MEMORANDUM

TO: COMMISSION MEMBERS
FROM: Brian Callahan, Counsel
RE: AGENDA FOR COMMISSION MEETING
DATE: January 26, 2021 at 11:00AM
LOCATION: Alfred E. Smith Building, 80 So. Swan Street, 12th Floor, Albany, New York and Manatee, Florida.

I. MINUTES

SCOC
December 15, 2020 Commission Meeting
January 5, 2021 Supplemental Commission Meeting

CPCRC
January 14, 2021 Minutes

MRB
Administrative Closures

II. VARIANCES

A. Jefferson County Sheriff’s Office
Jefferson County Jail
21-V-01
Non-Contact Visits
Sections 7008.2(b) and 7008.3(c)

B. Sullivan County Sheriff’s Office
Sullivan County Jail
20-V-21
Non-Contact Visits
Sections 7008.2(b) and 7008.3(c)
C. Sullivan County Sheriff’s Office  
Sullivan County Jail  
21-V-02  
Correspondence  
Sections 7004.1 and 7004.3(a)

III. **CONSTRUCTION**

D. Jefferson County Sheriff’s Office  
Jefferson County Jail  
20-C-127  
Modification of Visiting Room

E. New York City Department of Correction  
Eric M. Taylor Center  
20-C-126  
Fencing Project

F. Sullivan County Sheriff’s Office  
Sullivan County Jail  
20-C-106  
Modification of Visiting Room

IV. **REGULATORY REVIEW**

G. Notice of Adoption  
9 NYCRR section 7006.9, *et al*  
Disciplinary and Administrative Segregation of Incarcerated Individuals in Special Housing
Chairman Riley called the meeting to order at 11:00 a.m.

PRESENT:
Allen Riley, Chairman
Thomas Loughren, Commissioner
Brian Callahan, Counsel
Terry Moran, Director of Operations
Keith Zobel, Deputy Director of Operations
Deborah Slack-Bean, Associate Attorney
Brielle Christian, Senior Attorney
Lloyd Robistow, Correctional Facility Specialist 1
Patricia Amati, Assistant to Chairman/Commissioner

LOCATION: Alfred E. Smith Building, 80 So. Swan Street, 12th Floor,
Albany, New York.

I. MINUTES

SCOC
November 17, 2020 Commission Meeting
Approved Unanimous
Loughren/Riley

CPCRC
December 10, 2020 Minutes
Approved Unanimous
Loughren/Riley

MRB
Administrative Closures
Approved Unanimous
Loughren/Riley
II. **VARIANCES**

A. **Albany County Sheriff’s Office**  
   Albany County Jail  
   19-V-09  
   Correspondence  
   Sections 7004.1 and 7004.3  

B. **Jefferson County Sheriff’s Office**  
   Jefferson County Jail  
   20-V-20  
   Correspondence  
   Sections 7004.1 and 7004.3  

C. **Monroe County Sheriff’s Office**  
   Monroe County Jail  
   20-V-06  
   Correspondence  
   Sections 7004.1 and 7004.3  

D. **Oswego County Sheriff’s Office**  
   Oswego County Jail  
   20-V-22  
   Correspondence  
   Sections 7004.1 and 7004.3  

E. **Orange County Sheriff’s Office**  
   Orange County Jail  
   20-V-24  
   Correspondence  
   Sections 7004.1 and 7004.3  

F. **Rockland County Sheriff’s Office**  
   Rockland County Jail  
   20-V-25  
   Correspondence  
   Sections 7004.1 and 7004.3  

G. **Schenectady County Sheriff’s Office**  
   Schenectady County Jail  
   20-V-29  
   Correspondence  
   Sections 7004.1 and 7004.3
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<th>Date</th>
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<td>7008.2(b) and 7008.3(c)</td>
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<td>April 1, 2021</td>
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<td>M.</td>
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<td>April 1, 2021</td>
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<td>7008.2(b) and 7008.3(c)</td>
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<td>April 1, 2021</td>
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<td>7008.2(b) and 7008.3(c)</td>
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O. Rockland County Sheriff’s Office  
Rockland County Jail  
20-V-09  
Non-Contact Visits  
Sections 7008.2(b) and 7008.3(c)  
Approved Unanimous  
April 1, 2021  
Loughren/Riley

P. Westchester County Department of Correction  
Westchester County Jail  
20-V-23  
Non-Contact Visits  
Sections 7008.2(b) and 7008.3(c)  
Approved Unanimous  
April 1, 2021  
Loughren/Riley

Q. Yates County Sheriff’s Office  
Yates County Jail  
20-V-10  
Non-Contact Visits  
Sections 7008.2(b) and 7008.3(c)  
Approved Unanimous  
April 1, 2021  
Loughren/Riley

R. Herkimer County Sheriff’s Office  
Herkimer County Jail  
06-V-05  
Exercise  
Section 7028.4  
Approved Unanimous  
April 1, 2021  
Loughren/Riley

S. Westchester County Department of Probation  
Woodfield Cottage  
19-V-08  
Housing  
Section 7320.4  
Approved Unanimous  
March 1, 2021  
Loughren/Riley

T. Beacon Police Department  
18-V-03  
Supervision of Female Prisoners  
Section 7504.1(e)  
Approved Unanimous  
January 1, 2022  
Loughren/Riley

U. Irondequoit Police Department  
19-V-11  
Supervision of Female Prisoners  
Section 7504.1(e)  
Approved Unanimous  
January 1, 2022  
Loughren/Riley
III. CONSTRUCTON

V. Monroe County Sheriff’s Office
   Monroe County Jail
   20-C-123
   Removal of the Mods
   Approved    Unanimous
   Loughren/Riley

W. Saratoga County Sheriff’s Office
   Saratoga County Jail
   20-C-117
   New Security Door
   Approved    Unanimous
   Loughren/Riley

X. Westchester County Department of Correction
   Westchester County Jail
   20-C-109
   Visiting Entrance
   Approved    Unanimous
   Loughren/Riley

Commissioner Loughren made a motion to go into executive session at 11:03 a.m. to discuss Variances, Construction and Medical Review Board items which was seconded by Chairman Riley.

Commissioner Loughren made a motion to exit Executive Session and return to general session at 11:33 a.m., which was seconded by Chairman Riley.

The meeting resumed at 11:34 a.m. Motion was made by Commissioner Loughren to ratify actions taken in Executive Session regarding Variances, Construction and Medical Review Board items, seconded by Chairman Riley. Commissioner Loughren made a motion to adjourn at 11:34 a.m. which was seconded by Chairman Riley.

