteria.
- (15) “Specialized mental health housing” are housing units for persons with serious mental illness, such as Program for Accelerating Clinical Effectiveness (PACE) units, and Clinical Alternatives to Punitive Segregation (CAPS) units. ~~where e~~Entry and discharge are determined by CHA according to clinical criteria. ~~This term does not include~~ Mental Observation (MO) units ~~are not specialized mental health housing.~~
- (16) “Young adults” mean people in custody ages eighteen (18) through twenty-one (21).

### **Subchapter C: Immediate Placement Responses to Violence**

#### **§ 6-04 Pre-Hearing Detention.**

- (a) The Department may place a person in custody in pre-hearing detention in RMAS Level 1 if the person is under investigation for or charged with an infraction, and ~~the Department~~ meets the following criteria:
- (1) ~~The person is reasonably believed by the Department to have~~ ~~The Department reasonably believes that the person has~~ committed a Grade I violent offense within the past ~~one (1)~~ business day; and
- (2) ~~The person’s removal~~ ~~The Department reasonably believes that removing the person~~ from general population is necessary to:
- (i) Protect the safety of any person, including staff or other people in custody, prior to the person’s hearing; or
- (ii) Prevent the person from intimidating or coercing other people in custody to give false testimony or to refuse to testify at the person’s infraction hearing.
- (b) ~~A person in custody who qualifies for and is placed in pre-hearing detention shall be afforded a disciplinary hearing no later than seven (7) business days after the person’s placement in pre-hearing detention, and the person’s time spent in such detention prior to the hearing shall count toward the person’s sentence to RMAS Level 1.~~ ~~When a person in~~

custody qualifies for and is placed in pre-hearing detention, the Department must provide them a disciplinary hearing no later than seven (7) business days after the person's placement in pre-hearing detention. The Department must count any time spent in pre-hearing detention toward the person's sentence in RMAS Level 1.

- (c) ~~If an infraction hearing is not held within seven (7) business days, the person in custody must be released from pre-hearing detention.~~ If the Department does not hold an infraction hearing within seven (7) business days, the Department must release the person from pre-hearing detention.
- (d) ~~A person in custody may be released from pre-hearing detention if~~ the Department determines that the person's retention in pre-hearing detention is not necessary for the safety or security of that person or others, including staff and other people in custody, the Department must release the person from pre-hearing detention.
- (e) The Department shall provide the Board with a semiannual report with information related to its use of prehearing detention including but not limited to: (1) the number of people placed in prehearing detention, (2) their placement infractions, (3) time from placement to hearing for each infraction category, (4) whether people placed in pre-hearing detention were adjudicated for continued placement in RMAS Level 1 for each infraction category, and (5) any other information the Department or the Board deems relevant to the Board's assessment of pre-hearing detention.
- (f) The Board and the Department shall jointly develop reporting templates for the report required by 40 RCNY § 6-04(e) for approval by the Board.

#### **§ 6-05 Confinement for De-Escalation Purposes.**

- (a) The Department may confine ~~people~~ a person in custody for de-escalation purposes only to:
  - (1) ~~De-escalate a person's behavior that poses an immediate threat to the safety of the person or others or significantly disrupts Department activities in progress. This may be done to aid the person in calming the person's own behavior and only after other less restrictive measures have been exhausted or have been or are likely to be ineffective.~~ De-escalate that person's behavior, if the behavior poses an immediate threat to the safety of the person or others or significantly disrupts Department activities in progress. The Department may use confinement to aid the person in calming the person's own behavior. However, the Department may not confine the person unless other less restrictive measures have been exhausted or have been or are likely to be ineffective.

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

(3) Facilitate the decontamination of people in custody following exposure to chemical spray.

- (b) ~~The Department shall ensure the immediate notification to CHA of a person in custody's placement in de-escalation confinement, including the initial and any subsequent locations of such confinement, so that the person's access to medical and mental health services and medication is not interrupted.~~ The Department must provide immediate notification to CHA that the person in custody has been placed into de-escalation confinement, so that the person's access to medical and mental health services and medication is not interrupted. The notification must include the initial and any subsequent locations of the confinement.
- (c) The Department shall must conduct visual and aural observation of ~~people~~ every person in de-escalation confinement every fifteen (15) minutes.
- (d) ~~The Department shall utilize only individual cells for the purpose of de-escalation confinement. Such cells must be located in areas other than intake areas.~~ When the Department confines a person for de-escalation, it must use only individual cells. These cells must not be located in intake areas.
- (e) Cells used for de-escalation confinement must have the features specified in, and be maintained in, accordance with 40 RCNY § 1-03 and § 1-04, which set personal hygiene and adequate space requirements.
- (f) ~~Meals and snacks must be served to people in custody while in de-escalation confinement at or about the same time as, and be of the same quality and quantity of, the meals served to people in the general population.~~ The Department must serve meals and snacks to people in custody in de-escalation confinement at or about the same time as the meals served to people in the general population. The meals must also be of the same quality and quantity as meals served in the general population.
- (g) ~~Subject to the following time limitations, confinement for de-escalation purposes shall be employed for the minimum amount of time required for assessment of the person in custody and determination of the person's subsequent placement:~~ The Department must not confine a person for de-escalation purposes for longer than the minimum amount of time required for the Department to conduct and assessment and determine the person's subsequent placement. In addition, the following requirements apply:
- (1) ~~A person in custody's placement in de-escalation confinement shall be no more than six (6) hours. Each such placement shall be documented in a form designed for this~~

- ~~purpose, which shall specify the reasons for the placement.~~ The Department may not place a person into de-escalation confinement for more than six (6) hours. The Department must document every placement into de-escalation confinement on a form designed for this purpose, on which the Department must specify the reasons for the placement.
- (2) ~~Reauthorization based upon written approval up the Department's security chain of command is required every three (3) hours for a maximum of six (6) hours.~~ The Department may not confine a person for de-escalation purposes for more than three (3) hours without proper reauthorization. Reauthorization requires written approval up the Department's security chain of command. Each reauthorization approves three (3) hours of confinement, but total confinement may not exceed six (6) hours. ~~The approval for each three-hour authorization shall consider~~ Every written approval must include the reasons therefor, including what attempts were made by the Department to transfer the person in custody out of de-escalation confinement after each three-hour period.
- (3) ~~Notwithstanding that de-escalation confinement is limited to a maximum of six (6) hours, should the Department keep a person in de-escalation confinement for more than six (6) hours, it shall notify the Board, in writing, of all such instances within one business day.~~ Whenever the Department violates the maximum time limitation of six (6) hours of de-escalation confinement, it must notify the Board in writing within one (1) business day. Such notice shall include how long someone was kept in de-escalation confinement in total, and the reasons why the person was not placed elsewhere. The Department shall include in this notification the initial authorization and reauthorization information, forms, and written approvals specified in 40 RCNY §§ 6-05(g)(1) and (2).
- (4) ~~For the purposes of compliance with the time limitations in this section, the length of a person in custody's de-escalation confinement shall be calculated from the time of initial placement in the de-escalation confinement cell or area until the individual is transported to a newly assigned housing area, and shall include the time the person spends in any other subsequent de-escalation confinement cell or area to which the Department moves the individual prior to rehousing.~~ The length of a person's de-escalation confinement must be calculated from the time the Department first places the person into any de-escalation confinement cell or area, until the Department places the person into a newly assigned housing area. It must include all time that the person spends in any other subsequent de-escalation confinement cell or area prior to rehousing.
- (h) ~~The Department shall create and regularly update as necessary a list of the specific areas designated to be used for de-escalation purposes at each facility. The Department shall share this list with the Board and update the Board as soon as changes to these designations are made.~~ The Department must create a list of the specific areas it

designates for use for de-escalation purposes at each facility, and share this list with the Board. As soon as the Department makes any changes to these designations, it must update the list and share the changes and updated list with the Board.

~~(i) Notwithstanding that de-escalation confinement is limited to a maximum of six (6) hours, should the Department keep a person in such confinement for more than six (6) hours, it shall provide the Board with documentation supporting initial placement, each three-hour authorization of the continued placement, and the reason placement has continued beyond six (6) hours.~~[removed as duplicative of 40 RCNY §§ 6-05(g)(3)]

(j) The Department shall provide the Board with a quarterly public report with information related to its use of de-escalation confinement including but not limited to (1) the number of placements in de-escalation confinement, (2) the number whose placement lasted more than three (3) hours, (3) the number whose placement lasted more than (6) hours, (4) the minimum, maximum, mean, and median time spent in de-escalation confinement, and (5) any other information the Department or the Board deems relevant to the Board's assessment of the use of de-escalation confinement in Department facilities. Metrics in the public report shall be reported in total and by facility. The data used to produce the report shall be tracked at the individual placement level and provided to the Board in a manner that may be analyzed electronically by the Board.

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

~~(l) The Department shall commence using individual cells outside of intake areas as required by 40 RCNY § 6-05(d) within six (6) months of the Effective Date. By or before the end of the sixth (6th) month after the Effective Date, the Department must begin complying with the requirement to only use individual cells outside of intake areas, set forth in 40 RCNY § 6-05(d-e).~~ Pending such implementation:

(1) The Department shall operate intake areas used for de-escalation confinement in accordance with all other requirements set forth in this section.

(2) De-escalation confinement in an intake area must have an adequate number of working flush toilets, wash basins with drinking water, including hot and cold water, and appropriate furnishings for seating and reclining to accommodate the number of people in custody confined there. Such areas must be maintained in a clean and sanitized manner.

