



# Commission of Correction

**ALLEN RILEY**  
Chairman

**THOMAS J. LOUGHREN**  
Commissioner

**YOLANDA CANTY**  
Commissioner

## MEMORANDUM

**TO:** COMMISSION MEMBERS

**FROM:** Brian Callahan, General Counsel 

**RE:** AGENDA FOR SUPPLEMENTAL COMMISSION MEETING

**DATE:** March 21, 2022 at **10:00AM**

**LOCATION:** Alfred E. Smith Building, 80 So. Swan Street, 12<sup>th</sup> Floor,  
Albany, New York.

**Note:** In the interest of public health and as authorized by Chapter 1 of the Laws of 2022, members of the public are currently prohibited from attending in person. The meeting will be live streamed at:  
<https://scoc.ny.gov/commissionmeetings.htm>

### I. REGULATION

- A. Notice of Emergency Adoption and Proposed Rulemaking  
9 NYCRR section 7000.1, et al  
Minimum standards for the imposition of segregated confinement  
and the operation of RRUs in jails.**

# Notice of Emergency Adoption and Proposed Rule Making

Correction, State Commission of  
(SUBMITTING AGENCY)

- Approval has been granted by Executive Chamber to propose this rule making.
- This rule making does not require Executive Chamber approval.
- This adoption will amend the NYCRR.
- This adoption will not amend the NYCRR.

**NOTE: THIS FORM CANNOT BE USED FOR A CONSENSUS RULE MAKING.**

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.

1. A. Proposed action:

Addition of	sections 7001.1(f),7005.2(c),Parts 7076 & 7077 of	Title <u>9</u>	NYCRR
Amendment of	sections 7003.3(j)(6),7006.1,7006.7(a),7006.8 of	Title <u>9</u>	NYCRR
Amendment of	sections 7006.9(a)(5),7017.1,7028.2(d) of	Title <u>9</u>	NYCRR
Amendment of	sections 7075.1,7075.2,7075.3,7075.4,7075.5 of	Title <u>9</u>	NYCRR
_____	_____	Title _____	NYCRR
_____	_____	Title _____	NYCRR

2. Effective date of emergency rule:

- Date of filing.
- Other date (specify): 03/31/2022

3. History of emergency actions:

- This is the first time this emergency rule has been adopted.
- This is the first re-adoption of an emergency rule printed in the *State Register* on \_\_\_\_\_ under I.D. No. \_\_\_\_\_.

4. Statutory authority under which the rule was adopted:

Correction Law section 45(6) and (15).

5. This emergency rule is necessary for the preservation of:

- public health
- public safety
- general welfare

6. The specific reasons underlying the finding of necessity, above, are as follows:

7. *Subject of the rule:*  
 Segregated confinement.

8. *Purpose of the rule:*  
 Set minimum standards for the imposition of segregated confinement and the operation of RRUs in jails.

9. *Public hearings* (check box and complete as applicable):

- A public hearing is not scheduled. (*SKIP TO ITEM 12*)
- A public hearing is required by law and is scheduled below. (**Note:** first hearing date must be at least 60 days **after** publication of this notice unless a different time is specified in statute.)
- A public hearing is not required by law, but is scheduled below.

Time:	Date:	Location:

10. *Interpreter services* (check only if a public hearing is scheduled):

Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

11. *Accessibility* (check appropriate box only if a public hearing is scheduled):

- All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.
- Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

12. *Terms of rule* (SELECT A, B **or** C. Item D is required.):

- A.  The full text of the rule is attached because it does not exceed 2,000 words.
- B.  A summary of the rule is attached because the full text of the rule exceeds 2,000 words.
  - Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:  
 www.scoc.ny.gov
- C.  Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making]. Web posting of full text of such rule is not required [SAPA §202(1)(a)].
- 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).

13. *Emergency expiration date* (A first emergency rule is effective and enforceable for up to 90 days from the **date of filing**. Second and subsequent emergency rules are effective and enforceable for up to 60 days from their **date of filing** UNLESS the agency specifies an earlier date). This rule expires:

- 90 days after filing
- 60 days after filing
- Other (*specify date*): \_\_\_\_\_ .

14. Proposed expiration date (check only if applicable):

- This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102 (2)(a)(ii).

15. The text of the final rule and any required statements and analyses may be obtained from:

<i>Agency contact</i>	Deborah Slack-Bean, Associate Attorney		
<i>Agency name</i>	New York State Commission of Correction		
<i>Office address</i>	Alfred E. Smith State Office Building		
	80 S. Swan Street, 12th Floor, Albany, New York 12210		
<i>Telephone</i>	(518) 485-2346	<i>E-mail</i>	Deborah.Slack-Bean@scoc.ny.gov

16. *Submit data, views or arguments to* (complete only if different than previously named agency contact):

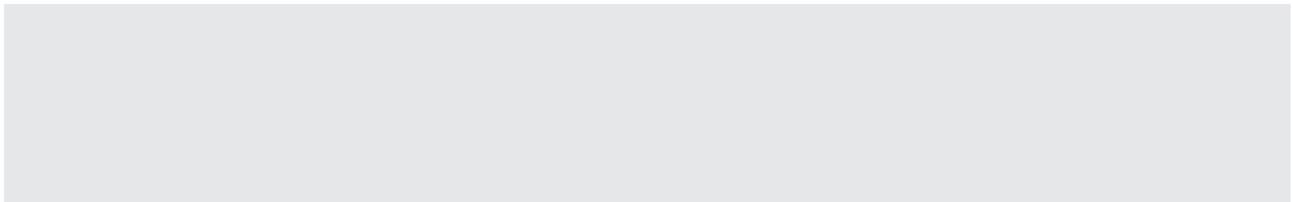
<i>Agency contact</i>	_____		
<i>Agency name</i>	_____		
<i>Office address</i>	_____		
	_____		
<i>Telephone</i>	_____	<i>E-mail</i>	_____

17. *Public comment will be received until:*

- 60 days after publication of this notice (MINIMUM public comment period).
- 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing).
- Other: (*specify*) \_\_\_\_\_ .

18. *Additional matter required by statute:*

- YES (include below material required by statute).



- NO additional material required by statute.