Respectfully submitted,

Tricia Amati
Assistant to Chairman/Commissioner
EXECUTIVE SESSION

MINUTES
Commission Meeting

STATE COMMISSION OF CORRECTION
LOCATION:
Albany Location
80 S. Swan Street, 12th Floor
Albany, New York 12210

DATE OF MEETING: December 15, 2020

Chairman Riley called the meeting to order at 11:00 a.m.

PRESENT:
Allen Riley, Chairman
Thomas Loughren, Commissioner
Brian Callahan, Counsel
Terry Moran, Director of Operations
Keith Zobel, Deputy Director of Operations
Deborah Slack-Bean, Associate Attorney
Brielle Christian, Senior Attorney
Lloyd Robistow, Correctional Facility Specialist 1
Patricia Amati, Assistant to Chairman/Commissioner

LOCATION: Alfred E. Smith Building, 80 So. Swan Street, 12th Floor,
Albany, New York.

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Respectfully submitted,

Tricia Amati
Assistant to Chairman/Commissioner
MINUTES
“Supplemental” Commission Meeting

STATE COMMISSION OF CORRECTION
LOCATION(S):
Albany Location
80 S. Swan Street, 12th Floor
Albany, New York 12210
and
Manatee, Florida 34222

DATE OF MEETING: January 5, 2021

Chairman Riley called the meeting to order at 11:06 a.m.

PRESENT:
Allen Riley, Chairman
Thomas Loughren, Commissioner (Via WebEX)
Brian Callahan, Counsel
Deborah Slack-Bean, Associate Attorney
Terry Moran Director of Operations
Keith Zobel, Deputy Director of Operations
Patricia Amati, Assistant to Chairman/Commissioner

LOCATION: Alfred E. Smith Building, 80 So. Swan Street, 12th Floor,
Albany, NY and Manatee, Florida

I. MINUTES

A. MRB
December 3, 2020 Medical Review Board
Minutes

Approved Unanimous
Loughren/Riley

Commissioner Loughren made a motion to go into executive session at 11:06 a.m. to discuss Medical Review Board items which was seconded by Chairman Riley.

Commissioner Loughren made a motion to exit Executive Session and return to general session at 11:10 a.m., which was seconded by Chairman Riley.

The meeting resumed at 11:10 a.m. Motion was made by Commissioner Loughren to ratify actions taken in Executive Session regarding Variances, Maximum Facility
Capacity and Construction items, seconded by Chairman Riley. Commissioner Loughren made a motion to adjourn at 11:10 a.m. which was seconded by Chairman Riley.

Respectfully submitted,

Tricia Amati
Assistant to Chairman/Commissioner
CITIZENS’ POLICY AND COMPLAINT REVIEW COUBNCIL
January 14, 2021

NYS Commission of Correction
at
Alfred E. Smith Office Building
80 South Swan Street, 12th Floor
Albany, NY 12210
WEBEX CONFERENCE CALL

PRESENT:
Commissioner Loughren

Council Members:
Albany:
Tom Cross
Martin Stanton

Also Present:
Deborah Slack-Bean
Brielle Christian
E.L. Hamilton
Keith Zobel
Cynthia Allen
MarySusan Timpson
Chris Ost
Vicky Walker

Commissioner Loughren opened the meeting at 11:03 A.M.

Commissioner Loughren asked for a motion to ratify all actions taken at the December 10, 2020 meeting. Martin Stanton made a motion to ratify all actions taken on December 10, 2020. Tom Cross seconded. Carried. Commissioner Loughren asked for a motion to approve the minutes of the December 10, 2020 meeting. Martin Stanton made a motion to approve the minutes of the December 10, 2020 meeting. Tom Cross seconded. Carried.

Tom Cross, Martin Stanton, and Commissioner Loughren reviewed the Denied with Comment grievances for the month of January 2021. Tom Cross, and Martin Stanton made motions to Deny with the appropriate comment the grievances they reviewed. These motions were seconded by Martin Stanton, Tom Cross respectively, and unanimously passed. Upon the recommendation of Commissioner Loughren, Tom Cross made a motion to Deny with the appropriate comment the grievances that Commissioner Loughren reviewed. This motion was seconded by Martin Stanton, and unanimously passed.

Tom Cross, Martin Stanton, and Commissioner Loughren reviewed the Expedited grievances for the month January 2021. Tom Cross and Martin Stanton made motions to deny the grievances they reviewed. These motions were seconded by Martin Stanton and Tom Cross, respectively, and unanimously passed. Upon the recommendation of Commissioner Loughren, Tom Cross made a motion to Deny the grievances that Commissioner Loughren reviewed. This motion was seconded by Martin Stanton, and unanimously passed.
There were 13 Facility Responses that were reviewed for the month of January 2021. Martin Stanton made a motion to refer the Onondaga County Facility Responses for Grievance #117421, #115912, and Orleans Facility Responses to Grievance #115319 to the Commission for follow up. This motion was seconded by Tom Cross and unanimously passed.

The Council reviewed the remaining grievances.

**ACCEPT IN PART**

127295  
Cayuga CJ  
Unanimous

127914  
Clinton CJ  
Unanimous

**DENY**

128249  
128269  
128250  
Albany CJ  
Unanimous

128073  
Broome CJ  
Unanimous

128016  
127210  
127753  
127754  
Cattaraugus CJ  
Unanimous

127573  
127872  
127037  
127038  
127570  
126982  
127298  
127317  
127318  
127321  
Cayuga CJ  
Unanimous

127775  
127774  
127716  
Chautauqua CJ  
Unanimous

127130  
126945  
127719
Chenango CJ

Unanimous

Clinton CJ

Unanimous

Cortland CJ

Unanimous

Delaware CJ

Unanimous

Erie CF

Unanimous

Erie CJ

Unanimous

Jefferson CJ

Unanimous

Lewis CJ

Unanimous
Livingston CJ  Unanimous

Madison CJ  Unanimous

Monroe CJ  Unanimous

Montgomery CJ  Unanimous

Nassau CJ  Unanimous

Niagara CJ  Unanimous

Oneida CJ  Unanimous

Onondaga CD  Unanimous

Onondaga CJ  Unanimous

Ontario CJ  Unanimous
127536
128096
128097
128098
Orange CJ

126955
Otsego CJ

127829
127810
127915
Putnam CJ

127189
127215
Rensselaer CJ

127628
Rockland CJ

127521
127400
127990
128230
128231
128072
127420
127989
128071
127816
127522
127576
127814
127817
127815
127813
127812
St. Lawrence CJ

127214
127090
128020
Suffolk CJ

127438
127391
127155
127690
127691
127457

Unanimous
Sullivan CJ: Unanimous

Ulster CJ: Unanimous

Warren CJ: Unanimous
Wayne CJ  Unanimous

Westchester CJ  Unanimous

Wyoming CJ  Unanimous

Yates CJ  Unanimous

DENIED WITH COMMENT

Cayuga CJ  Unanimous

Chautauqua CJ  Unanimous

Chenango CJ  Unanimous
127749
127610
127611
127613
Clinton CJ

127154
128279
127157
Delaware CJ

127516
Erie CF

128270
126949
127289
Erie CJ

128092
128093
Genesee CJ

127769
Jefferson CJ

127049
127159
127162
128104
Livingston CJ

127589
Madison CJ

127789
127818
128109
127997
Monroe CJ

127310
128173
128100
128174
128175

Unanimous
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Sullivan CJ
Ulster CJ
Warren CJ
Wayne CJ
Westchester CJ

FACILITY RESPONSES REFERRED TO COMMISSION

Onondaga CJ
Orleans CJ
The next CPCRC meeting will be held on Thursday, February 11, 2021 at 11:00 A.M. via WebEx Telephone Conference.