#### **§ 6-06 Emergency Lock-Ins.**

~~(a) Emergency lock-ins shall be in effect for no longer than necessary to allow staff to investigate or avoid a serious incident, conduct searches, or restore order or safety. The Department must end an emergency lock-in as soon as the lock-in is no longer necessary to fulfill an authorized purpose. An authorized purpose is for the staff to investigate or avoid a serious incident, to conduct a search, or to restore order or safety.~~

- (b) ~~DOC shall limit the scope of emergency lock-ins so that only those housing areas that must be locked down are affected.~~ During an emergency lock-in, the Department may not lock down or otherwise affect any housing area where lock-in is not necessary to fulfill an authorized purpose.
- (c) ~~As soon as an emergency lock-in occurs or is extended beyond a regularly scheduled lock-in period, the Department shall notify the Board and CHA, in writing, as to the facilities and specific housing area locations and number of people impacted. Notification may be accomplished via the Department's Incident Reporting System or similar system in place for real-time, operational reporting.~~ The Department must immediately notify the Board and CHA as soon as an emergency lock-in begins or a regularly scheduled lock-in period extends past the scheduled time. The notification must be in writing and including information on the specific facilities and housing area locations and the number of people affected. The Department may make this notification through the Department's Incident Reporting System, or a similar system that is in place for real-time, operational reporting.
- (d) ~~When emergency lock-ins require the cancellation or delay of visits, the Department shall notify the public on its website or by other means as to the facilities where visits are affected.~~ As soon as the Department anticipates that an emergency lock-in will require visits to be cancelled or delayed, it must immediately notify the public on its website and other means with specific details that visits will be affected at particular facilities.
- (e) ~~The Department shall document the locations and reason(s) for each emergency lock-in (e.g., fight, slashing, use of force, missing razor) and the objectives to be accomplished during the lock-in related to those reasons (e.g., investigate use of force, conduct searches to recover contraband) in a manner that may be analyzed electronically by the Board.~~ The Department must document the location and reason(s) for each emergency lock-in or extension of regularly scheduled lock-in period (e.g., fight, slashing, use of force, missing razor). The Department must document the objectives that the lock-in will accomplish related to those reasons (e.g., investigate use of force, conduct searches to recover contraband). The documentation must be in a manner that may be analyzed electronically by the Board.
- (f) When authorizing an extension of an emergency lock-in beyond a regularly scheduled lock-in period, the Department shall re-evaluate the stated reasons and objectives for the lock-in and shall document reasons as to why the lock-in must be continued (e.g., search still underway, not enough staff on post to lock out housing area).
- (g) In all housing areas where lock-ins have continued for more than six (6) consecutive hours, CHA staff shall complete medical and mental health rounds within the first eight hours of the lock-in and every six hours afterward. DOC shall ensure timely access to medical and mental health care — particularly emergency or time-urgent medical and mental health

care — during any lock-in, and must provide for other delayed or missed services as quickly as possible following an emergency lock-in.

(h) For lock-ins continuing for twenty-four (24) hours or more, the Department shall notify the Board in writing of the steps taken to address the emergency and lift the lock-in.

(i) For the following services, the Department shall track and record, in a manner that may be analyzed electronically by the Board, whether services were impacted (i.e., cancelled, delayed, or not affected) due to an emergency lock-in and the number of housing areas and people affected:

(1) Recreation

(2) Law library

(3) Visits

(4) Religious services

(5) Educational services

(6) Sick call

(7) Other Clinic services

(8) Medication/pharmacy

(9) Scheduled Medical and Mental Health appointments (including on- and off- Island specialty appointments)

(10) Medical or Mental health rounds

(11) Programming

(j) If services were delayed or ~~not~~ otherwise affected, the Department shall track and report the time period each service was afforded for each housing area impacted by the emergency lock-in.

(k) The Department shall provide the Board with direct access to all documentation related to emergency lock-ins and lock-in extensions.

(l) The Department and CHA shall issue a written directive to staff regarding the requirements of this section and provide the directive to the Board for its review and feedback prior to finalization. The directive shall include protocols for communication and coordination between ~~DOG~~ the Department and CHA during and after emergency lock-ins. Such protocols shall be designed to facilitate the triage of necessary care by CHA and minimize disruptions to patient care and the rescheduling of medical/mental health appointments.

(m) CHA shall provide the Board with a quarterly report including, but not limited to, the following data on reported emergency lock-ins and lock-in extensions occurring during the reporting period:

(1) Number of emergency lock-ins and lock-in extensions reported to CHA by ~~DOG~~ the Department, in total and disaggregated by facility;



- (2) Number of clinic closures during an emergency lock-in and reason for closure (e.g., clinic attending to staff injuries, no facility movement permitted), in total and disaggregated by facility;
  - (3) Number of previously scheduled appointments missed and number of previously scheduled appointments required to be rescheduled due to an emergency lock-in, in total and disaggregated by facility and service type;
  - (4) Number of non-scheduled CHA services (wound care, etc.) missed or delayed as a result of an emergency lock-in, in total and disaggregated by facility and service type;
  - (5) Number of required medical rounds missed, in total and disaggregated by facility and restrictive housing units affected;
  - (6) Number of required mental health rounds missed, in total and disaggregated by facility and restrictive housing units affected;
  - (7) Number of patients requesting sick call but not afforded sick call when requested, in total and disaggregated by facility;
  - (8) Number of patients whose medication services were missed or delayed as a result of an emergency lock-in, in total and disaggregated by facility; and
  - (9) Number of rounds conducted in housing areas with more than six (6) hours of non-scheduled continuous lock-in, in total and disaggregated by facility.
  - (10) Any other information the CHA or the Board deems relevant to the Board's assessment of emergency lock-ins and their impact on access to health and mental health care.
- (n) The Board and CHA shall jointly develop the reporting template for the report required by 40 RCNY § 6-06(m), for approval by the Board.
- (o) On at least a quarterly basis, the Department shall provide the Board all emergency lock-in and lock-in extension incident-level data tracked by the Department. The Board and the Department shall jointly develop a reporting template for transmission of this data for approval by the Board.

#### **Subchapter D: Prohibition On The Use Of Punitive Segregation**

##### **§ 6-07 Policy.**

- (a) Punitive segregation, also known as PSEG or solitary confinement, imposes significant risks of psychological and physical harm on people in custody. These risks are intensified for those with pre-existing mental illness or medical conditions and young adults. The risk of self-harm and potentially fatal self-harm is also strongly associated with solitary confinement. The hallmarks of solitary confinement — social deprivation and enforced



idleness — create these serious health risks and are antithetical to the goals of social integration and positive behavioral change.

- (b) By November 1, 2021, the use of all forms of punitive segregation, as defined in 40 RCNY § 6-03(b)(10), shall be prohibited in all existing and future DOC facilities.
- (c) Upon the Department's elimination of punitive segregation and commencing November 1, 2021, the only form of restrictive housing ~~DOC~~ the Department is permitted to operate will be RMAS housing pursuant to 40 RCNY § 6-08 through § 6-26.

### **Subchapter E: Risk Management and Accountability System (RMAS)**

#### **§ 6-08 Purpose.**

- (a) The purpose of RMAS is to:
  - (1) Separate from the general population a person in custody in response to the person's recent commission of an offense, which significantly threatens the safety and security of other people in custody and staff.
  - (2) Hold incarcerated individuals accountable for their misconduct through swift, certain, fair, and transparent processes.
  - (3) Promote prosocial behavior and progression back to general population through utilization of positive incentives, case management services, individual behavior support plans, and individualized evidence-based programming.
  - (4) Provide people in custody with meaningful opportunities to socially engage with others and pursue productive activities.

#### **§ 6-09 Exclusions.**

- (a) The following categories of people in custody shall be excluded from RMAS:
  - (1) People with a ~~mental disorder that qualifies as a~~ serious mental illness;
  - (2) People diagnosed with an intellectual disability;
  - (3) Pregnant persons, persons within eight (8) weeks of pregnancy outcome, and persons caring for a child in the Department nursery program.

- (b) ~~CHA shall determine if a person in custody meets one or more of the above exclusionary criteria in 40 RCNY § 6-09(a)(1) through (3).~~ A person in custody meets the above exclusionary criteria, 40 RCNY § 6-09(a)(1) through (3), if the person has an existing diagnosis from CHA that they meet one or more of the criteria. If the person does not have an existing diagnosis from CHA, CHA must evaluate the person for the exclusionary criteria.
- (c) ~~CHA has the authority to determine if any person, after being placed in RMAS, should be removed to a specialized medical or mental health housing unit because the person meets a criterion in 40 RCNY § 6-09(a)(1) through (3) or the housing is medically contraindicated.~~ CHA has the duty to determine whether any person in RMAS meets a criterion in 40 RCNY § 6-09(a)(1) through (3) or is medically contraindicated to be in RMAS. CHA has the authority to remove such persons to a specialized medical or mental health housing unit.
- (d) ~~People excluded from RMAS Level 1 or Level 2 at the time of an infraction due to health status pursuant to 40 RCNY § 6-09(a)(1) through (3) shall not be placed in RMAS Level 1 or Level 2 for the same infraction at a later date, regardless of whether their health status has changed.~~ If CHA determines that a person who has committed an infraction must be excluded from RMAS due to health exclusionary criteria in 40 RCNY § 6-09(a)(1) through (3), the Department may not place that person into RMAS for the same infraction at a later date, even if the person's health status has changed.

#### **§ 6-10 Placement Criteria.**

- (a) ~~Except for pre-hearing detention as set forth in 40 RCNY § 6-04, a person in custody may be confined in RMAS Level 1 only upon a finding within the past thirty (30) days that the person is guilty of having committed a Grade I violent offense.~~ The Department may only confine a person in custody to RMAS Level 1:
- a. For pre-hearing detention, as set forth in 40 RCNY § 6-04; or
  - b. After a person has been found guilty at an infraction hearing of having committed a Grade I violent offense. The Department may not place this person into RMAS Level 1 later than thirty (30) calendar days after the finding was issued.
- (b) ~~A person in custody may be placed directly into RMAS Level 2 only upon a finding within the past thirty (30) days that the person is guilty of having committed a Grade I non-violent offense or a Grade II offense.~~ The Department may only confine a person in custody to RMAS Level 2 after a person has been found guilty at an infraction hearing of:
- a. A Grade I non-violent offense; or
  - b. A Grade II offense.
- The Department may not place this person into RMAS Level 2 later than thirty (30) calendar days after the finding was issued.

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

#### **§ 6-11 Case Management.**

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

- (ii) individual differences in ability, personality, and interest, learning and motivation;
- (iii) assessment and treatment of behavioral disorders; and
- (iv) group behavior and dynamics and societal trends and influences; and/or
- (3) Demonstrated skills in active listening, conveying information effectively, and engaging empathetically with individuals in a correctional setting, collaborating with them in developing and monitoring treatment or behavioral support plans, and/or providing programming or support services to them.