19. *Regulatory Agenda* [see SAPA §202-d(1)]:

- This action was a Regulatory Agenda item in the following issue of the *State Register*: \_\_\_\_\_ .
- This action was not under consideration at the time this agency's Regulatory Agenda was submitted for publication in the *Register*.
- Not applicable.

**20. Regulatory Impact Statement (RIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits])

A. The attached RIS contains:

The full text of the RIS.

A summary of the RIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not** attached:

because this rule is subject to a consolidated RIS printed in the *Register* under I.D. No.: \_\_\_\_\_; issue date: \_\_\_\_\_.

because this rule is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

but will be published in the *Register* within 30 days of the rule's effective date.

C.  A **statement is attached** claiming exemption pursuant to SAPA §202-a (technical amendment).

**21. 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 RFA contains:

The full text of the RFA.

A summary of the RFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RFA, because this rule is one of a series of closely related rules.

B.  A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

C. A RFA is **not attached**:

because this rule is subject to a consolidated RFA printed in the *Register* under I.D. No.: \_\_\_\_\_; issue date: \_\_\_\_\_.

because this rule is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

but will be published in the *Register* within 30 days of the rule's effective date.

**22. Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached RAFA contains:

 The full text of the RAFA. A summary of the RAFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

 A consolidated RAFA, because this rule is one of a series of closely related rules.

B.  A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.

C. A RAFA is **not attached**: because this rule is subject to a consolidated RAFA printed in the *Register* under I.D. No.: \_\_\_\_\_ - \_\_\_\_\_ ; issue date: \_\_\_\_\_ . because this rule is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. but will be published in the *Register* within 30 days of the rule's effective date.**23. Job Impact Statement (JIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached JIS contains:

 The full text of the JIS. A summary of the JIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

 A consolidated JIS, because this rule is one of a series of closely related rules.

B.  A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and 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.

 A JIS/Request for Assistance is submitted with this notice.C. A JIS is **not attached** : because this rule is subject to a consolidated JIS printed in the *Register* under I.D. No.: \_\_\_\_\_ - \_\_\_\_\_ ; issue date: \_\_\_\_\_ . because this rule is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. because this rule was proposed by the State Comptroller or Attorney General. but will be published in the *Register* within 30 days of the rule's effective date.

24. Referenced material:

- No information is being incorporated by reference in this rule making.
- This rule making contains referenced material in the following Parts, sections, subdivisions, or paragraphs:


**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 03/21/2022

**Please read before submitting this notice:**

Reset Form

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.

## Finding of Necessity:

On March 31, 2021, Governor Cuomo signed into law what is commonly known as the Humane Alternatives to Long-Term Solitary Confinement (HALT) Act (Chapter 93 of the Laws of 2021), which generally serves to restrict the use of segregated confinement in state and local correctional facilities, while creating alternative therapeutic and rehabilitative confinement options.

The legislation places strict limitations on a local correctional facility's use of segregated confinement, which is defined as the confinement of an incarcerated individual to a cell in excess of 17 hours per day, with limited exceptions. The segregated confinement of incarcerated individuals 21 years of age and younger, 55 years of age or older, disabled or pregnant is prohibited. Out-of-cell programming must generally be offered to individuals in segregated confinement at least 4 hours per day, and at least 6 hours per day for individuals confined in residential rehabilitation units, utilized by large facilities for incarcerated individuals who have reached the time limitations of segregated confinement.

The HALT Act imposes numerous and precise requirements on the conditions, programming, duration and reporting of a local correctional facility's use of segregated confinement and operation of a residential rehabilitation unit. Consequently, the proposed rulemaking is immediately necessary to conform with the enactment of the HALT Act and to provide local governments with the rules necessary to comply with the legislation.

For the aforementioned reasons, SCOC finds that immediate adoption of the rule is necessary for the preservation of public safety and general welfare, and that compliance with the rulemaking procedures set forth in State Administrative Procedure Act section 202(1) would be contrary to the public interest. By immediately adopting these regulations, SCOC will be able to ensure that the incarcerated individuals of local correctional facilities are not subject to segregated confinement or confinement to a residential rehabilitation unit in

violation of the requirements of the HALT Act. Given the upcoming statutory deadline, emergency adoption is needed to require timely compliance with the legislation. Thus, SCOC finds that the regulation must be adopted and implemented effective March 31, 2022 on an emergency basis, and compliance with the minimum periods of notice, public comment and other requirements of State Administrative Procedure Act section 202(1) would be contrary to the public interest.

Text:

A new subdivision (f) of section 7000.1 of Title 9 is added to read as follows:

(f) On or before the first day of February of each year, each sheriff, superintendent, commissioner, or other officer in charge of a local correctional facility shall submit a report to the Commission of Correction detailing all aspects of segregated confinement and residential rehabilitation units occurring in the facility during the preceding calendar year. Such report shall be submitted in a form and manner prescribed by the Chair of the Commission.

Paragraph (6) of subdivision (j) of section 7003.3 of Title 9 is amended to read as follows:

(6) any significant events and activities occurring during supervision, including:

- (i) the date and time of such event or problem;
- (ii) the names of all [prisoners]incarcerated individuals and/or staff involved;
- (iii) facility staff response to such event or problem, including a summary of what occurred;
- (iv) a description of the condition of any [prisoners]incarcerated individuals involved;
- (v) for each segregated [inmate]individual, as that term is defined in section 7075.2 of this Title, incarcerated individual subject to segregated confinement, as that term is defined in section 7076.2 of this Title, or incarcerated individual assigned to a residential rehabilitation unit, as that term is defined in section 7077.2 of this Title, the date and time of each instance such [inmate] individual is either confined to an individual occupancy housing unit, or confined to the sleeping area of a multiple occupancy housing unit;

(vi) for each segregated [inmate] individual, as that term is defined in section 7075.2 of this Title, incarcerated individual subject to segregated confinement, as that term is defined in section 7076.2 of this Title, or incarcerated individual assigned to a residential rehabilitation unit, as that term is defined in section 7077.2 of this Title, the date and time of each instance such [inmate] individual is either released from an individual occupancy housing unit, or no longer confined to the sleeping area of a multiple occupancy housing unit; and

(vii) for each segregated [inmate] individual, as that term is defined in section 7075.2 of this Title, incarcerated individual subject to segregated confinement, as that term is defined in section 7076.2 of this Title, or incarcerated individual assigned to a residential rehabilitation unit, as that term is defined in section 7077.2 of this Title, any refusal of such [inmate] individual to leave an individual occupancy housing unit, or the sleeping area of a multiple occupancy housing unit.