Commissioner Loughren requested a motion to adjourn the meeting, which was made by Tom Cross, seconded by Martin Stanton, and carried. The meeting adjourned at 11:21 A.M.

Respectfully submitted,

Victoria Connors
Administrative Assistant
SUMMARY OF VARIANCE REQUEST
Due to the COVID 19 pandemic all visitation was cancelled. Requesting to modify visiting procedures to allow inmates the ability to visit with their family or loved ones.

VARIANCE HISTORY
NONE

CONSTRUCTION/RENOVATION PLANS
Have been submitted and will be addressed at this commission meeting

OTHER VARIANCES IN EFFECT
20-V-20 9 NYCRR 7004.3 (a)

STAFF INFORMATION AFTER SITE VISIT (DATE OF LAST VISIT TO FACILITY):

DATE OF LAST CYCLE VISIT THAT STANDARD VIOLATIONS WERE IDENTIFIED:
JULY 8-12, 2019

ANY OPEN MINIMUM STANDARD VIOLATIONS:
THERE WAS A RESPONSE ASSESSMENT BY THE COMMISION DATED 1/20/2020 WHERBY THE FACILITY SPECIALEST REVIEWED MANY ITEMS HOWEVER ITEMS REMAINED OPEN UNTIL A SITE VISIT COULD BE CONDUCTED.

NON OF THE VIOLATIONS RELATED TO VISITATION.

OTHER INFORMATION

ANY VIOLATIONS WHICH PERTAIN TO THE VARIANCE’S CONDITIONS:
NONE
JUSTIFICATION FOR WHY VARIANCE SHOULD OR SHOULD NOT BE EXTENDED:
RECOMMEND APPROVAL R CUTTITA

RECOMMENDED CONDITIONS IF APPROVED
This variance is approved with the following conditions:

1. Any and all visitation limitations requires the ongoing review and determination of the chief administrative officer pursuant to 9 NYCRR §7008.8;

2. Upon expiration of this variance, renovations made will be removed and the visiting area will be restored to its previous design within seven (7) days;

3. The facility shall maintain a sufficient supply of Personal Protective Equipment (PPE) for staff and incarcerated individuals as part as part of the visitation program;

4. The screening of all prospective visitors shall include search, taking of temperature, symptomology observations and questionnaire;

5. The exception to any one visitor limitation is for any person accompanying a visitor under eighteen (18);

6. Incarcerated individuals and visitors shall wear face coverings;

7. Social distancing (at least six feet apart) between visitors shall be maintained;

8. The visitation schedule and scheduling procedures shall be implemented;

9. Incarcerated individuals shall have equal access to visitation;

10. Visitation areas shall be disinfected in between sessions

REVIEWED BY REGIONAL SUPERVISOR: rcuttita DATE: 12/30/2020

REVIEWED BY DIRECTOR: T. Moran DATE: 1/6/21

COMMENTS BY DIRECTOR:

OFFICIAL USE ONLY:

NOTES OF MEETING:
TO: Alex Riley NYSCOC Chairman
FROM: Lt. Mark Wilson
RE: Variance Application for Visitation Room

FAX#: 518-485-2467
DATE: 12/15/2020
PAGES: 17

☐ Urgent ☐ For Review ☐ Please Comment ☒ Please Reply

NOTES:

Address all communications and make checks payable to the Sheriff of Jefferson County.
December 15, 2020

Alex Riley  
NYSCOC Chairman  
Alfred E. Smith State Office Bldg.  
80 S. Swan Street, 12th Floor  
Albany, NY 12210  

Re: Jail variance application seeking relief from regulations 9 NYCRR 7008.2(b) & 9 NYCRR 7008.3(c)  

Dear Mr. Riley,

The Jefferson County Correctional Facility acknowledges that 9 NYCRR 7008.2(b) requires that jail visiting areas be designed to allow physical contact between incarcerated individuals and their visitors. We further acknowledge regulation 9 NYCRR 7008.3(c), allows visitation with more than one visitor at the same time.

The Jefferson County Correctional Facility is submitting a variance application requesting relief from regulation 9 NYCRR 7008.2(b) and regulation 9 NYCRR 7008.3(c), and seeking permission to construct a temporary plexiglass barrier between the inmate and visitor as well as limit the visit to one visitor at a time.

The Jefferson County Correctional Facility is seeking this variance for when the COVID pandemic positive transmission rate is at an acceptable level from the advice of our Public Health personnel. The purpose of this renovation is intended as a temporary measure to increase visitation during the current pandemic, while maintaining the guidelines of the CDC and our local Public Health officials, for the health and safety of everyone. As per regulation 9 NYCRR 7008.8 all visitation limitations will be continually reviewed by the Jail’s Chief Administrative Officer.

Personnel from the Jefferson County Public Health office, came to the jail for a walk through of our visitation room. We discussed our renovation plan and they offered their advice to be able to conduct visits safely. Our Public Health personnel approved our policies and plans for the interim safety precautions and procedures for visitation.

We have confirmed that we have a sufficient supply of PPE for staff to safely conduct visitation as proposed, as well as sufficient funds to restore the visitation back to its previous design within seven days of the expiration or revocation of the variance.
The Jefferson County Correctional Facility agrees that upon expiration or revocation of the variance, any renovations to the visiting area will be removed and the visiting area will be restored to its previous design within seven days. We confirm that we will provide SCOC staff virtual access to the visitation area at any time upon request, for inspection of renovations and verification of restoration.

If you have any questions or concerns please don't hesitate to contact me. Thank you for your time.

Sincerely,

Lt. Mark Wilson
Facility Administrator
Jefferson County Correctional Facility
INSTRUCTIONS TO SHERIFF OR CHIEF ADMINISTRATIVE OFFICER:

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and mail or fax this form Attn: Chairman/ Commissioner to the address or fax number listed above.