**§ 6-12 Individual Behavior Support Plans.**

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

- (iv) ~~Whether the involvement of family members, criminal defense counsel, and community resources will be employed to assist the person in meeting the goals of the person's IBSP.~~ Whether the Department will involve family members, criminal defense counsel, and community resources to assist the person in meeting the goals of the person's IBSP.
- (b) ~~Within seventy-two (72) hours of a person in custody's placement in RMAS Level 1 or direct entry into RMAS Level 2, a case manager must review the IBSP with the person. The Department shall review and update a person's IBSP with the person's participation at each periodic review thereafter.~~ A case manager must review the IBSP with the person in custody no later than seventy-two (72) hours after the person is placed into RMAS Level 1 or directly enters into RMAS Level 2. At every periodic review, as required in 40 RCNY § 6-14, in the Department must review and update the person's IBSP and involve the person in the review.
- (c) ~~The date of initial and subsequent reviews with a person in custody and changes to the person's IBSP shall be documented in writing.~~ The Department must record in writing the dates of every review of a person's IBSP with that person. It must also document in writing every change made to the IBSP.
- (d) ~~If a person in custody commits and is found guilty of a Grade I infraction while in RMAS, the Department shall:~~ If a person in custody, while in RMAS, commits a Grade 1 infraction and is found guilty:
- (1) ~~Review the person's IBSP and update the plan to include the strategies the Department shall employ to prevent the person from engaging in further violent or disruptive behavior. The Department shall conduct this review and update the plan accordingly within two business days of the person's being found guilty of a Grade I infraction while in RMAS.~~ The Department must review and update the person's IBSP plan within two business days of the decision finding the person guilty of the Grade 1 infraction while in RMAS. The update must include strategies that the Department will use to prevent the person from engaging in further violent or disruptive behavior.
  - (2) ~~The Department shall submit the person's updated IBSP to the Chief of Department for the Chief's approval. Such determination shall be made by the Chief of Department within one business day of receipt of the plan.~~ The Chief of Department must approve or disapprove the updated IBSP within one business day of receiving the plan.
  - (3) ~~The updated IBSP with the Chief of Department's approval shall be transmitted to CHS, the Board, the affected person, and the person's criminal defense attorney within one business day of its approval by the Chief of Department.~~ After an IBSP is updated with the approval of the Chief of Department, it must be received by the affected person, CHA, the Board, and the person's criminal defense attorney within one business day.

- (4) ~~The person's case manager shall meet with the person at least five days a week to review the person's progress toward meeting the goals of the person's updated IBSP and further update the plan if necessary. Within twenty-four (24) hours of being updated, the IBSP shall be shared with the affected person.~~ The person's case manager must meet with the person at least five days a week to review the person's progress toward meeting the goals of the person's updated IBSP. When an IBSP is updated by the case manager, it must be received by the affected person within twenty-four (24) hours.

**§ 6-13 Progression.**

- (a) ~~Pursuant to the periodic review process described in 40 RCNY § 6-14, all persons in Level 1 except those found guilty of an offense against staff shall be given an opportunity to progress to Level 2 at their thirty (30) and forty-five (45) day reviews if there is no specific documented intelligence that the person will engage in violence in RMAS Level 2. All persons in Level 1 must progress to Level 2 after sixty (60) days unless (1) they have committed a Grade I violent infraction while in Level 1; or (2) there is specific documented intelligence that the person will engage in violence in RMAS Level 2. The periodic review process, described in 40 RCNY § 6-14, allows persons in custody to progress to lower restriction levels. The Department must give all persons confined in RMAS Level 1 an opportunity to progress to the less restrictive RMAS Level 2 at their thirty (30) and forty-five (45) day reviews, unless:~~ The periodic review process, described in 40 RCNY § 6-14, allows persons in custody to progress to lower restriction levels. The Department must give all persons confined in RMAS Level 1 an opportunity to progress to the less restrictive RMAS Level 2 at their thirty (30) and forty-five (45) day reviews, unless:

- (1) The person was originally placed into Level 1 after being found guilty of an offense against staff; or
- (2) The Department has specific documented intelligence that the person will engage in violence in RMAS Level 2.

The Department must progress all persons confined in Level 1 for sixty (60) calendar days into the less restrictive RMAS Level 2, unless:

- (3) The person committed a Grade I violent infraction while in Level 1; or
- (4) The Department has specific documented intelligence that the person will engage in violence in RMAS Level 2.

- (b) ~~A person in custody should not be held in RMAS Level 2 more than fifteen (15) days unless, during the current review period, there is (1) specific documented intelligence that the person will engage in violence in RMAS Level 3; or (2) documented evidence that the person has consistently and willfully refused to participate in programming. Such progression determination must be made pursuant to the periodic review process described in 40 RCNY § 6-14. The Department may not confine any person in RMAS Level 2 more than fifteen (15) calendar days unless:~~ The Department may not confine any person in RMAS Level 2 more than fifteen (15) calendar days unless:

- (1) The Department has specific documented intelligence that the person will engage in violence in RMAS Level 3; or

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

#### **§ 6-14 Periodic Review of Placement.**

- (a) The Department shall review the placement of ~~people~~ a person in custody confined in:
- (1) RMAS Level 1 ~~at least starting at thirty (30) days~~ no later than the thirtieth day (30<sup>th</sup>) day after initial confinement and every fifteen (15) calendar days thereafter;
- (2) RMAS Level 2 at least every fifteen (15) calendar days;
- (3) RMAS Level 3 at least every fifteen (15) calendar days.
- (b) ~~At least twenty-four (24) hours prior to such periodic review, people in custody shall be notified of the pending review in writing and of (1) the right to submit a written statement for consideration, and (2) the right to participate in the review. People in custody who are~~



~~unable to read or understand such notice shall be provided with necessary assistance.~~  
The Department must give written notice of a pending periodic review to the person in custody between twenty-four (24) to seventy-two (72) hours prior to the review. The notice must notify the person of their right to submit a written statement for consideration and to participate in the review. The Department must provide necessary assistance to any person in custody who is unable to read or understand such notice or prepare a written statement.

(c) Periodic review of an individual's RMAS status shall be conducted by a multidisciplinary team, including Department program staff and the person's case manager., and shall consider the following:

- (1) ~~In the Level 1 reviews, the justifications for continued placement in Level 1, if any, including the specific documented intelligence that the person will engage in violence in RMAS Level 2. This consideration does not apply to people in Level 1 who have been found guilty of an offense against staff until their sixty (60) day review, as set forth in 40 RCNY § 6-13(a);~~  
In the Level 1 reviews, the multidisciplinary review team must consider the justifications for continued placement in Level 1, if any. This includes any specific documented intelligence that the person will engage in violence in RMAS Level 2. For a person who was originally placed into Level 1 after being found guilty of an offense against staff, the review team cannot consider that person's progression until their sixty (60) day review, as required in 40 RCNY § 6-13(a);
- (2) ~~In the Level 2 reviews, the justifications for continued placement in Level 2, if any, including (i) the specific documented intelligence that the person will engage in violence in RMAS Level 3; or (ii) evidence that the person has consistently and willfully refused to participate in programming, including schedules and descriptions of offered programs, documented refusals, and program staff notes;~~  
In the Level 2 reviews, the multidisciplinary review team must consider the justifications for continued placement in Level 2, if any. This includes any specific documented intelligence that the person will engage in violence in RMAS Level 3, or evidence that the person has consistently and willfully refused to participate in programming including schedules and descriptions of offered programs, documented refusals, and program staff notes;
- (3) ~~In the Level 3 fifteen (15) day review, the justifications for continued placement in Level 3, if any, including (i) the specific documented intelligence that the person will engage in violence outside of RMAS; or (ii) evidence that the person has consistently and willfully refused to participate in programming, including schedules and descriptions of offered programs, documented refusals, and program staff notes;~~  
In the Level 3 fifteen (15) day review, the multidisciplinary review team must consider the justifications for continued placement in Level 3, if any. This includes any specific documented intelligence that the person will engage in violence outside of RMAS; or evidence that the person has consistently and willfully refused to participate in programming,



including schedules and descriptions of offered programs, documented refusals, and program staff notes;

- (4) In In the Level 3 thirty (30) day review and subsequent reviews, the justifications for continued placement in Level 3, if any, including the specific documented intelligence that the person will engage in violence outside of RMAS; In the Level 3 fifteen (30) day review and subsequent reviews, the multidisciplinary review team must consider the justification for continued placement in Level 3, if any. This includes any specific documented intelligence that the person will engage in violence outside of RMAS, but may not include evidence that the person has consistently and willfully refused to participate in programming;
- (5) The continued appropriateness of each individual restriction on privileges and whether any such individual restrictions on privileges should be relaxed or lifted;The review team must review each individual restriction on privileges and determine whether it continues to be appropriate and whether it should be relaxed or lifted;
- (6) Information regarding the person's subsequent behavior and attitude since placement in RMAS began;The review team must review information regarding the person's behavior and attitude since placement in RMAS;
- (7) Any written statement the person submitted for consideration or any oral statement the person made at their periodic review;The review team must review any written statement the person submitted for consideration, or any oral statement the person made at their periodic review;
- (8) Any other factors that may favor retaining the person or releasing the person from RMAS or any other factors that may favor the lifting of individual restrictions or continuing to impose individual restrictions on the person; andThe review team must review any other factors that justify retaining or releasing the person from RMAS or lifting or continuing of individual restrictions; and
- (9) If the person's placement in any level of RMAS is to continue, any actions or behavioral changes that the person might undertake to further rehabilitative goals and facilitate the lifting of individual restrictions or advancement to a less restrictive RMAS level or return to general population. In that event, the Department must update the person's IBSP pursuant to 40 RCNY § 6-13(b) and (c), to specify each such action or behavioral change.If the review team determines, after considering all required factors, that the person's placement in RMAS should continue, the review team must update the person's individual behavior support plan to include specific actions or behavioral changes that the person can undertake to meet rehabilitative goals and eliminate the need for individual restrictions, advance to a less restrictive RMAS level, or return to general population.

