

Regulatory Impact Statement (RIS):

The New York State Commission of Correction ("Commission") seeks to renumber Chapters V, IV and III of Subtitle AA, renumber Part 7300 and sections 7300.1-7300.10, amend sections 7013.2(1)(2) and 7210.4(e), add a new Chapter III of Subtitle AA, and add Parts 7303 and 7304 of Title 9 NYCRR.

1.) Statutory authority:

Subdivision (6) of section 45 of the Correction Law authorizes the Commission to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all person confined in the correctional facilities of New York State.

Correction Law section 45(10) requires the Commission to approve or reject plans and specifications for the construction or improvement of correctional facilities. Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties. County Law section 218-a(6) requires specialized secure detention facilities for older youth to be regulated and certified by the Office of Children and Family Services (OCFS) in conjunction with the Commission.

2.) Legislative objectives:

By including specialized secure detention facilities for older youth within the Correction Law section 40(2) definition of "local correctional facility," the Legislature intended the Commission to promulgate regulations for the construction, renovation and certification of such facilities.

3.) Needs and Benefits:

On April 10, 2017, Governor Cuomo signed into law what is commonly known as “Raise the Age” legislation (Part WWW of Chapter 59 of the Laws of 2017), which generally serves to prohibit the detention of 16 and 17 year olds in adult jails and prisons, makes substantive changes to the procedures and mechanisms used to process 16 and 17 year old offenders in the criminal and youth justice systems, and allows for additional services for youth and alters the types of detention and/or placement they may receive.

Specifically, the legislation creates a new category of offender, known as an “adolescent offender,” defined as a person 16 years old (effective October 1, 2018) or 17 years old (effective October 1, 2019) at the time such person is alleged to have committed a felony offense. While an adolescent offender’s case is adjudicated in the Youth Part Court, he or she may be detained in the newly-created specialized secure juvenile detention facilities for older youth (SSDs). Per County Law §218-a(6), not every county will be required to operate a SSD, but all must have one available for use when necessary. In New York City, each SSD shall be operated by the Administration for Children’s Services in conjunction with the Department of Corrections. All SSDs statewide are required to be certified and regulated by OCFS in conjunction with the Commission. Additionally, SSDs were included in the Correction Law §40(2) definition of “local correctional facility,” necessitating that the Commission promulgate minimum standard regulations for such facilities pursuant to Correction Law §45(6), and approve or reject plans and specifications for their construction or improvement pursuant to Correction Law §45(10).

The legislation requires New York City to remove all 16 and 17 year old inmates from correctional facilities on Rikers Island and place them in SSDs by April 1, 2018 to the extent practicable, but in no event after October 1, 2018. For the remainder of the State, SSDs must be established, certified and operational before the legislation goes into effect for 16 year old adolescent offenders on October 1, 2018. Consequently, the proposed rulemaking is necessary to provide counties and the City of New York the direction by which to

obtain Commission approval for facility construction and renovation, as well as to apply for Commission certification.

4.) Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: Minimal.

As set forth above, Commission approval of all SSD facility construction and renovation, as well as Commission certification of any operational SSD, was required by the recent legislation. Otherwise, compliance with the proposed rule would result only in minimal costs associated with providing the Commission a copy of all construction and renovation plans for review, as well as administrative costs associated with preparing applications for certification.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The regulation does not apply to state agencies or governmental bodies. As set forth above in subdivision (a), any additional costs to local governments would be minimal.

c. This statement detailing the projected costs of the rule is based upon the Commission's oversight and experience relative to the operation and function of a local correctional facility.

5.) Local government mandates:

The regulation provides the framework by which counties and the City of New York can comply with the requirements of Correction Law and County Law that require Commission approval of all SSD facility construction and renovation, as well as Commission certification of any operational SSD.

6.) Paperwork:

As set forth above, counties and the City of New York would be required to provide the Commission a copy of all construction and renovation plans for review, as well as prepare applications for certification.

7.) Duplication:

The rule does not duplicate any existing State or Federal requirement.

8.) Alternatives:

Given the statutory requirements that the Commission approve of all SSD facility construction and renovation, as well as certify any operational SSD, the Commission did not see any alternative to promulgating regulations providing counties and the City of New York a procedure for compliance.

9.) Federal standards:

There are no applicable minimum standards of the federal government.

10.) Compliance schedule:

Each local jurisdiction is expected to be able to achieve compliance with the proposed rule immediately.