Facility: ____________________________

Person requesting: ______________________
Lt. Mark Wilson ____________________________

(Sheriff/Chief Administrative Officer)

A. State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested: Example: 7040.3 states that, the total number of inmates confined within each correctional facility shall not exceed the maximum facility capacity of such facility. To request a variance to house additional inmates within the facility the citation should be listed as:

Ex. Part: 7040 Section: 3 Subdivision: n/a

Standard for which the variance is requested:

Part: 7008 Section: 2 Subdivision: b

B. In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. (Include or attach any relevant supporting documentation) We would like to renovate our visitation area as a temporary measure to facilitate visitation during the current pandemic.
C. In the space provided below include a detailed description regarding why this variance is necessary. (Include or attach any relevant supporting documentation.) This will help meet the guidelines set forth by the CDC, and our Public Health office to help prevent the spread of COVID-19, as it provides a barrier to stop the spread through a sneeze or cough. It is very important to take every measure to prevent one case of COVID-19 from entering the facility as it would be almost impossible to stop the spread to numerous other inmates or staff.

D. Provide the amount of time for which the variance is requested, if applicable:

   Days   ______  Weeks   ______  Months

E. Should this variance application be approved, please detail below any plans, provisions and timetables for achieving full compliance with the Minimum Standard regulation that is the subject of this application. (Use additional sheets to provide further information and supporting documentation).

   If the variance is approved, it would not take long for us to complete the requested renovation to the visitation area. The temporary renovation would then stay in place until the variance expired or was revoked. We would then restore the visitation area back to its previous design within seven days of the expiration or revocation of the variance.
F. If this variance request pertains to housing additional inmates, please provide the square footage for the potential housing areas affected (dayspace area, cells, gym, etc.) as well as the number of sinks, shower and toilets for that area. It is also necessary to include the current Maximum Facility Capacity (MFC) for the specific area listed in this application, along with the number of additional inmates (beyond the MFC rating) you are requesting to be housed in the specific area.

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<th>Dorms and Cells Sq. Ft.</th>
<th>Number of Sinks</th>
<th>Number of Showers</th>
<th>Number of Toilets</th>
<th>Current MFC</th>
<th>Requested Number of Variance Beds</th>
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(If additional space is required please make a copy of this sheet and attach)
G. Has this variance been previously approved by the Commission?

Yes _____ If yes, include the variance number ____________ No __X__

[Signature (Sheriff) (Chief Administrative Officer)] 10/15/2020

Additional copies of this form can be obtained by contacting the Commission, or online at www.scoc.ny.gov. Click on Table of Contents, Commission Forms, Request for a Variance (Formal application statement).

(SCOC Form #VA-CJ-1) (09/2018)
Name of Facility: Sullivan County Jail

<table>
<thead>
<tr>
<th>New</th>
<th>Renewal:</th>
<th>Relief from Standard:</th>
<th>Application by:</th>
<th>Date Request Rec:</th>
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<tr>
<td>X</td>
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<td>7008.2(b) 7008.3(c)</td>
<td>Sheriff Schiff</td>
<td>9/15/2020</td>
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<th>Last Approved:</th>
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Write-up Prepared by: Robert Cuttita

Recommendation by Field Staff: DENY

Recommendation at Briefing: DENY

Final Recommendation:

**SUMMARY OF VARIANCE REQUEST**

Due to the COVID 19 pandemic all visitation was cancelled. Requesting to modify visiting procedures to allow inmates the ability to visit with their family or loved ones.

**VARIANCE HISTORY**

New

**CONSTRUCTION/RENOVATION PLANS**

Have been submitted and will be addressed at this commission meeting

**OTHER VARIANCES IN EFFECT**

None

**STAFF INFORMATION AFTER SITE VISIT (DATE OF LAST VISIT TO FACILITY):**

**DATE OF LAST CYCLE VISIT THAT STANDARD VIOLATIONS WERE IDENTIFIED:**

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

**OTHER INFORMATION**

**ANY VIOLATIONS WHICH PERTAIN TO THE VARIANCE’S CONDITIONS:**

**JUSTIFICATION FOR WHY VARIANCE SHOULD OR SHOULD NOT BE EXTENDED:**

The health department review and approval was not submitted by the Sheriff’s Office. Policy and procedure was not submitted as well as the guarantee to remove the items after the Pandemic was over.

**RECOMMENDED CONDITIONS IF APPROVED**

REVIEWED BY REGIONAL SUPERVISOR: Robert Cuttita DATE: 1/13/21

REVIEWED BY DEPUTY DIRECTOR: Keith Zobel DATE:

COMMENTS BY DIRECTOR:

OFFICIAL USE ONLY:

NOTES OF MEETING:
September 15, 2020

Chairman Alan Riley

New York State Commission of Correction

Alfred E. Smith State Office Building
80 South Swan Street, 12th Floor
Albany, New York 12210

Dear Chairman Riley,

With the threat of COVID-19 still an issue we all must contend with, the Sullivan County Sheriff’s Office does realize the importance of the incarcerated individuals having the ability to maintain contact and relationships with family. Therefore, with respect to provisions of 9 NYCRR 7008.2(b), 7008.3(a), and 7008.3(c) my Office is respectfully requesting a variance with the conditions as follows:

Article 7008.2(b) allows for inmate and visitor to have physical contact during the visit —

Article 7008.3(a) entitles inmates to two hours of visitation per week — It is requested as part of the variance that inmates are entitled to one hour per week with each visit lasting a minimum of thirty minutes. This would allow inmates at least two visits per week versus potentially four thirty minute visit while also satisfying 7008.3(b).

Article 7008.3(c) permits for the inmate to visit with more than one visitor at a time — For the purpose of this variance it is requested the inmate be allowed to visit with one adult visitor and one child under the age of (18) as the maximum number of visitors.

In addition to these precautions the following conditions would also be put in place:
1. Personal protective equipment (PPE) will be made available and worn by staff, inmate and visitor at all times;
2. All visitors will be searched screened including taking of temperatures, staff observation of symptoms, and a questionnaire;
3. Social distancing between visitors will be maintained at all times;
4. All inmates shall have equal access time to visitation;
5. The visiting area will be disinfected between visits;
6. The jail will work closely with the County’s Public Health and take into consideration any recommendations they have in regards to visitation procedures.

In closing, during these unusual times the Sullivan County Sheriff’s Office is dedicated to providing a physically and mentally healthy environment for those incarcerated. One of the most effective ways to accomplish this is to provide a safe place for inmate and visitor to meet. If there are any other recommendations or considerations the Commission feels we have overlooked, we look forward to hearing from and working with you.

If there are any questions or issues concerning this request please have your staff reach out to my jail administration.