- (d) ~~The conclusions reached in the multidisciplinary team's periodic review, including progression and extension determinations, shall be recorded in a written report. A copy of the report shall be provided to the person in custody within one business day of the review, with the exception of specific documented intelligence in 40 §§ 6-14(c)(2)-(4), which may be redacted on the copy provided to the person in custody if the Department determines that disclosing such information would present a serious safety risk to specific individuals. In such cases, the Department shall inform the person in writing that the information is being redacted due to a specific security risk. The Department shall maintain records of both redacted and unredacted reports.~~ The multidisciplinary team's periodic review must record its conclusions in a written report, including its determinations on progression or extension. The Department must provide the person in custody a copy of the report before the end of the maximum confinement periods described by the rules for RMAS progression in 40 RCNY § 6-13. If the Department fails to do so, it must progress the person to the next less-restrictive level of RMAS or to the general population. In the report, the Department may redact any specific documented intelligence in 40 RCNY §§ 6-14(c)(1-4) that the Department determines would present a serious safety risk to specific individuals if disclosed, but the Department must inform the person in writing that the information is being redacted due to a specific security risk. The Department must maintain records of both redacted and unredacted reports.

#### **§ 6-15 Extensions**

- (a) ~~In such cases where the Department determines to extend a person's time in RMAS Level 1 beyond sixty (60) days or determines to extend a person's time in RMAS Levels 2 or 3 for more than fifteen (15) days at a time, the extension determination shall be reviewed by the Chief of Department to determine whether such highly exceptional circumstances exist to justify continued placement in the current level, pursuant to the criteria described in 40 RCNY § 6-13.~~ If the Department determines that a person meets the criteria, described in 40 RCNY § 6-13, to be confined in RMAS Level 1 beyond sixty (60) calendar days or to have their confinement in RMAS Levels 2 or 3 extended by more than fifteen (15) calendar days at a time, the Chief of Department must review that determination.
- (b) ~~Notice of a determination to extend a person's time in Level 1 beyond sixty (60) days or in Levels 2 or 3 for more than fifteen (15) days at a time, along with a copy of such determination, shall be submitted to the Chief of Department for approval or rejection and served upon the affected person within one business day of such determination.~~ The Department, within one business day of such a determination, must send notice of the determination to the Chief of Department for approval or rejection along with a copy of the determination itself, and send the same to the affected person. The person will be asked to sign the notice as proof of receipt. If the person does not sign the notice, the staff person serving the notice must note the person's refusal on the notice.

- (c) ~~The Chief of Department shall review the extension determination and approve or reject it within one business day of receipt thereof. The Chief's decision and the reasons supporting it shall be stated in writing and sent to the person in custody, the Board, and CHA within one business day of such decision.~~ Within one day of receiving the extension determination from the Department, the Chief of Department must review the determination and decide to approve or reject it. The Chief must state their decision and reasons supporting it in writing, and send it to the person in custody, the Board, and CHA within one business day of their decision. Service of the decision shall be served upon the affected person in accordance with the procedure set forth in subdivision (f) of this section. [subsection (f) does not currently set forth service procedures.]
- (d) ~~If a person commits and is found guilty of a Grade I violent offense while in RMAS Level 1, 2, or 3 and is found guilty of such offense at a disciplinary hearing, the Department may restart the person in Level 1 or return the person to Level 1 to serve the sentence imposed for that infraction. In that event, the person's length of stay in Level 1 shall be determined in accordance with the progression criteria described in 40 RCNY § 6-13(a).~~ If, at a disciplinary hearing, a person is found guilty of committing a Grade I violent offense while in RMAS Level 1, 2, or 3, the Department may choose to restart the person in Level 1, or send the person to Level 1 to serve the sentence imposed for the Grade I violent offense. If so, the Department must use the progression criteria, described in 40 RCNY § 6-13(a), to determine the maximum length of stay.
- (e) ~~If a person commits and is found guilty of a Grade I non-violent or Grade II offense while in RMAS Level 1, 2, or 3 and is found guilty of such an offense at a disciplinary hearing, the Department may restart the person in Level 2 or return the person to Level 2 to serve the sentence imposed for that infraction. In that event, the person's length of stay in Level 2 shall be determined in accordance with the progression criteria described in 40 RCNY § 6-13(b).~~ If, at a disciplinary hearing, a person is found guilty of committing a Grade I non-violent or Grade II offense while in RMAS Level 1, 2, or 3, the Department may choose to restart the person in Level 2, or send the person to Level 2 to serve the sentence imposed for the Grade I non-violent or Grade II offense. If so, the Department must use the progression criteria, described in 40 RCNY § 6-13(a), to determine the maximum length of stay.
- (f) The Department may not extend a person's length of stay in RMAS by imposing consecutive lengths of stay regarding multiple offenses for which the person was found guilty at a hearing.

#### **§ 6-16 Required Out-of-Cell Time.**

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

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

**§ 6-17 Other Conditions.**

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

- (f) ~~To the extent the Department imposes individual restrictions on a person in custody confined in RMAS that deviate from those imposed on people housed in the general population, such restrictions must be limited to those required to address the specific safety and security threat posed by that person.~~ The Department may not impose any individual restrictions on a person in custody confined in RMAS that differs from those imposed on persons housed in the general population, unless the individual restriction is necessary to address a specific safety and security threat imposed by that person.
- (g) ~~To the extent the Department seeks to limit access to contact visits of a person in custody who is confined in RMAS, a hearing shall be held, as required in 40 RCNY § 6-24(d), which shall address the criteria set forth in 40 RCNY § 1-09(h) with regard to both the incarcerated person and any individual visitors with whom the Department wishes to limit contact.~~ The Department may not limit access to contact visits of a person in custody who is confined in RMAS without holding a hearing to address the criteria for restrictions on visitation rights, which are set forth in 40 RCNY § 1-09(h). The hearing must assess these criteria for both the incarcerated person and any individual and any individual visitors with whom the Department wishes to limit contact, and the hearing procedures must follow those required in 40 RCNY § 6-24(d).
- (h) ~~Law library services may be provided in RMAS Level 1 and Level 2 units instead of a law library. Such alternative means must ensure services are provided to people in custody who are confined in these housing units. At a minimum:~~ The Department may choose to provide law library services in RMAS Level 1 and Level 2 units instead of a law library. If so, the Department must ensure the services are provided to people in custody who are confined in these housing units, and at a minimum include:
- (1) ~~Access to law library services shall be provided by means of a law library kiosk and typewriters in each Level 1 and Level 2 unit. A law library kiosk and typewriter in every~~ Level 1 and Level 2 unit, to provide access to law library services;
  - (2) ~~There shall be one library coordinator assigned to every two (2) RMAS units at least five (5) times per week; and One law library coordinator assigned to every two (2)~~ RMAS units at least five (5) times per week; and
  - (3) The law library coordinator will provide instruction on available legal research tools and respond to people in custody's requests for law library services.
- (i) To the extent the Department offers outdoor recreation in outdoor recreation pens or in vacant cells to people confined in RMAS ~~recreation in outdoor recreation pens or in vacant cells,~~ the Department shall equip these pens or cells with exercise equipment such as dip bars, high bars, or pull-up bars.
- (j) All RMAS Level 1 and Level 2 units shall be air conditioned.

#### **§ 6-18 Staffing.**

(a) Steady Posts

The Department shall retain records sufficient to show accurate, uniform data on the security staff transferring in and out of RMAS units and the years of experience and training of security staff assigned to and working in these units. The Department shall semi-annually report this information, in writing, to the Board.

(b) Staffing Plans

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

#### **§ 6-19 Training.**

(a) Security staff assigned to RMAS units shall receive training designed to address the unique characteristics and operations of these units and the people in custody who are housed in these units. Such training shall include, but not be limited to recognition and understanding of mental illness and distress, effective communication skills, and conflict de-escalation techniques.

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

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

#### **§ 6-20 Programming.**

(a) ~~The Department shall provide people in RMAS with both in- and out-of-cell programming which is evidence-informed, age-appropriate, and tailored to each person's IBSP. Such programming shall be aimed at facilitating rehabilitation, addressing the root causes of violence, and minimizing idleness. The Department shall also provide people confined in RMAS with access to both in-cell and out-of-cell productive activities. The Department must provide people in RMAS with programming both inside and outside of the cell. The programing must be informed by research evidence, be age-appropriate, and be tailored to each person's individual behavior support plan. The programming must also be~~

designed to facilitate rehabilitation, address the root causes of violence, and minimize idleness. In addition, the Department must also provide people confined in RMAS with productive activities inside and outside of the cell.

- (b) The Department shall offer at least five (5) hours of daily programming to people confined in RMAS.
- (c) ~~The Department shall offer young adults who are confined in RMAS with access to at least five (5) hours of daily programming. The 5 hours of access may include programming, activities and/or services provided during school hours by entities or persons other than the Department. For young adults in RMAS who are eligible for educational services provided by or through the New York City Department of Education (“DOE”) pursuant to N.Y. Education Law 3202(7) and implementing state regulation, the Department shall offer such young adults access to DOE-provided educational services each school day that DOE’s school program is in session during the 10-month school year (or extended school year, if set forth on the student’s special education plan), provided that the young adult indicates in writing that they wish to attend and demonstrates their eligibility for such services.~~ The Department must provide young adults in RMAS with at least five (5) hours of programming every day. Those five hours may be provided by non-Department entities or persons during school hours. Young adults in RMAS who are eligible for educational services provided by or through the New York City Department of Education (“DOE”), pursuant to N.Y. Education Law 3202(7) and implementing state regulation, may demonstrate their eligibility for such services and indicate in writing that they wish to attend. If they do so, the Department must offer those young adults access to DOE-provided educational services on every school day that DOE’s school program is in session, during the 10-month school year or extended school year if set forth on the student’s special education plan.
- (d) The Department shall provide and regularly update the Board with information on program offerings in RMAS. The Department shall maintain accurate and up-to-date programming schedules in each RMAS unit.
- (e) The Department shall document by date each individual’s participation in each program session offered and any refusals to participate in RMAS programming and the reasons therefor.
- (f) The Department shall provide the Board with quarterly public reports on RMAS programming, including but not limited to the following information for adults and young adults by RMAS level:
- (1) the name, description, and type of program offered and staff delivering each program offered;
  - (2) the number of sessions of each program offered;



- (3) the average number of participants per session and the number of unique individuals in RMAS overall and the number of unique individuals participating in each program during the reporting period;
- (4) the number of programming hours received per day (minimum, maximum, mean, median) by individuals in RMAS during the reporting period.
- (5) Any other information the Department or the Board deems relevant to the assessment of programming in RMAS.
- (g) The Department shall provide the Board with the individually identified data used to create the public reports required in this section.
- (h) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY §6-21(e), which shall be subject to approval by the Board.