A new subdivision (c) of section 7005.2 of this Title is added to read as follows:

(c) Absent exigent circumstances, an incarcerated individual may be confined to a shower or shower area only for the duration necessary to sufficiently complete the shower.

Section 7006.1 of Title 9 is amended to read as follows:

Section 7006.1 Policy and definitions.

(a) In order to promote the safety, security and welfare of all [inmates] incarcerated individuals and staff within local correctional facilities, the chief administrative officer of each facility shall establish and maintain a system

of [inmate] discipline designed to set standards of appropriate behavior, encourage self-control and punish misbehavior fairly, impartially and consistently.

(b) As used in this Part, the following definitions shall apply to the terms listed below:

(1) *Segregated confinement* shall mean the confinement of an incarcerated individual to an individual occupancy housing unit, in any form, for more than seventeen (17) hours a day, other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment.

(2) *Special population* shall mean any incarcerated individual:

(i) 21 years of age or younger;

(ii) 55 years of age or older;

(iii) with a disability, as defined in section 292 of the Executive Law; or

(iv) who is pregnant, in the first eight (8) weeks of the post-partum recovery period after giving birth, or caring for a child in the facility.

(3) *Residential rehabilitation unit* shall mean a separate housing unit used for therapy, treatment, and rehabilitative programming of incarcerated individuals who have been determined to require more than fifteen (15) days of segregated confinement pursuant to facility proceedings.

(4) *Chief administrative officer* shall mean the highest-ranking facility official present during the time period in which a determination must be rendered.

(5) *Violent felony act* shall mean conduct of an incarcerated individual that constitutes:

(i) causing or attempting to cause serious physical injury or death to another person or making an imminent threat of such serious physical injury or death if the person has a history of causing such physical injury or death and the chief administrative officer reasonably determines that there is a strong likelihood that the person will carry out such threat;

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

(iii) extorting another, by force or threat of force, for property or money;

(iv) coercing another, by force or threat of force, to violate any rule;

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

(vi) procuring a deadly weapon or other dangerous contraband that poses a serious threat to the security of the facility; or

(vii) escaping, attempting to escape or facilitating an escape from a facility or escaping or attempting to escape while under supervision outside such facility.

(6) *Maximum facility capacity* shall have the same meaning as provided in section 7040.2 of this Title.

Subdivision (a) of section 7006.7 of Title 9 is amended to read as follows:

(a) An [inmate] incarcerated individual who threatens the safety, security, and good order of the facility may be immediately confined in a cell or room pending a disciplinary hearing and may be retained in administrative segregation until the completion of the disciplinary process, subject to the limitations of Parts 7075, 7076 and 7077 of this Chapter, provided that:

(1) any such administration segregation shall not constitute segregated confinement unless the chief administrative officer reasonably believes, and issues a written determination that, the individual fits the specified criteria for segregated confinement set forth in subparagraph (iii) of paragraph (5) of subdivision (a) of section 7006.9 of this Part; and

(2) any incarcerated individual of a special population placed in segregated confinement pending a disciplinary hearing shall, as expeditiously as possible, but in no case longer than forty-eight (48) hours from the time of such placement, be given at least seven (7) hours a day outside his or her assigned individual occupancy unit or shall, in a facility with a maximum facility capacity exceeding five hundred (500), be transferred to a residential rehabilitation unit.

Subdivisions (a), (b) and (c) of section 7006.8 of Title 9 are amended to read as follows:

(a) An [inmate] incarcerated individual charged with a violation in accordance with section 7006.4 of this Part shall receive a hearing within 15 business days of receipt of the misbehavior report. In the event an incarcerated individual is placed in segregated confinement pending a disciplinary hearing pursuant to subdivision (a) of section 7006.7 of this Part, a hearing shall occur as soon as reasonably practicable and at most within five (5) days of such placement, unless the charged individual seeks postponement of the hearing. The [inmate] incarcerated individual shall be given at least 24 hours prior written notice of the hearing. A hearing shall be completed within five business days of its convening unless otherwise authorized by the chief administrative officer. The time frames required by this subdivision may be waived by the [inmate] incarcerated individual, however, such waiver shall not be effective unless made in writing.

(b) The chief administrative officer shall appoint one or more impartial persons to serve as hearing officer or as members of a hearing panel during the disciplinary hearing. Prior to presiding over any hearings, a hearing officer shall undergo a minimum of thirty-seven hours of training, with one additional day of training annually thereafter, on relevant topics, including but not limited to, the physical and psychological effects of segregated confinement, procedural and due process rights of the accused, and restorative justice remedies.

(c) The [inmate] incarcerated individual shall be allowed to be present at the hearing unless the [inmate] individual has waived [his] the right to be present or the hearing officer determines that the [inmate] individual's presence will jeopardize the safety, security, or good order of the facility. A waiver of the right to be present shall be made in writing and signed by the [inmate] incarcerated individual. If the [inmate] incarcerated individual refuses to sign such waiver, it shall be so noted in the record. A hearing officer's determination that an [inmate]individual's presence will jeopardize the safety, security, or good order of the facility shall be documented in the hearing record. For any hearing in which segregated confinement is an authorized sanction upon a finding of guilt, the incarcerated individual shall be permitted to be represented by any attorney or law student, or by any paralegal or incarcerated individual unless the chief administrative officer reasonably disapproves of such paralegal or incarcerated person based upon objective written facility criteria.