Sincerely,

[Signature]

Sheriff Michael A. Schiff
Sullivan County Sheriff’s Office
Name of Facility: Sullivan County Jail  
Variance #: 21-V-02

New: X  
Renewal:  
Relief from Standard: 7004.3(a)

Application by: Chief Harold Smith  
Date Request Rec: 1-14-21

Last Approved: NA  
Length of Approval: 5 Months  
Expiration: 7-1-20

Write-up Prepared by: Adam Tilbe CFS 1

Recommendation by Field Staff: Recommend approval until July 1, 2021.

Recommendation at Briefing: 

Final Recommendation: 

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SUMMARY OF VARIANCE REQUEST

As a solution, I am asking for a variance to allow facility staff to make photocopies of all incoming non-privileged correspondence along with the accompanying envelope. Please see attached documentation explaining our proposed policy.

RECOMMENDATION BY STAFF

It is recommended this variance be approved until July 1, 2021.

RECOMMENDED CONDITIONS IF APPROVED

Pursuant to this action, the following conditions shall apply:

1. Only non-privileged incoming correspondence and accompanying envelope may be photocopied and provided to the recipient prisoner. Incoming privileged correspondence shall be provided to the recipient prisoner and is not to be photocopied.

2. Incoming general and legal privileged correspondence shall be opened and inspected for contraband in the presence of the recipient prisoner. Outside the presence of recipient prisoner, the facility may use a drug detecting device to scan privileged correspondence for illicit drugs without opening the envelope. In instances where the envelope must be opened in order to perform such scan, the opening and scanning of the envelope and contents must occur only while in the presence of the recipient prisoner.

3. Approval of this variance does not relieve the facility from its duty to comply with United States Postal Services’ regulations and statutes.

4. Except for incoming non-general and legal privileged correspondence forwarded to the chief administrative officer, the facility shall make available correspondence for inmate view within one business day of delivery by the United States Postal Service.

5. The facility shall ensure that inmates are provided, at no cost, the opportunity to:
a. be provided with their original correspondence and enclosed contents (i.e., photos, cards, etc.), that are non-criminal in nature, immediately upon release/transfer from the facility; and

b. be permitted to designate a person(s) who may obtain such original correspondence from the facility.

6. The facility shall provide inmates the opportunity to have their original correspondence forwarded to a third party.

7. All relevant protocols concerning the photocopying of correspondence shall be included in the facility’s inmate rulebook. If the rulebook is not yet scheduled for reprinting, such information shall be posted conspicuously in all housing areas until such reprinting has been completed and issued.

8. Any costs associated with the correspondence photocopying program shall be borne by the facility and not through the use of commissary profits.

9. The facility ensures that all correspondence-related reportable incidents are submitted to the Commission in accordance with Part 7022, Reportable Incidents.

CONSTRUCTION/RENOVATION PLANS
NA

OTHER VARIANCES IN EFFECT
NA

STAFF INFORMATION AFTER SITE VISIT (DATE OF LAST VISIT TO FACILITY):

DATE OF LAST CYCLE VISIT THAT STANDARD VIOLATIONS WERE IDENTIFIED:
September 9-11, 2019

ANY OPEN MINIMUM STANDARD VIOLATIONS:
Section 7013.8(c) – Assignment to facility housing
Section 7013.9(a) – Classification review
Section 7013.13(a) - Quarterly classification report

ANY VIOLATIONS WHICH PERTAIN TO THE VARIANCE’S CONDITIONS:
NA

JUSTIFICATION FOR WHY VARIANCE SHOULD OR SHOULD NOT BE APPROVED/EXTENDED:

REVIEWED BY REGIONAL SUPERVISOR: Cuttita DATE 1/19/2021
OFFICIAL USE ONLY:

NOTES OF MEETING: _____
County Jail Variance Application Form

INSTRUCTIONS TO SHERIFF OR CHIEF ADMINISTRATIVE OFFICER:

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and mail or fax this form Attn: Chairman/Commissioner to the address or fax number listed above.

Facility: Sullivan County Jail

Person requesting: Chief Harold L. Smith Jr.

(Sheriff/Chief Administrative Officer)

A. State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested: Example: 7040.3 states that, the total number of inmates confined within each correctional facility shall not exceed the maximum facility capacity of such facility. To request a variance to house additional inmates within the facility the citation should be listed as:

Ex. Part: 7040 Section: 3 Subdivision: n/a

Standard for which the variance is requested:

Part: 7004 Section: 1&3 Subdivision: 3(a)

B. In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. (Include or attach any relevant supporting documentation)

As a solution, I am asking for a variance to allow facility staff to make photocopies of all incoming non-privileged correspondence along with the accompanying envelope. Please see attached documentation explaining our proposed policy.
C. In the space provided below include a detailed description regarding why this variance is necessary. (Include or attach any relevant supporting documentation.)

D. Provide the amount of time for which the variance is requested, if applicable:

   Days   Weeks   Months
   As long as the Commission will allow.

E. Should this variance application be approved, please detail below any plans, provisions and timetables for achieving full compliance with the Minimum Standard regulation that is the subject of this application. (Use additional sheets to provide further information and supporting documentation). See attached addendum to facility correspondence policy as well as original correspondence policy. If approved inmates will be advised by way of memorandum two weeks prior to taking effect unless the Commission requires a longer advanced notice. A copy of the inmate notification is attached, dates of course will be changed.
G. Has this variance been previously approved by the Commission? \( \checkmark \)

Yes _____ If yes, include the variance number ________________ No _____

[Signature] (Sheriff) (Chief Administrative Officer) 1/14/21 Date

Additional copies of this form can be obtained by contacting the Commission, or online at www.scoc.nv.gov. Click on Table of Contents, Commission Forms, Request for a Variance (Formal application statement).
Notice of Adoption

[X] This adoption will amend the NYCRR.
[ ] This adoption will not amend the NYCRR.

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice change in text

1. Action taken:
   Amendment of sections 7006.9(a)(5), 7013.2(h), 7013.6(a)(1), 7013.6(b), 7040.2, 7040.7(b), 7041.2(a)(4), 7070.2(c)(11), 7070.7(a), 7075.4(b), addition of sections 7075.2(h)-(j), 7075.4(g)-(k) of Title 9 NYCRR.

[ ] “X” box if the rule was originally proposed as a consensus rule making.

2. Effective date of rule:
   [X] Date this notice is published in the State Register.
   [ ] This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:
     [ ] Date of filing.
     [ ] Other date (specify): ______________
     [ ] Other date (specify): ______________
     [ ] _____ days after filing.