**§ 6-21 Access to Health Services.**

- (a) ~~Upon intake and in subsequent clinical encounters, CHA shall identify individuals with serious medical conditions, as defined by CHA.~~ CHA shall identify individuals with serious medical conditions, as defined by CHA, upon intake and in subsequent clinical encounters. Without disclosing specific diagnoses, CHA shall maintain a current list of all such individuals in DOC custody and make that list available to the Department. The Department shall then ensure that staff in RMAS units are aware of all people in the unit who have been identified by CHA as having a serious medical condition.
- (b) CHA shall provide daily medical and mental health rounds to all people in custody in RMAS. Such rounds must be documented in writing.
- (c) ~~The Department shall immediately notify CHA of each placement of a person in custody into RMAS. Such notification shall be in writing. When the Department places a person in custody into RMAS it must immediately notify CHA in writing.~~
- (d) ~~Clinical encounters, with the exception of daily rounds described in 40 RCNY § 6-21(b), shall never occur cell-side. The Department shall ensure that every person who is placed into RMAS is brought to the facility clinic for all scheduled appointments. All clinical encounters must take place in clinics and may not take place in or by cells, except for the daily rounds required in 40 RCNY § 6-21(b). The Department must ensure that every person confined in RMAS is brought to the facility clinic for all scheduled appointments.~~
- (e) ~~Each time CHA determines removal of a person from RMAS to an alternate housing unit is appropriate, CHA shall notify the Board in writing of the circumstances related to the determination and the reason(s) for the determination (e.g., medical concern, mental health concern, disability);~~ CHA may determine that a person confined in RMAS needs to



be moved to specialized medical housing or specialized mental health housing for care and can direct that the person be moved. CHA must provide written notice to the Board containing the circumstances related to the determination and the reason(s) for the determination (e.g., medical concern, mental health concern, disability).

- (f) CHA shall provide the Board with a monthly, public report. The report shall include but not be limited to:
- (1) Number of notifications of placement in RMAS received by CHA during the reporting period, in total and disaggregated by type of restrictive housing and facility;
  - (2) Number of notifications of placement in de-escalation confinement received by CHA during the reporting period, in total and disaggregated by facility;
  - (3) Number and percent of medical rounds in RMAS and the number and percent of rounds resulting in referrals to other CHA services during the reporting period, in total and disaggregated by RMAS level and facility;
  - (4) Number and percent of mental health rounds in RMAS and the number and percent of rounds resulting in referrals to other CHA services during the reporting period, in total and disaggregated by RMAS level and facility;
  - (5) Number of CHA determinations of removal from RMAS to an alternate housing unit during the reporting period, in total and disaggregated by RMAS level and facility;
  - (6) Number and percent of scheduled services by service type and outcome for people housed in RMAS during the reporting period, in total and disaggregated by RMAS level and facility; and
  - (7) Any other information CHA or the Board deems relevant to understanding access to health services in RMAS.
- (g) CHA shall provide the Board with the data used to prepare the report required in 40 RCNY § 6-21(f) and any other information CHA or the Board deems relevant to understanding access to health services in RMAS.
- (h) The Board and CHA shall jointly develop the reporting templates for the public report required by 40 RCNY § 6-21(f), subject to approval by the Board.

**§ 6-22 Fines.**

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

### **§ 6-23 Disciplinary System Plans.**

- (a) Within three (3) months of the Effective Date, the Department shall submit to the Board a written plan for a disciplinary process ("plan"), one for young adults and one for adults, that addresses:
- (1) Grade III offenses ("violations"), and
  - (2) People subject to the exclusions in 40 RCNY § 6-09.
- (b) Each plan shall include:
- (1) Mechanisms for addressing violations without resort to RMAS placement or limitations on individual movement or social interaction. Such mechanisms may include, e.g., positive behavioral incentives and privileges, targeted programming to address problematic behavior; and conflict resolution approaches in response to interpersonal conflict within the jails;
  - (2) Criteria for restricting or affording privileges based on behavior (e.g. commissary);
  - (3) A process for Department staff to respond to violations swiftly and consistently;
  - (4) A plan for communicating the rules of conduct, Department responses to rule violations, and due process procedures in a clear and understandable manner to people in custody and to all Department staff, including non-uniformed staff who have routine contact with people in custody.
  - (5) ~~(4)~~ Training curricula for uniformed and non-uniformed staff on the disciplinary process and procedures.
  - (6) ~~(5)~~ The assistance the Department shall provide people in custody to understand the disciplinary process and procedures, including their rights thereunder. This shall include the procedures the Department will follow if the person in custody is non-English or limited-English proficient, illiterate, or has a disability including, for example, if the person is deaf or hard of hearing, is blind or has low vision, or has an intellectual, psychiatric, or speech disability.

- (7) A process for engaging Department staff in the plans' development.
- (8) Potential housing options for people excluded from RMAS.
- (c) Upon review of the plans required by this section, the Board and the Department shall jointly develop a public reporting template on the Department's disciplinary systems. The template shall be subject to the Board's approval.

**§ 6-24 Due Process and Procedural Justice.**

(a) Purpose

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

(b) Investigations

- (1) When the Department conducts investigations into allegations of a person in custody's violation of Department rules, it shall do so promptly, thoroughly, and objectively.
- (2) ~~Department personnel conducting the investigation must be of the rank of Captain or above and must not have reported, participated in, or witnessed the conduct. The investigation cannot be conducted by Department personnel who have reported, participated in, or witnessed the conduct, or who are below the rank of Captain.~~  
The investigation cannot be conducted by Department personnel who have reported, participated in, or witnessed the conduct, or who are below the rank of Captain.
- (3) ~~If the rule violation in question could lead to a subsequent criminal prosecution, the Department must inform the person interviewed that while the Department's investigation is not pursuant to a criminal proceeding, statements made by the person may be used against the person in a subsequent criminal trial. The person must also be informed of the right to remain silent and that silence will not be used against the person. If the infraction in question could lead to a separate criminal prosecution, the Department must inform the person interviewed that:~~  
If the infraction in question could lead to a separate criminal prosecution, the Department must inform the person interviewed that:
  - a. The Department's investigation is not pursuant to a criminal proceeding;
  - b. Statements made by the person may be used against them if there is a later criminal trial;
  - c. The person has the right to remain silent; and

d. Silence will not be used against the person.

(4) All investigations shall be documented in written reports that include a description of the physical, testimonial, and documentary evidence as well as investigative facts and findings.

(5) Investigations shall commence within twenty-four (24) hours after the ~~incident~~ end of the alleged incident.

~~(6) The Department shall proceed with adjudication of charges against a person in custody upon a determination that there is reasonable cause to believe the person has committed the infraction charged.~~ The Department must determine that there is reasonable cause to believe the person in custody has committed the infraction charged before it may proceed with adjudication of charges against them.

(c) Notice of Infraction

~~(1) Prior to the disciplinary hearing provided in 40 RCNY § 6-24(d), people in custody must receive written notice detailing the charges against them.~~ The Department may not hold a disciplinary hearing, as provided in 40 RCNY § 6-24(d), until it has provided written notice to the person in custody that details the charges against them. The notice must be legible, detailed, and specific and must include, at a minimum:

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

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

~~(2) People in custody who are unable to read or understand the notice shall be provided with necessary assistance.~~ The Department must provide necessary assistance to any person in custody who is unable to read or understand the notice.

~~(3) Notice of the infraction shall be served upon any person placed in pre-hearing detention within twenty-four (24) hours of such placement, absent extenuating circumstances.~~ Whenever the Department places a person into pre-hearing detention, the Department must serve them notice of the infraction within twenty-four (24) hours. If extenuating circumstances prevent the possibility of twenty-four-hour service, the Department must serve notice as soon as possible and document each reason for delay.

~~(4) Notice of the infraction shall be served upon a person not placed in pre-hearing detention as soon as practicable but in no event later than two (2) business prior to the hearing. Failure to do so shall constitute a due process violation warranting~~

~~dismissal.~~ When the Department has charged a person with an infraction and has not placed them in pre-hearing detention, the Department must serve them notice of the infraction as soon as practicable, and no later than two (2) business days prior to the hearing. The Department's failure to meet either criteria will cause the charges to be dismissed for a violation of due process.

- (5) ~~Any member of DOC staff, except those who participated in the incident may serve the person charged with the notice of infraction. The person will be asked to sign the notice as proof of receipt. If the person does not sign the notice, a staff member other than the person serving the notice must note the person's refusal on the notice. Staff members who serve the notice, including staff members who note a person's refusal to sign the notice, shall indicate their name and shield number legibly on the notice. Any member of DOC staff may serve the notice of infraction to the person charged, except staff who participated in the incident. The person will be asked to sign the notice as proof of receipt. If the person refuses to sign the notice, the refusal must be recorded on the notice by another staff member who is not serving the notice. All staff members serving the notice must indicate their name and shield number legibly on the notice, including any staff members who recorded a person's refusal to sign.~~
- (6) ~~All refusals to sign a notice of infraction shall be videotaped. Failure of the Department to produce a videotaped refusal and make it part of the hearing record shall constitute a due process violation warranting dismissal.~~ The Department must also videotape all refusals to sign a notice of infraction. If a person has refused to sign, but the Department fails to produce a videotaped refusal at the hearing or make it part of the hearing record, the charges must be dismissed for a violation of due process.
- (7) ~~If the person is charged with a Grade I eligible offense that would render them eligible for placement in RMAS Level 1, notification of such shall be transmitted, via email, to the person's criminal defense counsel within one business day of service on the person. This notification shall not include specific details concerning the alleged offense.~~ When the Department charges any person in custody with a Grade 1 eligible offense that would render the person eligible to be placed into RMAS Level 1, the Department must send notification of the charge and eligibility to the person's criminal defense counsel. That notification must be sent by email within one business day after the Department serves notice onto the person in custody, and must not contain specific details concerning the alleged offense.