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] Parts 7075, 7076 and 7077 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] of a special population may be sanctioned to segregated confinement;

(ii) except as authorized by subparagraph (iii) of this paragraph, 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] segregated confinement for up to three (3) consecutive days, and no longer than six (6) days in any thirty (30) day period;

(iii) [no] an incarcerated individual [shall] may be sanctioned to segregated 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] beyond the limitations of subparagraph (ii) of this paragraph or, in a facility with a maximum facility capacity exceeding five hundred (500), in a residential rehabilitation unit only if the disposition contains a finding that the individual committed a violent felony act, and if the chief administrative officer determines in writing, based on specific objective criteria, the act was so heinous or destructive that placement of the individual in general population housing creates a significant risk of imminent serious physical injury to staff or other incarcerated persons, and creates an unreasonable risk to the security of the facility; and

(iv) for purposes of subparagraph (iii) of this paragraph, the violent felony act of attempting to cause a serious disturbance or to escape shall only be determined to have occurred if there is a clear finding that the incarcerated individual had the intent to cause a serious disturbance or the intent to escape and had completed

significant acts in the advancement of the attempt to create a serious disturbance or escape. Evidence of withdrawal or abandonment of a plan to cause a serious disturbance or to escape shall negate a finding of intent;

Section 7017.1 of Title 9 is amended to read as follows:

(a) Full-time and part-time correction officers shall satisfactorily complete a correctional training program approved by the [commission] division of criminal justice services. Such training shall be completed within one year following the date of appointment as a correction officer.

(b) All special housing unit and residential rehabilitation unit staff and their supervisors shall undergo specialized training prior to assignment to such unit, and regular specialized training thereafter, on substantive content developed in consultation with relevant experts, on topics including, but not limited to, the purpose and goals of the non-punitive therapeutic environment, trauma-informed care, restorative justice, and dispute resolution methods.

Subdivision (d) of section 7028.2 of Title 9 is amended to read as follows:

(d) [Inmates] Incarcerated individuals who do not have access to [inmate] cell corridors or day rooms because of physical plant limitations or disciplinary actions shall be entitled to an exercise period of at least one hour seven days a week. [Segregated inmates, as that term is defined in section 7075.2 of this Title, who are under the age of 18 years, or known by security, health or mental health personnel to be pregnant, within eight weeks of delivery or pregnancy outcome, having a mental or physical disability, or having a serious mental illness shall be entitled to an exercise period of at least two hours, seven days a week.]

The title of Part 7075 of Title 9 is amended to read as follows:

PART 7075. [INMATE] CONFINEMENT AND DEPRIVATION

Section 7075.1 of Title 9 is amended to read as follows:

The purpose of this Part shall be to ensure that [inmates] incarcerated individuals are confined to individual occupancy housing units, and deprived of essential [inmate] services, only when necessary, and for the least amount of time necessary, to maintain the safety, security and good order of the facility and, absent exigent circumstances, this period of confinement or deprivation may not risk significantly compromising the health of the [person] individual.

Section 7075.2 of Title 9 is amended to read as follows:

As used in this Part, the following definitions shall apply to the terms listed below:

- (a) *Chief Administrative Officer* shall mean the highest-ranking facility official present during the time period in which a determination must be rendered.
- (b) *Facility* shall mean a county jail or penitentiary, or a local correctional facility under the jurisdiction of the New York City Department of Correction.
- (c) *Essential service* shall mean any right, service, item or article guaranteed an [inmate] incarcerated individual by the provisions of this Chapter.
- (d) *Individual occupancy housing unit, multiple occupancy housing unit, medical housing unit, dayroom space and sleeping area* shall each have the same meaning as provided in Part 7040 of this Title.

(e) *Segregation* shall mean the involuntary confinement of an [inmate] incarcerated individual to an individual occupancy housing unit, or to the sleeping area of a multiple occupancy housing unit, for any duration[, as may be necessary for the maintenance of order or discipline]. Segregation shall not include such confinement during established [inmate] sleep hours, confinement [to a medical housing unit] for purposes of medical [observation] or mental health treatment, confinement to a housing unit designated for classification purposes, confinement for the purpose of providing constant supervision, routine confinement necessary for a change of shift, conducting an [inmate] incarcerated population count, or the provision of routine services, or temporary confinement necessary to quell a disturbance or incident.

(f) *Segregated [inmate] individual* shall mean any [inmate] incarcerated individual subject to segregation.

(g) [*Qualified* shall mean sufficiently licensed and credentialed to perform a particular function related to an individual's medical or mental health care] *Segregated confinement* shall mean the confinement of an incarcerated individual to an individual occupancy housing unit, in any form, for more than seventeen (17) hours a day, other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment.

(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.

(i) *Administratively segregated incarcerated individual* shall mean any incarcerated individual subject to administrative segregation.

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

Section 7075.3 of Title 9 is amended to read as follows:

Consistent with the requirements of this Part, each facility shall establish and implement policies and procedures designed to ensure that the segregation of [inmates] incarcerated individuals, and the deprivation of essential services[ to inmates], is limited in both scope and duration to maintain the safety, security and good order of the facility and, absent exigent circumstances, may not risk significantly compromising the health of the [person]individual.

Section 7075.4 of Title 9 is amended to read as follows:

Section 7075.4. [Inmate c]Confinement

(a) Other than [inmates] incarcerated individuals subject to segregation, segregated confinement, voluntary confinement, confinement during established [inmate] sleep hours, confinement [to a medical housing unit] for purposes of medical [observation] or mental health treatment, confinement to a housing unit designated for classification purposes, confinement for the purpose of providing constant supervision, routine confinement necessary for a change of shift, conducting an [inmate] incarcerated population count, or the provision of routine services, or temporary confinement necessary to quell a disturbance or incident, any [inmate] incarcerated individual assigned to an individual or multiple occupancy housing unit shall have unrestrained access to adjoining dayroom space.

(b) Absent exigent circumstances, no incarcerated individual shall be confined in any [housing unit, cell,] room, space or other area of the facility that is not designed, intended and purposed for the confinement of individuals, nor any housing unit, cell or pen not listed as appropriate housing on, or beyond the allowable duration specified by, 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.

(c) Each segregated [inmate] individual assigned to a multiple occupancy housing unit shall be allowed a minimum of [four] seven (7) hours per day [outside his or her assigned individual occupancy housing unit, or a minimum of four hours per day] outside the sleeping area[ if the inmate is assigned to a multiple occupancy housing unit, unless the chief administrative officer determines that doing so would cause a threat to the safety, security, or good order of the facility, or the safety, security, or health of the inmate, staff or other inmates, and that less restrictive measures would not adequately alleviate any such threat. Any such determination shall be made by the chief administrative officer in writing, and shall state the specific facts and reasons underlying the determination].