3. Statutory authority under which the rule was adopted:
   Correction Law sections 45(6) and 45(15).

4. Subject of the rule:
   Disciplinary and administrative segregation of inmates in special housing.

5. Purpose of the rule:
   Prohibit the segregation of vulnerable inmates, and to standardize allowable uses and duration of special housing segregation.
NOTICE OF ADOPTION (Rev. 1/17)

6. Terms and identification of rule:
A. I.D. No. of original notice of proposed or emergency/proposed rule making: CMC-35-19-00002 - P

B. Comparison of the proposed rule to the adopted rule (CHECK ALL THAT APPLY):

[ ] No changes were made to the proposed rule.
- Text/Summary does not need to be republished in the State Register. If the last previously published RIS, RFA, RAFA or JIS remain adequate and do not require correction, SKIP ITEMS 9-12 and do NOT attach any such statements. If any of the most recently published statements were deemed inadequate or required correction, complete item 9, 10, 11, or 12 as applicable, do NOT attach previously published statements. Be sure to complete C (if applicable), and D, as well as remaining items 7-8 and 13-14.

[ ] Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:
- Text/Summary is required to be republished in the State Register. Attach the original of the text as adopted (if proposed as full text, submit full text; if proposed as a summary, submit a summary) typed in scannable format. Do not skip Items 9-12; revised statements or explanatory statements are required.
  
  Text attached.
  Summary attached.

[ ] This is a "rate making" as defined in SAPA §102(2)(a)(ii) and, pursuant to SAPA §202(7)(b), the agency elected to submit an original copy of a description of the substance. Substantial revisions were made in the following Parts, sections, subdivisions or paragraphs:

C. List the publication date and I.D. No. of any previously published notice(s) of revised rule making:

  Publication date: _________________________, I.D. No. _________________________
  Publication date: _________________________, I.D. No. _________________________

D. Signed certification of adoption and full text of the rule are attached:

[ ] Signed certification of adoption (scanned pdf).
[ ] Full text of the rule (MS Word).

7. Text of the final rule and any required statements and analyses may be obtained from:

  Agency contact: Brielle Christian, Senior Attorney
  Agency name: New York State Commission of Correction
  Office address: Alfred E. Smith State Office Building
  80 S. Swan Street, 12th Floor, Albany, New York 12210
  Telephone: (518) 485-2346  E-mail: Brielle.Christian@scoc.ny.gov

8. Additional matter required by statute:

[ ] Yes (include below material required by statute).

[ ] No additional material required by statute.

9. Revised Regulatory Impact Statement (RIS)
(SELECT AND COMPLETE ONE. ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RIS contains:

[ ] The full text of the Revised RIS.
[ ] A summary of the Revised RIS.

B. A statement is attached explaining why a revised RIS is not required (check one box):

[ ] Changes made to the last published rule do not necessitate revision to the previously published RIS.
[ ] This is a technical amendment exempt from SAPA §202-a.
C. A revised RIS is not attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).

A revised RIS is not attached because this rule was proposed as a consensus rule as defined in SAPA §102(2)(a)(ii).

10. Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RFA contains:

[ ] The full text of the Revised RFA.

[ ] A summary of the Revised RFA.

B. A statement is attached explaining why a revised RFA is not required (check one box):

[ ] Changes made to the last published rule do not necessitate revision to the previously published RFA.

[ ] The changes will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The attached statement sets forth this agency’s findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.

C. A revised RFA is not attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).

A revised RFA is not attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

11. Revised Rural Area Flexibility Analysis (RAFA)
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RAFA contains:

[ ] The full text of the Revised RAFA.

[ ] A summary of the Revised RAFA.

B. A statement is attached explaining why a revised RAFA is not required (check one box):

[ ] Changes made to the last published rule do not necessitate revision to the previously published RAFA.

[ ] The changes will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The attached statement sets forth this agency’s findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.

C. A revised RAFA is not attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).

A revised RAFA is not attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

12. Revised Job Impact Statement (JIS)
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised JIS contains:

[ ] The full text of the Revised JIS.

[ ] A summary of the Revised JIS.

B. A statement is attached explaining why a revised JIS is not required (check one box):

[ ] Changes made to the last published rule do not necessitate revision to the previously published JIS.

[ ] The changes will not impose a substantial impact on jobs and employment opportunities. The attached statement sets forth this agency’s findings that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

C. A revised JIS is not attached because:

[ ] This rule is a "rate making" as defined in SAPA §102(2)(a)(ii).

[ ] This rule was proposed by the State Comptroller or Attorney General.
13. **Assessment of Public Comment** *(includes legislative comments)*

**(COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):**

- [x] Attached is an assessment of public comment.
  
  No particular form is required, and it need only include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.

- [ ] An assessment is not attached because no comments were received.

- [ ] An assessment is not required because this action is for a "rate making" as defined in SAPA §102(2) (a)(ii).

14. **Referenced material (check one box):**

- [x] No information is being incorporated by reference in this rule.

- [ ] This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

15. **Initial Review of Rule** *(SAPA §207)*

**(SELECT AND COMPLETE ONE)**

- A. [ ] As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year which is no later than the 3rd year after the year in which this rule is being adopted.

- B. [ ] As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

  - Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period;
  
  or

  - An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

- C. [x] As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year **2026**, which is no later than the 5th year after the year in which this rule is being adopted.

- D. [ ] Not Applicable. This is a "rate making" or a "consensus rule," or a repeal of a rule.
AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name  Brian M. Callahan

Signature

Address  NYS Commission of Correction, 80 S. Swan Street, Albany, New York 12210

Telephone  (518) 485-2346

E-mail  Brian.Callahan@scoc.ny.gov

Date  01/26/2021

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State’s Register procedures manual, Rule Making in New York.

2. Rule making notices, with any necessary attachments (in MS Word unless otherwise specified), should be e-filed via the Department of State website.
Paragraph (5) of subdivision (a) of section 7006.9 of Title 9 is amended to read as follows:

(5) confinement to a cell, room, or in special housing, as that term is defined in section 7013.2(h) of this Title, for a period consistent with the facility rules of inmate conduct for the particular offense(s), subject to the provisions of section 7075.4 of this Title, provided that:

(i) no incarcerated individual known by security, health or mental health personnel to be pregnant, within eight (8) weeks of delivery or pregnancy outcome, having a mental or physical disability, or having a serious mental illness shall be confined in special housing;

(ii) an incarcerated individual shall only be sanctioned to confinement in special housing for behavior that violates rules of inmate conduct and poses an unreasonable risk to the health, safety or security of staff, incarcerated individuals, or facility security by: causing or attempting to cause injury or death to another person or making a credible threat of such injury or death; engaging in a sexual act, or compelling or attempting to compel another person to engage in a sexual act; coercing another, by force or threat of force, to violate any rule; leading, organizing, inciting, or attempting to cause a riot, insurrection, strike, or other serious disturbance that may result in physical harm to another person, significant property damage or significant interference with facility operations; procuring, possessing, brandishing or using a weapon that poses a threat to the health, safety, or security of staff, incarcerated individuals, or security of the facility; procuring, possessing, using or distributing dangerous contraband that poses a threat to the health, safety, or security of staff, incarcerated individuals, or security of the facility; escaping, attempting to escape or facilitating an escape from a facility, or absconding or attempting to abscond outside of a facility, or; engaging in conduct constituting a felony under the Penal Law; and
(iii) no incarcerated individual shall be sanctioned to confinement in special housing for longer than necessary and; effective on and after April 1, 2021, for no more than ninety (90) days; effective on and after October 1, 2021, for no more than sixty (60) days and; effective on and after April 1, 2022, for no more than thirty (30) days;

Subdivision (h) of section 7013.2 of Title 9 is amended to read as follows:

(h) Special housing shall [include, but not be limited to: admissions/orientation housing; medical/mental health observation; and] mean any incarcerated individual housing area, or subdivision thereof, used principally for punitive or administrative segregation.