(d) Disciplinary Hearing

(1) Hearing Adjudicators

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

~~infraction charge.~~ Disciplinary hearings must be adjudicated by Department staff of the rank of Captain or above, but Department staff who initially recommended the person for adjudication or provided evidence to support the person in custody's infraction charge may not adjudicate the hearing.

(2) Time of Hearing

~~Within three (3) business days of service of the notice of infraction on the person charged, the Department shall conduct an adjudication hearing.~~ The Department must not conduct the disciplinary hearing more than three (3) business days after the Department has served the notice of infraction on the charged person in custody.

(3) Due Process Violations

~~Prior to calling the person charged to the hearing, the Hearing Adjudicator shall review the notice of infraction to determine whether there are any due process violations that may require dismissal of the infraction.~~ The hearing adjudicator must review the notice of infraction to determine whether the Department has committed any violations of due process that would require the adjudicator to dismiss the infraction. The Department may not call the charged person in custody to the hearing until the adjudicator's review is complete.

(4) Audiotaping

All disciplinary hearings must be audiotaped.

(5) Refusal to attend or participate

~~The refusal of people in custody to attend or participate in their hearing must be videotaped or audiotaped and made a part of the hearing record.~~ When a person in custody refuses to attend or participate in their hearing, the Department must videotape or audiotape the refusal, and make the recording a part of the hearing record.

(6) Rights of the Person Charged

~~The Hearing Adjudicator shall advise the person charged of the following rights at the hearing, which must also be set forth in the notice of infraction:~~ Charged persons in custody have the following rights, which must be stated in the notice of infraction and must be told to the person by the adjudicator at the hearing:

- (i) The right to appear. ~~The person charged has the right to appear personally unless the right is waived in writing or the person refuses to attend the hearing.~~ The Department must allow the person charged to appear in person at the hearing, unless the person waives the right in writing or refuses to attend the hearing.

(ii) The right to make statements: The person charged has the right to make statements. ~~In cases where the infraction in question could lead to a subsequent criminal prosecution, the Hearing Adjudicator must inform the person that while the proceeding is not a criminal one, the person's statements may be used against the person in a subsequent criminal proceeding. The Adjudicator must also inform the person of the right to remain silent and that silence will not be used against the person at the hearing.~~ If the rule violation in question could lead to a separate criminal prosecution, the hearing adjudicator must inform the person charged that:

- (A) The Department's hearing is not pursuant to a criminal proceeding;
- (B) Statements made by the person may be used against them if there is a later criminal trial;
- (C) The person has the right to remain silent; and
- (D) Silence will not be used against the person.

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

(iv) The right to review the Department's evidence: ~~The person charged has the right to review, prior to the infraction hearing, the evidence relied upon by the Department. Should the Department provide any evidence to the person for the first time at the hearing, the Department shall inform the person at the hearing that they have the right to adjourn the hearing so they can review and prepare their defense.~~ The person charged has the right to review all evidence relied upon by the Department prior to the infraction hearing. If the Department seeks to provide any evidence to the person for the first time at the hearing, the Department must inform the person, at the hearing, that the person has the right to immediately adjourn the hearing so the person can review and prepare their defense.

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

- (A) ~~The person is non-English or limited-English proficient;~~ The person has limited proficiency in spoken or written English;
- (B) ~~The person is illiterate;~~ The person has low literacy;
- (C) ~~The person is blind or deaf, low vision, or hard of hearing;~~ The person has low vision or is hard of hearing; or

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

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

(A) Clarifying the charges;

(B) Explaining the hearing process;

(C) Interviewing witnesses;

(D) Obtaining evidence and/or written statements;

(E) Providing assistance at the hearing;

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

(G) Providing assistance in filing an appeal as provided in 40 RCNY § 6-24(h) of this Chapter.

(vii) ~~A person in custody entitled to a hearing facilitator must be provided access to a facilitator at the time the notice of infraction is served, at least two (2) business days prior to the hearing. Whenever a person in custody is entitled to a hearing facilitator, the Department must provide access to the facilitator at the same it serves notice to the person. The Department must document in writing the efforts taken to inform the person charged of their right to a facilitator, and whether the person accepted or refused the facilitator.~~

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

(ix) *The right to an interpreter.* In addition to a hearing facilitator, a person has the right to an interpreter in the person's native language if the person does not understand or is not able to communicate in English well enough to ~~conduct~~ participate in the hearing in English. The Department must document in writing the efforts taken to inform the person charged of their right to an interpreter, and whether the person accepted or refused the interpreter.



(x) The right to an appeal. A person who is found guilty at a disciplinary hearing has the right to appeal ~~an~~ the adverse decision, as provided in § 6-24(h) of this Chapter.

(7) Burden of Proof

~~The Department has the burden of proof in all disciplinary proceedings. A person's guilt must be shown by a preponderance of the evidence to justify RMAS placement.~~ In all disciplinary proceedings, the Department must prove that the person charged is guilty, otherwise the adjudicator must find the person not guilty. The Department may not place a person into RMAS without proving guilt through a preponderance of the evidence.

(8) Hearing Time Frame

(i) Once the hearing has begun, the Hearing Adjudicator shall make reasonable efforts to conclude the hearing in one session.

~~(ii) Adjournments may be granted if the person charged requests additional time to locate witnesses, obtain the assistance of a hearing facilitator, or prepare a defense.~~ If the person charged requests additional time to locate witnesses, to obtain the assistance of a hearing facilitator, or to prepare a defense, the adjudicator may choose to grant an adjournment.

(iii) Hearing Adjudicators may also adjourn a hearing to question additional witnesses not available at the time of the hearing, to gather further information, to refer the person charged to mental health staff, or if issues are raised that require further investigation or clarification to reach a decision.

(iv) Notwithstanding any adjournments, hearings must be completed within five (5) calendar days, absent extenuating circumstances or unless the person charged waives this time frame in writing.

(e) Determination

~~(1) Absent extenuating circumstances, the person charged shall be served with a copy of the determination within two (2) business days of the conclusion of the disciplinary hearing.~~ The Department must serve the person charged with a copy of the adjudicator's determination within two (2) business days of the conclusion of the disciplinary hearing. If extenuating circumstances cause the Department to be unable to meet that deadline, it must serve the determination as soon as circumstances permit.

(2) The determination shall be in writing, legible, and contain the following:

- (i) A finding of “guilty,” “not guilty,” or “dismissed” on each charge in the infraction;
  - (ii) The evidence relied upon by the Hearing Adjudicator in reaching such finding;
  - (iii) The sanction imposed, if any;
- (3) A summary of each witness’s testimony, including whether the testimony was credited or rejected, with a statement of the reasons therefor. *[appears this provision should be e(2)(iv) and not e(3)]*
- (4) ~~Records generated pursuant to a disciplinary hearing in which a person is found not guilty of the charges, after either the disciplinary hearing or appeal, shall be kept confidential and shall not be considered in making decisions pertaining to the person’s access to programs, services, or in the granting of or withholding of good time for sentenced people.~~ Whenever a person in custody is found not guilty of the charges at the disciplinary hearing or on appeal, the Department must ensure that the records generated related to the hearing are kept confidential and must prohibit those records from being considered when the Department makes decisions pertaining to the person’s access to programs or services, or decisions to grant or withhold good time.
- (f) ~~Hearing adjudicators shall impose sanctions that are proportionate to the infraction of which a person was found guilty and fair in light of comparable penalties given other people for the same or similar misconduct.~~ Sanctions imposed by hearing adjudicators must be proportionate to the infraction, and must be comparable to sanctions imposed on other persons found guilty of the same or similar misconduct.
- (g) ~~People in custody must be placed in RMAS, within thirty (30) days of adjudication of guilt. If the Department does not place a person into RMAS within this thirty (30)-day period, the Department may not place the person in RMAS for that infraction at a later time.~~ When an adjudicator finds a person guilty and imposes RMAS as the penalty, the Department must place that person into RMAS within thirty (30) calendar days of the finding. If the Department does not place the person into RMAS within these thirty days, it may not place the person into RMAS for that infraction.

#### (h) Appeals

- (1) ~~A person who is found guilty at a disciplinary hearing has the right to appeal such determinations. The appeal shall be in writing, shall be based on facts already in the record, and shall clearly set forth the basis for the appeal, except the person may raise any newly discovered evidence in the appeal.~~ Every person found guilty at a disciplinary hearing has the right to appeal the finding. The appeal must be in writing and clearly state which justification the person is using for the appeal, set forth in 40

RCNY § 6-24(h)(5). The appeal may not use facts that are not already in the record, except that the person may include any evidence discovered after the hearing.

- (2) ~~People in custody shall have three (3) business days from receipt of a guilty determination to file an appeal, and the Department shall render a decision within two (2) business days of receipt of the appeal.~~ A person in custody, and not in restrictive housing, who wishes to appeal a guilty determination must file the appeal within three (3) business days of receiving the determination. After the Department receives the appeal, it must issue a decision to the person within two (2) business days whether to uphold or overturn the guilty finding.
- (3) ~~Individuals in RMAS and other restrictive housing, shall have fifteen (15) business days to file an appeal of an adverse determination, and the Department shall render a decision within five (5) business days of receipt of the appeal.~~ A person who is in RMAS or other restrictive housing who wishes to appeal a guilty determination must file the appeal within fifteen (15) business days of receiving the determination. After the Department receives the appeal, it must issue a decision to the person within two (2) business days whether to uphold or overturn the guilty finding.
- (4) The Department shall provide prompt and adequate access to people in custody to file an appeal.
- (5) ~~A person may appeal based on the belief that there was a due process violation, insufficient evidence to support a guilty finding, or because the Hearing Adjudicator was biased.~~ An appeal must be based on one of the following justifications:
  - a. The Department committed a due process violation;
  - b. The evidence on the record cannot support a guilty finding; or
  - c. The hearing adjudicator demonstrated bias.
- (6) ~~The decision on appeal shall be in writing, legible, and state the reasons for granting or denying the appeal.~~ The Department's decision on the appeal must be provided to the person in writing, be legible, and state the reasons for granting or denying the appeal. People who are unable to read or understand the decision shall must be provided with necessary assistance.
- (7) Appeals shall be determined by DOC Department staff of the rank of Captain or above. Department staff who decide appeals shall not be: The appeal must not be determined by:
  - (i) Staff who reported, witnessed, or investigated the incident underlying a the guilty determination;

(ii) ~~Staff who recommended the person's initial placement in restrictive housing other than disciplinary housing;~~ Staff who, related to this infraction, recommended that the Department place the person in restrictive housing or pre-hearing detention, other than specialized medical or mental health housing.