[(d) Any determination made pursuant to subdivision (c) of this section shall be reviewed by the chief administrative officer at intervals not to exceed seven 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 would risk significantly compromising the health of the inmate. 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 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 inmate.

(e) Each segregated inmate under the age of 18 years, and each segregated inmate who is known by security, health or mental health personnel to be pregnant, within eight weeks of delivery or pregnancy outcome, having a mental or physical disability, or having a serious mental illness, shall be allowed a minimum of four hours per

day, exclusive of entitled exercise periods, outside his or her assigned individual occupancy housing unit, or a minimum of four hours per day, exclusive of entitled exercise periods, outside the sleeping area if the inmate is assigned to a multiple occupancy housing unit, unless the chief administrative officer determines that doing so would cause a threat to the safety, security, or good order of the facility, or the safety, security, or health of the inmate, staff, or other inmates, and that less restrictive measures would not adequately resolve any such threat. Any such determination shall be made by the chief administrative officer in writing, and shall state the specific facts and reasons underlying the determination.

(f) Any segregation of an inmate under the age of 18 years, or any segregation of an inmate who is known by security, health or mental health personnel to be pregnant, within eight weeks of delivery or pregnancy outcome, having a mental or physical disability, or having a serious mental illness, shall be reviewed by the chief administrative officer, at intervals not to exceed seven days, to determine whether the continuance of such segregation is necessary to maintain discipline or ensure the safety, security, or good order of the facility, or the safety, security, or health of the inmate, staff or other inmates. 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 would risk significantly compromising the health of the inmate. Following each such review, the chief administrative officer shall record, in writing, whether such segregation 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 segregation if the jail physician, facility medical director, or other qualified facility health staff determines that doing so would risk significantly compromising the health of the inmate.

(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)d] 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.]

(e) The confinement of an incarcerated individual to an individual occupancy housing unit for medical or mental health treatment shall, if available, be within the facility's clinical area or in as close proximity to a medical or mental health unit as possible.

Section 7075.5 of Title 9 is amended to read as follows:

(a) Unless specifically allowed in this Chapter, the provision of an essential service to an [inmate] incarcerated individual shall not be denied, restricted or limited as a means of discipline or punishment.

(b) Unless otherwise specified by the provisions of this Chapter, the provision of an essential service to an [inmate] incarcerated individual shall not be denied, restricted or limited unless the chief administrative officer determines that providing such essential service would cause a threat to the safety, security, or good order of the facility, or the safety, security, or health of [the inmate, staff or other inmates] any individual. Any such determination shall be made by the chief administrative officer in writing, and shall state the specific facts and reasons underlying the determination.

(c) Any determination made pursuant to subdivision (b) of this section shall be reviewed by the chief administrative officer at intervals not to exceed seven days. A review conducted by the chief administrative officer, pursuant to this subdivision, which may impact an [inmate]individual's health 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 deprivation would risk significantly compromising the health of the inmate]. Following each such review, the chief administrative officer shall document, in writing, a summary of any consultation with health staff, whether such determination shall continue or cease, and state the specific facts and reasons underlying the continuance or termination.

A new Part 7076 of Title 9 is added to read as follows:

## Part 7076

### Segregated Confinement

(Statutory authority: Correction Law §§45(6), 45(15), 45(18))

#### Sec.

##### 7076.1 Purpose

##### 7076.2 Definitions

##### 7076.3 Policy

##### 7076.4 Conditions and function

##### 7076.5 Programming

##### 7076.6 Duration of segregated confinement

##### 7076.7 Recordkeeping and reporting

#### § 7076.1 Purpose.

The purpose of this Part shall be to ensure that the conditions, programming, duration, recordkeeping and reporting of segregated confinement practices in local correctional facilities remain consistent with relevant law and ensure the fair and humane treatment of affected incarcerated individuals.

§ 7076.2 Definitions.

As used in this Part, the following definitions shall apply to the terms listed below:

(a) *Segregated confinement* shall mean the confinement of an incarcerated individual to an individual occupancy housing unit, in any form, for more than seventeen (17) hours a day, other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment.

(b) *Special population* shall mean any incarcerated individual:

(1) 21 years of age or younger;

(2) 55 years of age or older;

(3) with a disability, as defined in section 292 of the Executive Law; or

(4) who is pregnant, in the first eight (8) weeks of the post-partum recovery period after giving birth, or caring for a child in the facility.

(c) *Residential rehabilitation unit* shall mean a separate housing unit used for therapy, treatment, and rehabilitative programming of incarcerated individuals who have been determined to require more than fifteen (15) days of segregated confinement pursuant to facility proceedings.

(d) *Chief administrative officer* shall mean the highest-ranking facility official present during the time period in which a determination must be rendered.

(e) *Violent felony act* shall have the same meaning as provided in section 7006.1 of this Title.

(f) *Facility* shall mean a county jail or penitentiary, or a local correctional facility under the jurisdiction of the New York City Department of Correction.

(g) *Individual occupancy housing unit* shall have the same meaning as provided in Part 7040 of this Title.

(h) *Maximum facility capacity* shall have the same meaning as provided in section 7040.2 of this Title.

#### § 7076.3 Policy.

Consistent with the requirements of this Part, each facility shall establish and implement policies and procedures with respect to the conditions, programming, duration, recordkeeping and reporting of segregated confinement.

#### § 7076.4 Conditions and function.

(a) All facility housing areas in which incarcerated individuals are subject to segregated confinement shall create the least restrictive environment necessary for the safety of incarcerated persons, staff, and the security of the facility.

(b) No individual may be placed in segregated confinement based on the same act or incident that was previously used as the basis for such placement.

(c) No individual may be held in segregated confinement for protective custody. Any unit used for protective custody must, at a minimum, conform to the requirements governing residential rehabilitation units, as set forth in Part 7077 of this Title.

#### § 7076.5 Programming.

(a) Incarcerated individuals in segregated confinement shall be offered out-of-cell programming at least four (4) hours per day, including at least one (1) hour for exercise.