Paragraph (1) of subdivision (a) of section 7013.6 of Title 9 is amended to read as follows:

(1) special housing [as defined in section 7013.2(h) of this Part], admissions/orientation housing, and medical/mental health observation, provided minors and adults are separately grouped to prevent access between such classification categories;

Subdivision (b) of section 7013.6 of Title 9 is amended to read as follows:

(b) Males and females shall not be commingled in areas designated as special housing, admissions/orientation housing, or medical/mental health observation [as defined in section 7013.2(h) of this Part].

Section 7040.2 of Title 9 is amended to read as follows:
As used in this Part, the [term] following definitions shall apply to the terms listed below:

(a) *Maximum facility capacity* shall mean the greatest number of [inmates] *incarcerated individuals* that may be confined at one time within each correctional facility, as formulated by the commission pursuant to the requirements of this Part.

(b) *Special housing* shall have the same meaning as defined in section 7013.2(h) of this Title.

Subdivision (b) of section 7040.7 of Title 9 is amended to read as follows:

(b) In formulating the maximum facility capacity of a facility, the commission shall determine the maximum number of [inmates] *incarcerated individuals* that can be housed in each individual and multiple occupancy housing unit pursuant to the requirements of this Part. Such determination shall be based on the following:

1. the number of properly equipped individual occupancy housing units, including the number of properly equipped individual occupancy housing units in housing areas designated for admissions/orientation, medical and mental health observation, and [any other] special housing [units];

2. the number of properly equipped multiple occupancy housing units, including the number of properly equipped multiple occupancy housing units in housing areas designated for admissions/orientation, medical and mental health observation, and [any other] special housing [units]; and

3. the facility's ability to provide required programs and services and to comply with other rules and regulations of this Chapter which are related to facility capacity.

Paragraph (4) of subdivision (a) of section 7041.2 of Title 9 is amended to read as follows:

(4) special housing, admissions/orientation housing, and medical/mental health observation [area] supervision;
Paragraph (11) of subdivision (c) of section 7070.3 of Title 9 is amended to read as follows:

(11) pursuant to the requirements of section 7070.7(a) and (b) of this Part, provision of educational services to eligible youth confined in special housing, admissions/orientation housing, and medical/mental health observation units; and

Subdivision (a) of section 7070.7 of Title 9 is amended to read as follows:

(a) Eligible youth confined in special housing, admissions/orientation housing, and medical/mental health observation units shall not be denied access to educational services solely on the basis of their classification status.

A new subdivision (h) of section 7075.2 of Title 9 is added to read as follows:

(h) *Administrative segregation* shall mean any segregation, as defined in subdivision (e) of this section, that does not constitute a disciplinary sanction, imposed pursuant to section 7006.9 of this Title, or segregation pending a disciplinary hearing, ordered pursuant to section 7006.7 of this Title.

A new subdivision (i) of section 7075.2 of Title 9 is added to read as follows:

(i) *Administratively segregated incarcerated individual* shall mean any incarcerated individual subject to administrative segregation.
A new subdivision (j) of section 7075.2 of Title 9 is added to read as follows:

(j) Special housing shall have the same meaning as defined in section 7013.2(h) of this Title.

Subdivision (b) of section 7075.4 is amended to read as follows:

(b) Absent exigent circumstances, no [inmate] incarcerated individual shall be confined in any housing unit, cell, room or other area of the facility that is not listed as appropriate housing on the maximum facility capacity formulation, issued by the commission pursuant to section 7040.7 of this Part. Additionally, no facility shall operate an incarcerated individual housing area, or subdivision thereof, for special housing unless it is specifically designated for such use on the maximum facility capacity formulation, issued by the commission pursuant to section 7040.7 of this Part.

New subdivisions (g), (h), (i), (j) and (k) of section 7075.4 of Title 9 are added to read as follows:

(g) No administratively segregated incarcerated individual known by security, health or mental health personnel to be pregnant, within eight (8) weeks of delivery or pregnancy outcome, having a mental or physical disability, or having a serious mental illness shall be confined in special housing.

(h) An administratively segregated incarcerated individual shall only be confined in special housing upon a determination of the chief administrative officer that such incarcerated individual’s presence in the facility’s general housing would pose an unreasonable and demonstrable risk to the safety and security of staff, incarcerated individuals, the facility, or would present an unreasonable risk of escape. Any such determination
shall be made by the chief administrative officer in writing, and shall state the specific facts and reasons underlying the determination.

(i) Except as authorized by subdivision (j) of this section, no incarcerated individual shall be subject to segregation in special housing for longer than necessary and, for any six (6) month period; effective on and after April 1, 2021, for no more than ninety (90) days; effective on and after October 1, 2021, for no more than sixty (60) days and; effective on and after April 1, 2022, for no more than thirty (30) days.

(j) A segregated incarcerated individual may be confined to special housing, in excess of the limitations set forth in subdivision (i) of this section, only upon a determination of the chief administrative officer that the incarcerated individual poses an immediate or continuing unacceptable threat to the safety of staff or other incarcerated individuals or to the security of the facility. Any such determination shall be made by the chief administrative officer in writing, and shall state the specific facts and reasons underlying the determination.

(k) Any determination made pursuant to subdivision (j) of this section shall be reviewed by the chief administrative officer at intervals not to exceed seven (7) days. Every review conducted by the chief administrative officer pursuant to this subdivision shall include consultation with the jail physician, facility medical director, or other qualified facility health staff who shall record, in writing, any determination that continuing the confinement in special housing would risk significantly compromising the health of the incarcerated individual. Following each such review, the chief administrative officer shall record, in writing, whether such determination shall continue or cease, and state the specific facts and reasons underlying the continuance or termination. Absent exigent circumstances, the chief administrative officer shall not continue confinement in special housing if the qualified jail physician, facility medical director, or other knowledgeable facility health staff determines that doing so would risk significantly compromising the health of the incarcerated individual.
Assessment of Public Comment

The New York State Commission of Correction (hereinafter “Commission”) received formal comments from members of the public, advocacy groups, elected officials, and representatives providing correctional health services.