(v) Staff who recommended that individual restrictions be imposed on the person; Staff who, related to this infraction, recommended that the Department place the individual restrictions be imposed on the person. [This should be 7(iii) and the next should be 7(iv)]

(vi) Staff who presided as the H~~earing~~ A~~adjudicator~~ at the person's disciplinary hearing.

(i) *Disciplinary Due Process Reporting*

(1) Within one year of the Effective Date, the Department shall develop the system(s) necessary to collect accurate, uniform data on the due process requirements of 40 RCNY §6-24, and to centrally store related documentation, in a manner that may be analyzed electronically by the Board.

(2) The Department shall provide the Board with a public semiannual report on Disciplinary Due Process for the Adult and Young Adult population, including but not limited to information on:

i. Notices of Infraction, including the number and percent of Infraction notices, by Grade of top infraction charge (e.g., Grade I violent, Grade I non-violent, Grade II, Grade III), by whether the person charged signed or refused to sign the Infraction Notice and whether refusal was documented on video; by whether the Notice was sent to defense counsel of the person charged with a Grade I violent charge; and by whether the person charged requested assistance in reading or understanding the person's infraction notice and whether the person was provided such assistance.

(ii) Hearings and hearing determinations, including the number and percent of infractions served, by top infraction charge (i.e., Grade I violent, Grade I non-violent, Grade II, Grade III) by whether a hearing occurred, and by hearing outcome (Guilty, Not Guilty, Dismissed, e.g. due process violation).

(iii) Rights of people charged, including the number and percent of hearings by top infraction charge Grade (i.e., Grade I violent, Grade I non-violent, Grade II, Grade III), by whether the person charged refused to attend their hearing and whether the refusal is documented on video or on audio; and by whether the person charged requested a hearing facilitator or interpreter and whether such request was granted.

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

#### **§ 6-25 RMAS Data Collection and Review.**

- (a) The Department shall maintain and update as necessary a list of the type and specific location of all RMAS units. The list shall include the opening and closing dates of all such units. The Department shall provide this list to the Board on at least a monthly basis and notify the Board in writing when any new RMAS units open, close, or change level.
- (b) The Department shall maintain and develop the system(s) necessary to collect accurate, uniform data on RMAS and the requirements of 40 RCNY Subchapter E, and to centrally store related documentation, in a manner that may be analyzed electronically by the Board.
- (c) The Department shall provide the Board with a monthly public report with information on RMAS, including but not limited to the following information for the Adult and Young adult populations, overall and by each RMAS Level:
  - (1) Number of sentences to RMAS by top offense (Rule Violation Grade Level, Rule Number, Rule Description) and length of sentence;

- (2) The mean, median, minimum, and maximum time from qualifying incident or violation to placement and from adjudication to placement for all placements in RMAS in the reporting period;
  - (3) The total number of placements and unique people placed during the reporting period; the number and percent of people placed by age, race, ethnicity, gender, and "M" designation status, Security Risk Group, Red ID, and Enhanced Restraint status at time of placement; the average daily population; and the number of adults and young adults currently housed in RMAS as of the last day of the reporting period;
  - (4) Number of determinations to extend a person's time in RMAS Level 1 beyond sixty (60) calendar days or to extend a person's time in RMAS Levels 2 or 3 beyond fifteen (15) calendar days during the reporting period by whether the extension was approved;
  - (5) Number of exits of people from RMAS during the reporting period and their cumulative and consecutive days in RMAS during current incarceration (i.e., minimum, maximum, mean, median days); number of people in RMAS as of the last day of the reporting period and their cumulative and consecutive days in RMAS (i.e., minimum, maximum, mean, median days).
  - (6) The number of periodic reviews required and conducted by outcome of review and whether people attended their review; number of people recommended to progress to a less restrictive level by whether progression occurred within 48 hours of recommendation; number of people not progressing to a less restrictive level or unit by reason not progressed; number of movements to a more or less restrictive level by reason for movement if not related to a review.
  - (7) Average number of out-of-cell hours received per day; and average rate of participation in daily recreation.
  - (8) Numbers and rates of: person-in-custody on person-in-custody fights, slashings/stabbings, assaults on staff, and uses of force, compared to the comparable age group in the general population;
  - (9) Any other information the Department or the Board deems relevant to understanding the Department's use of RMAS.
- (d) The Department shall produce monthly public reports of time spent out of cell; access to law library; access to showers; participation in recreation; and time spent participating in programming for each individual in RMAS. Reports shall include the number, length of, and reasons for late lockouts in RMAS units and recommendations or corrective action(s) taken to address report findings related to improving access to and participation in mandated services. Information gathering to prepare this report shall not be conducted by staff regularly assigned to the facilities or units. At least four (4) dates per month shall be

selected at random and shall not be previously disclosed to staff with responsibilities related to the units reviewed.

- (e) On a monthly basis, the Department shall provide the Board with the individually identified data used to create the public reports required by 40 RCNY §§ 6-25(c) and (d) and all supporting documentation including but not limited to RMAS placement, review, and IBSP documentation.
- (f) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY §§ 6-25(c) and (d). Such templates shall be subject to the Board's approval. Upon submission and review of the Department's disciplinary system plan submitted pursuant to 40 RCNY § 6-23, the reporting provisions outlined in 40 RCNY § 6-25(c) and associated templates shall be reviewed and revised as necessary.
- (g) The Board shall review the information provided by the Department and any other information it deems relevant to the assessment of RMAS. No later than eighteen months (18) after implementation of RMAS, the Board shall meet to discuss the effectiveness of RMAS. The Board's discussion shall address but not be limited to findings regarding the conditions of confinement in RMAS and the impact on the mental health of people housed therein.

#### **§ 6-26 Transition.**

- (a) The Department shall provide the Board with the architectural renderings for RMAS housing units prior to their submission to the New York State Commission of Correction (SCOC). The Department shall provide the Board with the architectural renderings for such units as approved by SCOC within two (2) business days of SCOC's approval.
- (b) Within one (1) month of the Effective Date, the Department shall provide a comprehensive transition plan, in writing to the Board, which shall include the following documents and information concerning the elimination of punitive segregation and the implementation of RMAS:
  - (1) A list of written policies to implement RMAS;
  - (2) Staffing plans for uniform and non-uniform staff who will work in RMAS;
  - (3) Training curricula for uniform and non-uniform staff who will work in RMAS;
  - (4) Programming to be provided to people housed in RMAS;



- (5) Plans for conducting a process and outcome evaluation with proposed metrics to determine success of the RMAS model.
- (c) Starting the first business day of July 2021 and of each month thereafter until RMAS implementation is complete, the Department shall submit to the Board, on a monthly basis and in writing, a public progress report for the previous month, which shall include the Department's progress toward achieving:
- (1) Progress in reducing the PSEG population (i.e., PSEG I/Central Punitive Segregation Unit (CPSU), PSEG II, Restrictive Housing Unit (RHU));
  - (2) Progress in reducing the population housed in other restrictive housing units, including Enhanced Supervision Housing (ESH) and Secure;
  - (3) Construction, opening, and use of new RMAS housing units, including when plans are submitted to and approved by SCOC and explanations for unanticipated delays;
  - (4) Development of Department policies governing the operation of RMAS disaggregated by the stage of their development, as follows:
    - (i) Commenced drafting;
    - (ii) Signed by DOC and posted on DOC's public website;
    - (iii) Integrated into training of DOC staff.
  - (5) Implementation of training on RMAS, including:
    - (i) Status of curriculum development;
    - (ii) Number of staff scheduled to be trained disaggregated by uniform and non-uniform status;
    - (iii) Number of staff who have been trained, disaggregated by uniform and non-uniform status.
  - (6) Implementation of programming in RMAS.
  - (7) The provision of services such as recreation, visits, and privileges in the general population which exceed the requirements of the Minimum Standards outlined in Chapter 1 of Title 40 of the Rules of the City of New York;
  - (8) Any deviations from the detailed timelines and benchmarks set forth in the plan required by 40 RCNY § 6-26(b);



- (9) Any other information the Department or the Board deems relevant to understanding progress toward the elimination of punitive segregation and implementation of the RMAS model.

## **Subchapter F: Restraints and Canines**

### **§ 6-27 Restraints.**

- (a) Nothing in this section shall prohibit:
- (1) The use of restraints that are reasonable and necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, prevent escape, control a person in custody, or protect staff, other people in custody, and others from injury;
  - (2) The immediate use of restraints to prevent a person in custody from self-harm or harming others or causing serious property damage;
  - (3) The routine use of restraints for movement, escort, and transportation purposes.
- (b) ~~Restraints shall be imposed only when no lesser form of control would be effective in addressing the risks posed by unrestricted movement.~~ The Department may not impose restraints unless no lesser form of control would be similarly effective in minimizing the risk posed by unrestricted movement.
- (c) ~~The method of restraint shall be the least intrusive method necessary and reasonably available to control a person in custody's movement based on the level and nature of the risks imposed.~~ If the Department must use a restraint, it must select the reasonably available method of restraint that is that is the least intrusive method able to control the person in custody's movement, based on the level and nature of the current risks.
- (d) ~~Restraints shall be imposed only for the time required and shall be removed as soon as possible after the risks posed by unrestricted movement are no longer present.~~ The Department must remove restraints immediately after the risks posed by unrestricted movement are no longer present.
- (e) ~~As of November 1, 2021, the Department shall eliminate non-individualized use of restraint desks or other restraints during lockout in all facility housing units. Non-individualized use means placing any person or group of people in a restraint desk or other restraint as a condition of lockout, or solely based on their transfer to a restrictive housing unit.~~ The Department must not make restraint desks or other restraints a condition of lockout, or

use them during transfer to a restrictive housing unit without other justifying reason, after October 31, 2021. These uses will be considered non-individualized uses and be prohibited.