(b) Incarcerated individuals in segregated confinement shall be offered programming led by program or therapeutic staff five (5) days per week, except on recognized state legal holidays. All other out-of-cell time

may include peer-led programs, time in a day room or out-of-cell recreation area with other people, congregate meals, volunteer programs, or other congregate activities.

(c) If established that an incarcerated individual committed a violent felony act while in segregated confinement and poses a significant and unreasonable risk to the safety and security of other incarcerated individuals or staff, the chief administrative officer may restrict such individual's participation in programming and out-of-cell activities as necessary for the safety of other incarcerated individuals and staff. If such restrictions are imposed, the facility must provide at least four (4) hours out-of-cell time daily, including at least two (2) hours of therapeutic programming and two (2) hours of exercise, and must make reasonable efforts to reinstate access to programming as soon as possible. In no case may such restrictions extend beyond fifteen (15) days unless the incarcerated individual commits a new violent felony act justifying restrictions on program access, or if the chief administrative officer reasonably determines that the incarcerated individual poses an extraordinary and unacceptable risk of imminent harm to the safety or security of other incarcerated individuals or staff. Any extension of program restrictions beyond fifteen (15) days must be meaningfully reviewed and approved at least every fifteen (15) days by the chief administrative officer. Each review must consider the impact of therapeutic programming provided during the fifteen (15) day period on the individual's risk of imminent harm and the chief administrative must articulate in writing, with a copy provided to the incarcerated individual, the specific reason why the individual currently poses an extraordinary and unacceptable risk of imminent harm to the safety or security of incarcerated individuals or staff. In no case may restrictions imposed by the chief administrative officer extend beyond ninety (90) days unless the individual commits a new violent felony act justifying restrictions on program access.

§ 7076.6 Duration of segregated confinement.

(a) Incarcerated individuals of a special population shall not be placed in segregated confinement for any length of time, except as authorized by subdivision (a) of section 7006.7 of this Title as administrative segregation pending a disciplinary hearing.

(b) No incarcerated individual may be placed in segregated confinement for longer than necessary and no more than fifteen (15) consecutive days, nor shall any individual be placed in segregated confinement for more than twenty (20) total days within any sixty (60) day period except as otherwise provided in subdivision (c) of this section. At these limits, the incarcerated individual must be released from segregated confinement or, in facilities with a maximum facility capacity exceeding five hundred (500), diverted to a separate residential rehabilitation unit. If placement of such individual in segregated confinement would exceed the twenty (20) day limit and the chief administrative officer determines that the individual committed a violent felony act, the chief administrative officer may, in a facility with a maximum facility capacity exceeding five hundred (500), place the individual in segregated confinement until admission to a residential rehabilitation unit can be effectuated. Such admission to a residential rehabilitation unit shall occur as expeditiously as possible and in no case take longer than forty-eight (48) hours from the time such individual is placed in segregated confinement.

(c) For offenses determined to constitute a violent felony act, if occurring more than one time within any sixty (60) day period, up to an additional fifteen (15) consecutive days in segregated confinement may occur for each such additional incident. If such subsequent incident takes place in a residential rehabilitation unit or general population, the incarcerated individual may be returned to segregated confinement for up to fifteen (15) consecutive days. If such subsequent incident takes place in segregated confinement and causes physical injury to another person, the incarcerated individual may receive up to an additional fifteen (15) consecutive days in segregated confinement, provided however that the individual must spend at least fifteen (15) days in a residential rehabilitation unit in between each placement of up to fifteen (15) consecutive days in segregated confinement.

§ 7076.7 Recordkeeping and reporting.

- (a) Any restriction, determination, extension, review or approval required or authorized by this Part shall be made by the chief administrative officer in writing, and shall state the specific facts and underlying reasons.
- (b) Each facility shall maintain all records required by subdivision (a) of this section in a centralized location.
- (c) Each facility shall publish monthly reports on its website, with semi-annual and annual cumulative reports, of the total number of people who are in segregated confinement on the first day of each month. The reports shall provide a breakdown of the number of people in segregated confinement by:

- (1) age;
- (2) race;
- (3) gender;
- (4) special health accommodations or needs;
- (5) need for and participation in substance use disorder programs;
- (6) pregnancy status; and
- (7) number of days in segregated confinement.

A new Part 7077 of Title 9 is added to read as follows:

Part 7077

Residential Rehabilitation Units

(Statutory authority: Correction Law §§45(6), 45(15), 45(18))

Sec.

7077.1 Applicability and purpose

7077.2 Definitions

7077.3 Policy

7077.4 Conditions and function

7077.5 Programming

7077.6 Duration of stay

7077.7 Recordkeeping and reporting

§ 7077.1 Applicability and Purpose.

(a) The purpose of this Part shall be to ensure that the conditions, programming, duration, recordkeeping and reporting of residential rehabilitation units in local correctional facilities remain consistent with relevant law and ensure the fair and humane treatment of affected incarcerated individuals.

(b) The requirements of this Part shall not apply to a facility with a maximum facility capacity of five hundred (500) or fewer.

§ 7077.2 Definitions.

As used in this Part, the following definitions shall apply to the terms listed below:

(a) *Segregated confinement* shall mean the confinement of an incarcerated individual to an individual occupancy housing unit, in any form, for more than seventeen (17) hours a day, other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment.

(b) *Residential rehabilitation unit* shall mean a separate housing unit used for therapy, treatment, and rehabilitative programming of incarcerated individuals who have been determined to require more than fifteen (15) days of segregated confinement pursuant to facility proceedings.

(c) *Chief administrative officer* shall mean the highest-ranking facility official present during the time period in which a determination must be rendered.

(d) *Violent felony act* shall have the same meaning as provided in section 7006.1 of this Title.

(e) *Facility* shall mean a county jail or penitentiary, or a local correctional facility under the jurisdiction of the New York City Department of Correction.

(f) *Individual occupancy housing unit* shall have the same meaning as provided in Part 7040 of this Title.

(g) *Maximum facility capacity* shall have the same meaning as provided in section 7040.2 of this Title.

#### § 7077.3 Policy.

Consistent with the requirements of this Part, each facility shall establish and implement policies and procedures with respect to the conditions, programming, duration, recordkeeping and reporting of residential rehabilitation units.