A preponderance of the comments received expressed the same opinion, that the proposed regulations are inadequate as compared to the provisions of the previously-proposed Humane Alternatives to Long-Term (HALT) Solitary Confinement Act, that establishes a maximum of 15 consecutive days in solitary confinement, prohibits the use of solitary confinement for incarcerated individuals 21 and younger, and requires congregate programming for out-of-cell time. The Commission was urged to reformulate the regulations to mirror, and that the New York State Legislature should adopt, the HALT Act. Specifically, comments received wanted the proposed regulations to limit the circumstances in which solitary confinement can be imposed, limit the amount of time that may be spent in solitary confinement, establish a public reporting requirement, prohibit restricting diets as a form of punishment, speed up the proposed implementation timeline for limiting solitary confinement, and protect vulnerable age groups from solitary confinement.

Correction Law section 137(6), applicable to local correctional facilities by means of Correction Law section 500-k, permits correction officials to “keep any inmate confined in a cell or room … for such period as may be necessary for maintenance of order or discipline.” The New York State Court of Appeals has held that the Correction Law thus gives correction officials “broad discretion in the formulation and implementation of policies relating to security and to the disciplining of inmates [emphasis added].” Arteaga v. State, 72 N.Y.2d 212, 217 (1988); see also Allah v. Coughlin, 190 A.D.2d 233, 236 (3d. Dept. 1993).

While Correction Law section 45(6) provides the authority to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision and discipline of incarcerated individuals in local correctional facilities, the Commission must also consider that such regulations shall apply
equally to each facility throughout the state. Presently, the jails of 62% of upstate counties have less than 200 beds, and 40% of upstate counties have less than 150 beds. Unlike state prisons, many local county jails, particularly the small upstate jails, do not have a sufficient number of separate and distinct housing units to establish residential rehabilitation units, or other separate forms of incarcerated individual housing necessary to comport with the confinement restrictions set forth in the proposed HALT Act. Similarly, county jails differ greatly from state prisons with respect to the frequency of incarcerated individual admissions and discharges, criminal court appearances and transport, family and counsel visitation, emergency hospital transports, etc., making the regular and sustained incarcerated individual programming required by the proposed HALT Act impracticable. Nevertheless, it is the goal of the Commission, in promulgating the present regulations, to limit the use of cell confinement in special housing units to only those instances required to preserve the safety and security of the facility and its staff and incarcerated individuals.

Some commenters expressed concern that these regulations did not limit back-to-back sanctions of solitary confinement, did not cap the cumulative use of isolation, and did not go far enough in limiting the amount of time that could be spent in solitary. Similarly, many commenters believed the regulations granted the chief administrative officer “unchecked discretion” in extending periods of confinement. However, the proposed regulations provide that no incarcerated individual shall be subject to segregation in special housing for longer than necessary and for any six month period, effective on and after April 1, 2021 for no more than 90 days, effective on and after October 1, 2021, for no more than 60 days, and effective on and after April 1, 2022 for no more than 30 days, absent “an immediate or continuing unacceptable threat to the safety of staff or other incarcerated individuals or to the security of the facility.” Additionally, it is the Commission’s intention, by adopting the regulations, to ensure that determinations to confine incarcerated individuals to special housing are justified and documented, reviewed on a timely basis to assess if continuation is warranted, and reported to the
Commission. Thereafter, the Commission’s ability to monitor and oversee such confinement will be sufficient to identify and investigate potential abuses.

Commenters also asked the Commission to limit all administrative segregation, limit the use of keeplock and prevent administrative segregation from being used for protective custody purposes. On June 5, 2019, the Commission’s regulations governing incarcerated individual’s cell confinement and essential service deprivation became effective. Those regulations focused on limiting both disciplinary and administrative segregation to the least amount of time necessary to maintain the safety, security and good order of the facility.

Several commenters bemoaned the lack of regulation to provide for required programming of confined incarcerated individuals during their “out-of-cell” time. Likewise, a few commenters suggested that the state should implement alternatives to solitary confinement, with one commenter suggesting a program like the Resolve to Stop the Violence Project (RSVP) in San Francisco jails, which “immerses residents in an intensive program including most of the day out-of-cell, group discussions, classes, counseling, and meetings with victims of violence.” For the reasons noted above with respect to the proposed HALT Act legislation, such a requirement is currently impracticable.

A handful of commenters stated that the proposed regulations do not create transparency and oversight. One commenter suggested that in order to address this, the Commission “should post reporting data on its website, assess local correctional facilities’ implementation of the regulations, and report on its findings.” The Commission provides oversight as it currently evaluates, investigates, and oversees correctional facilities to ensure they are meeting the minimum standards created by the Commission. As these proposed regulations are implemented, the Commission will continue to ensure that each facility meets the minimum standard created and the mission of the Commission to provide for a safe, stable and humane correctional system is carried out. The Commission also issues an annual report, available on our website, that identifies which minimum standards are assessed by the Commission each year.
Commenters also requested that correctional staff receive training on identifying signs of mental health decompensation and on guidelines for when a mental health referral is warranted. Per Executive Law §837-a, the responsibility for the administration of training programs for local correction officers is assigned to the Division of Criminal Justice Services, Municipal Police Training Council and Office of Public Safety. In addition, one commenter requested that medical and mental health assessments be completed prior to segregation and then regularly during periods of segregation in order to ascertain if an individual should be excluded from segregation due to mental illness. Currently, the Correction Law and Commission regulations require any incarcerated individual confined to a cell, after a 24-hour period, to be visited and assessed daily by a qualified medical professional.

One commenter asked the Commission to adopt a clear definition for “a mental or physical disability” or “a serious mental illness,” as they believed without such definition corrections staff will not correctly identify these populations. The proposed regulations were drafted to allow qualified health staff at each facility to determine which individuals have a mental or physical disability or a serious mental illness.

Received comments from representatives providing correctional health services noted two main concerns, that “healthcare providers participating in decisions concerning the penalty process of an inmate is against medical ethical opinions” and that “healthcare practitioners are not able to predict the effects and outcomes of solitary confinement on any individual and may face potential liability by participating in the process. This action would potentially result in the medical staff determining the housing and safety status of an inmate.” As drafted, while the regulation requires consultation with qualified health staff, the determination to continue or cease confinement is made by the facility’s chief administrative officer; therefore, the healthcare professional is not determining the housing or safety status of the incarcerated individual.

Lastly, one correctional health service provider also commented that “local health departments providing jail medical services were not given the opportunity to provide input before these regulations were implemented.”
As published, the Notice of Proposed Rulemaking invited public comment from August 28, 2019 to October 27, 2019 and was open to any member of the public, including local health departments, to provide comment.