- (f) ~~As of the Effective Date of the Rule and until November 1, 2021, the Department shall not subject any person or group of people to the use of restraint desks or other forms of restraint during lockout periods, unless the person or people have recently participated in an actual or attempted slashing or stabbing, or engaged in activity that caused serious injury to a staff member or another person. The use of a restraint desk or other restraint must be the least restrictive option necessary for the safety of others.~~ From the Effective Date of the Rule until the prohibition of non-individualized use of restraints beginning November 1, 2021, the Department must not subject any person to the use of restraint desks or other forms of restraint during lockout periods, unless the person recently participated in an actual or attempted slashing or stabbing, or engaged in activity that caused serious injury to a staff member or another person. The Department may only use the least restrictive restraint option that is necessary for the safety of others.
- (g) ~~As of the Effective Date of the Rule and until November 1, 2021, at which point the non-individualized use of restraint desks or other restraints shall cease, the Department shall review the placement of people in custody in non-individualized restraint during lockout every seven (7) days.~~ From the Effective Date of the Rule until the prohibition of non-individualized use of restraints beginning November 1, 2021, the Department must review, every seven (7) calendar days, the placement of people in custody in non-individualized restraint during lockout.
- (1) ~~At least twenty four (24) hours prior to such periodic review, people in custody shall be notified of the pending review in writing and of the (i) right to submit a written statement for consideration, and (ii) right to participate in the review. People in custody who are unable to read or understand such notice shall be provided with necessary assistance.~~ The Department must provide people in custody written notice at least twenty-four (24) hours prior to the periodic review. The notice must let the person know of their right to submit a written statement for consideration and their right to participate in the review. The Department must provide necessary assistance to a custody who is unable to read or understand the notice.
- (2) Periodic review of a person's placement in non-individualized restraint during lockout shall consider the following, with conclusions recorded in a written report made available to the person within two (2) calendar days of the review:
- A. ~~The justifications for continued placement of the person in a form of non-individualized restraint during lockout;~~ The reasons that justify the Department's continued use of non-individualized restraint during lockout for this person, if any;

- B. ~~The continued appropriateness of the person in a form of non-individualized restraint during lockout;~~ Whether the form of the non-individualized restraint during lockout remains appropriate, and any justifications;
  - C. Information regarding the person's subsequent behavior and attitude since placement of the person in a form of non-individualized restraint during lockout;
  - D. Any written statement the person submitted for consideration or any oral statement the person made at the person's periodic review;
  - E. Any other factors that may favor retaining the person or removing the person from non-individualized restraint during lockout; and
  - F. ~~If the person's placement in non-individualized restraint during lockout is to continue, any actions or behavioral changes that the person might undertake to further rehabilitative goals and facilitate the lifting of the placement in non-individualized restraint during lockout.~~ If the information set forth in the written review report justifies continued use of the non-individualized restraint during lockout, the Department must state specific actions or behavioral changes that the person can undertake to meet rehabilitative goals and eliminate the need for non-individualized restraint during lockout.
- (3) ~~At each periodic review, a person in custody shall advance out of the non-individualized use of restraints during lockout unless:~~ At each periodic review, the Department must eliminate the use of non-individualized restraints during lockout for that person, unless:
- A. The person has engaged in violent behavior in the previous seven (7) calendar days; or
  - B. There is credible intelligence that the person may engage in violence in a less restrictive level or housing unit.
- (4) The Department shall determine whether the person shall advance out of restraint desks or other form of non-individualized restraint within twenty-four (24) hours of the person's periodic review. If the Department determines that a person in custody should be moved out of restraint desks or other form of non-individualized restraint during lockout, the person shall be moved out of restraint desks or other form of non-individualized restraint during lockout within forty-eight (48) hours of such determination. If the person is not moved out of restraint desks or other form of non-individualized restraint during lockout within forty-eight (48) hours, the Department shall notify the Board, in writing, within forty-eight (48) hours of its decision. The notification shall include the reason the Department did not move the person out of restraint desk or other form of non-individualized restraint. [\[suggest rewording this provision to make clear how it interacts with \(3\) above, and](#)

condensing the language significantly. I am unclear as to the intended parameters of this provision, but here is one attempt: "The Department's determination on whether the person meets the criteria for continued use of non-individualized restraint during lockout must be made within twenty-four (24) hours of the periodic review of use of these restraints. If the Department determines that the criteria for continued use are not met, the Department must eliminate the use of non-individualized restraints during, including restraint desks, within forty-eight (48) hours. If it fails to do so, it must notify the Board in writing before the end of that forty-eight (48) hour period, and the notification must include the specific reasons and justifications that the Department did not eliminate this use for this person."

- (h) Restraints shall never be:
- (1) Applied as punishment or retaliation;
  - (2) Applied to the head or neck or in a manner that may restrict blood circulation or breathing;
  - (3) Used to pull or lead a person in custody;
  - (4) Used to cause unnecessary physical pain or discomfort;
  - (5) Used inside of a cell unless the cell is being used to hold more than one person in custody and restraints are the only way to ensure the safety of those held in the cell.
- (i) ~~CHA shall notify the Department in writing of people in custody who have functional needs or impairments that contraindicate the imposition of one or more permitted restraints. The Department shall consider this information before such individuals are escorted in restraints, transported in restraints, or otherwise subject to restraints.~~ The CHA must notify the Department of all persons in custody who have a functional need or condition that would make it inappropriate for the Department to use permitted restraints. The notice must be in writing, and the Department must consider this information before using restraints in each situation, including escort or transport.
- (j) A person in a wheelchair or a visually impaired person may be handcuffed only in front.
- (k) ~~People who are deaf, hearing impaired, or have impaired speech and communicate with hand gestures may be restrained under controlled conditions, and when it is determined safe to do so, in a manner that allows for communication without jeopardizing safety.~~ The Department may not use restraints on people in custody who are deaf or hearing impaired, or who have impaired speech and communicate with hand gestures, except in a manner that allows for communication without jeopardizing safety. [I have attempted to interpret the meaning and parameters of this provision but am not sure if I have done so correctly.]

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

#### § 6-28 Canines.

- (a) ~~The Department may use canines inside the secure perimeter of a facility only for searches.~~ Inside the secure perimeter of a facility, the Department may use canines only for searches.
- (b) ~~Canines may never be used to extract people in custody from their cells or otherwise as a use of force.~~ The Department may never use canines as a use of force, including to extract people in custody from their cells.
- (c) ~~Canines may never be used to harass, threaten or otherwise control people in custody.~~ The Department may never use canines to harass, threaten or otherwise control people in custody.
- (d) ~~Canines may not be stationed in restrictive housing units, including RMAS.~~ The Department may not station canines in restrictive housing units, including RMAS.

**Subchapter G: Variances**

**§ 6-29 Variances.**

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

**Effective Date.**

The standards in section 1 of this Rule shall take effect 6/15/2021.

**Implementation Dates.**

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

<b><u>SECTION</u></b>	<b><u>IMPLEMENTATION</u></b>
<b><u>§ 6-04: Pre-Hearing Detention</u></b> <u>(e) (Semiannual report on Prehearing Detention)</u>	<u>Within 8 months of Effective Date</u>
<b><u>§ 6-05: De-escalation Confinement</u></b> <u>(g) (time in de-escalation (6 hours), re-authorization (3 hours), notice to the Board if confinement exceeds 6 hours)</u>  <u>(c) (visual and aural observation of people in de-escalation confinement every 15 minutes)</u>  <u>(k) (Quarterly report on De-escalation)</u>	<u>Within 6 months of Effective Date</u>  <u>Within 3 months of Effective Date</u>  <u>Within 8 months of Effective Date</u>
<b><u>§ 6-06: Emergency Lock-Ins</u></b> <u>(e) (documentation of reasons for and objectives to be accomplished during emergency lock-ins)</u>  <u>(g) (CHS medical and mental health rounding in housing areas where emergency lock-ins have been in effect for more than 6 hours)</u>	<u>Within 3 months of Effective Date</u>

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

<b><u>SECTION</u></b>	<b><u>IMPLEMENTATION</u></b>
<u>(e) CHS monthly public reports</u>	<u>Within 1 month of RMAS Implementation</u>
<b><u>§ 6-23: Disciplinary System Plans</u></b>	<u>Within 3 months of the Effective Date</u>
<b><u>§ 6-24 Due Process and Procedural Justice</u></b> <u>(c)(6) (videotaping of refusals to sign notice of infraction)</u>  <u>(d)(5) (recording of refusal to attend hearing)</u>  <u>(i)(1) system to track due process requirements and documentation</u>  <u>(i)(2) Semiannual public report</u>	<u>November 1, 2021</u>     <u>Within 1 year of Effective Date</u>
<b><u>§ 6-25: RMAS Data Collection and Review</u></b> <u>(b) (system to track RMAS placements and RMAS documentation)</u>  <u>(c) (monthly public data reports)</u>  <u>(d) (monthly public reports)</u>	<u>Within 1 year of Effective Date</u>   <u>Within 1 month of RMAS implementation</u>  <u>Within 1 month of RMAS implementation</u>
<b><u>§ 6-26: Transition</u></b> <u>(b) (comprehensive transition plan)</u>  <u>(c) (monthly public progress reports)</u>	<u>Within 1 month of Effective Date</u>  <u>First business day of July 2021</u>
<b><u>§ 6-27: Restraints</u></b>  <u>(m) (Semiannual public report)</u>	<u>Within 1 year of Effective Date</u>