#### § 7077.4 Conditions and function.

(a) Residential rehabilitation units shall be therapeutic and trauma-informed, and aim to address individual treatment and rehabilitation needs and underlying causes of problematic behaviors.

(b) All residential rehabilitation units shall create the least restrictive environment necessary for the safety of incarcerated persons, staff, and the security of the facility.

(c) No individual may be placed in a residential rehabilitation unit based on the same act or incident that was previously used as the basis for such placement.

#### § 7077.5 Programming.

(a) Upon admission to a residential rehabilitation unit, program and mental health staff shall administer assessments and develop an individual rehabilitation plan in consultation with the incarcerated individual, based upon the individual's medical, mental health, and programming needs. Such plan shall identify specific goals and programs, treatment, and services to be offered, with projected time frames for completion and discharge from the residential rehabilitation unit.

(b) Incarcerated individuals admitted to a residential rehabilitation unit shall be offered at least six (6) hours of daily out-of-cell congregate programming, services, treatment, recreation, activities and/or meals, with an additional minimum of one hour for exercise. Exercise in all residential rehabilitation units shall take place in a congregate setting, unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other incarcerated individuals, staff, or the facility.

(c) Incarcerated individuals in residential rehabilitation units shall be offered programming led by program or therapeutic staff five (5) days per week, except on recognized state legal holidays. All other out-of-cell time may include peer-led programs, time in a dayroom or out-of-cell recreation area with other people, congregate meals, volunteer programs, or other congregate activities.

(d) An incarcerated individual in a residential rehabilitation unit shall have access to programs and work assignments comparable to core programs and types of work assignments in general population. Such incarcerated individuals shall also have access to additional out-of-cell, trauma-informed therapeutic programming aimed at promoting personal development, addressing underlying causes of problematic behavior resulting in placement in a residential rehabilitation unit, and helping prepare for discharge from the unit and to the community.

(e) If established that an incarcerated individual committed a violent felony act while in a residential rehabilitation unit and poses a significant and unreasonable risk to the safety and security of other incarcerated individuals or staff, the chief administrative officer may restrict such individual's participation in programming

and out-of-cell activities as necessary for the safety of other incarcerated individuals and staff. If such restrictions are imposed, the facility must provide at least four (4) hours out-of-cell time daily, including at least two (2) hours of therapeutic programming and two (2) hours of exercise, and must make reasonable efforts to reinstate access to programming as soon as possible. In no case may such restrictions extend beyond fifteen (15) days unless the individual commits a new violent felony act justifying restrictions on program access, or if the chief administrative officer reasonably determines that the individual poses an extraordinary and unacceptable risk of imminent harm to the safety or security of incarcerated individuals or staff. Any extension of program restrictions beyond fifteen (15) days must be meaningfully reviewed and approved at least every fifteen (15) days by the chief administrative officer. Each review must consider the impact of therapeutic programming provided during the fifteen (15) day period on the individual's risk of imminent harm and the chief administrative officer must articulate in writing, with a copy provided to the incarcerated individual, the specific reason why the individual currently poses an extraordinary and unacceptable risk of imminent harm to the safety or security of other incarcerated individuals or staff. In no case may restrictions imposed by the chief administrative officer extend beyond ninety (90) days unless the individual commits a new violent felony act justifying restrictions on program access.

(f) Restraints shall not be used when incarcerated individuals are participating in out-of-cell activities within a residential rehabilitation unit unless an individual assessment is made that restraints are required because of a significant and unreasonable risk to the safety and security of other incarcerated individuals or staff.

#### § 7077.6 Duration of stay.

(a) Any sanction imposed on an incarcerated individual requiring segregated confinement shall run while the individual is in a residential rehabilitation unit and the individual shall be discharged from the unit before or at

the time such sanction expires. If the individual's rehabilitation plan is successfully completed before the sanction expires, the individual shall have a right to be discharged from the unit upon such completion.

(b) If an incarcerated individual has not been discharged from a residential rehabilitation unit within one year of initial admission to such a unit, the individual shall have a right to be discharged from the unit unless the individual committed a violent felony act within the prior one hundred eighty (180) days and the individual poses a significant and unreasonable risk to the safety or security of incarcerated persons or staff. In any such case the decision not to discharge such individual shall be immediately and automatically subjected to an independent review by the chief administrative officer. An incarcerated individual may remain in a residential rehabilitation unit beyond the time limits provided in this section if approved by the chief administrative officer. In extraordinary circumstances, a person who has not committed a violent felony act within the prior one hundred eighty (180) days may remain in a residential rehabilitation unit beyond the time limits provided in this section if the chief administrative officer determines that such individual poses an extraordinary and unacceptable risk of imminent harm to the safety or security of incarcerated persons or staff.

(c) There shall be a meaningful periodic review of the status of each incarcerated individual in a residential rehabilitation unit at least every sixty (60) days to assess the individual's progress and determine if the individual should be discharged from the unit. Following such periodic review, if the individual is not discharged from the unit, program and mental health staff shall specify in writing the reasons for the determination and the program, treatment, service, and/or corrective action required before discharge. The incarcerated individual shall be given access to the programs, treatment and services specified, and shall have a right to be discharged from the residential rehabilitation unit upon the successful fulfillment of such requirements.

(d) When an incarcerated individual is discharged from a residential rehabilitation unit, any remaining time to serve on any underlying disciplinary sanction shall be dismissed. If an incarcerated individual substantially

completes the developed rehabilitation plan, the individual shall have any associated loss of good time restored upon discharge from the unit.

§ 7077.7 Recordkeeping and reporting.

(a) Any restriction, determination, extension, review or approval required or authorized by this Part shall be made by the chief administrative officer in writing, and shall state the specific facts and underlying reasons.

(b) Each facility shall maintain all records required by subdivision (a) of this section in a centralized location.

(c) Each facility shall publish monthly reports on its website, with semi-annual and annual cumulative reports, of the total number of people who are in residential rehabilitation units on the first day of each month. The reports shall provide a breakdown of the number of people in residential rehabilitation units by:

(1) age;

(2) race;

(3) gender;

(4) special health accommodations or needs;

(5) need for and participation in substance use disorder programs; and

(6) pregnancy status.

## Summary of the Text:

A new Part 7076 of Title 9 NYCRR is established that provides minimum standards for conditions, programming, duration, recordkeeping and reporting of segregated confinement with respect to incarcerated individuals of a local correctional facility.

A new Part 7077 of Title 9 NYCRR is established that provides minimum standards for conditions, programming, duration, recordkeeping and reporting of an incarcerated individual's assignment to a residential rehabilitation unit of a local correctional facility.

Existing SCOC jail regulations are amended as follows:

- (a) Requiring a local correctional facility's annual report to the Commission detailing all aspects of segregated confinement and residential rehabilitation units occurring in the facility during the preceding calendar year;
- (b) Prohibiting the confinement of an incarcerated individual to a shower area in excess of the time necessary to complete the shower;
- (c) Limiting the use of segregated confinement pending a disciplinary hearing;
- (d) Requiring minimum training of disciplinary hearing officers prior to presiding over hearings;
- (e) Allowing representation by an attorney, law student, paralegal or other incarcerated person at a disciplinary hearing in which segregated confinement is an authorized sanction; and
- (f) Requiring specialized training of all special housing unit and RRU staff and supervisors prior to assignment;

Regulatory Impact Statement (RIS):

The New York State Commission of Correction ("Commission") seeks to add a new subdivision (f) of section 7000.1, amend paragraph (6) of subdivision (j) of section 7003.3, add a new subdivision (c) of section 7005.2, amend section 7006.1, amend subdivision (a) of section 7006.7, amend subdivisions (a), (b) and (c) of section 7006.8, amend paragraph (5) of subdivision (a) of section 7006.9, amend section 7017.1, amend subdivision (d) of section 7028.2, amend the title of Part 7075, amend section 7075.1, amend section 7075.2, amend section 7075.3, amend section 7075.4, amend section 7075.5, add a new Part 7076, and add a new Part 7077 of Title 9 NYCRR.

1.) Statutory authority:

Subsection (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. 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.

2.) Legislative objectives:

By vesting the Commission with this rulemaking authority, and recently amending Correction Law section 45(18) to require the Commission to assess and annually report on the compliance of local correctional facilities with statutory requirements, the Legislature intended the Commission to maintain minimum standards for the segregated confinement of incarcerated individuals and the operation of residential rehabilitation units.

### 3.) Needs and Benefits:

On March 31, 2021, Governor Cuomo signed into law what is commonly known as the Humane Alternatives to Long-Term Solitary Confinement (HALT) Act (Chapter 93 of the Laws of 2021), which generally serves to restrict the use of segregated confinement in state and local correctional facilities, while creating alternative therapeutic and rehabilitative confinement options.

The legislation places strict limitations on a local correctional facility's use of segregated confinement, which is defined as the confinement of an incarcerated individual to a cell in excess of 17 hours per day, with limited exceptions. The segregated confinement of incarcerated individuals 21 years of age and younger, 55 years of age or older, disabled or pregnant is prohibited. Out-of-cell programming must generally be offered to individuals in segregated confinement at least 4 hours per day, and at least 6 hours per day for individuals confined in residential rehabilitation units, utilized by large facilities for incarcerated individuals who have reached the time limitations of segregated confinement.

The HALT Act imposes numerous and precise requirements on the conditions, programming, duration and reporting of a local correctional facility's use of segregated confinement and operation of a residential rehabilitation unit. Although inclusive, the legislation is not organized or conveyed in a manner that allows for immediate reference and comprehension by correctional facility staff. Incorporating the various requirements of the HALT Act within the systemic construct of the Commission's existing regulations will provide facility administrators with a more straightforward and organized source of reference. Consequently, the proposed rulemaking is immediately necessary to conform with the enactment of the HALT Act and to provide local governments with the rules necessary to comply with the legislation.

### 4.) Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None. As set forth above, restrictions on the use of segregated confinement and the creation of alternative therapeutic and rehabilitative confinement options in local correctional facilities was required by recent legislation. Compliance with the proposed rule will not result in any additional costs to county and municipal agencies operating such jails.

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), there would not be any additional costs to local governments.

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 adult jails.

5.) Local government mandates:

The rulemaking mirrors recent legislation that restricts the use of segregated confinement and creates alternative therapeutic and rehabilitative confinement options in local correctional facilities, effective March 31, 2022.

6.) Paperwork:

Recent legislation already requires each local correctional facility to track, maintain and publish data with respect to incarcerated individuals placed in segregated confinement and residential rehabilitation units. The proposed rulemaking will, for purposes of compiling the Commission's annual statewide report, require that local correctional facilities forward such data to the Commission on an annual basis.

7.) Duplication:

The rule conforms to recent legislation that restricts the use of segregated confinement and creates alternative therapeutic and rehabilitative confinement options in local correctional facilities, effective March 31, 2022.

8.) Alternatives:

Given the legislation that restricts the use of segregated confinement and creates alternative therapeutic and rehabilitative confinement options in local correctional facilities, the Commission did not see any alternative to promulgating conforming regulations.

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 effective March 31, 2022.

Regulatory Flexibility Analysis (RFA) for small businesses and local governments:

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses or local governments. The proposed rule seeks only to conform regulations to recent legislation that restricts the use of segregated confinement and creates alternative therapeutic and rehabilitative confinement options in local correctional facilities. The proposed rule does not impose any new mandates on local facilities, just reiterates the reporting, recordkeeping and training requirements contained in the Correction Law as part of the HALT Act. Consequently, the rule will not have an adverse impact on small businesses or local governments, nor impose any additional significant reporting, record keeping, or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis (RAFA):

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to conform regulations to recent legislation that restricts the use of segregated confinement and creates alternative therapeutic and rehabilitative confinement options in local correctional facilities.

Consequently, it will not impose an adverse economic impact on rural areas, nor impose any additional significant record keeping, reporting, or other compliance requirements on private or public entities in rural areas.

Job Impact Statement (JIS):

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to conform regulations to recent legislation that restricts the use of segregated confinement and creates alternative therapeutic and rehabilitative confinement options in local correctional facilities. As such, there will be no impact on jobs and employment opportunities.