



ALLEN RILEY
Chairman

THOMAS J. LOUGHREN
Commissioner

CHAIRMAN'S MEMORANDUM

NO: 1-2019

DATE: May 28, 2019

TO: SHERIFFS, COMMISSIONERS OF CORRECTION, JAIL ADMINISTRATORS and WARDENS

RE: New Regulations Governing Inmate Cell Confinement and Essential Service Deprivation

Please be advised that, on May 21, 2019, the New York State Commission of Correction voted to adopt regulations that require local correctional facilities to record, review and report inmate cell confinement and essential service deprivation. Effective June 5, 2019 upon publication in the *State Register*, the regulations establish a new Part 7075 of Title 9 NYCRR, which generally requires that:

- (a) disciplinary or administratively segregated inmates must be allowed out of their cells for a minimum of four (4) hours a day;
- (b) disciplinary or administratively segregated inmates who are under eighteen (18) years of age or 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, must be allowed out of their cells for a minimum of four (4) hours a day, exclusive of entitled exercise periods;
- (c) a jail's chief administrative officer (CAO) may deny an inmate such four (4) hour period only when it would pose a threat to the safety, security or good order of the facility;
- (d) any CAO determination to deny such four (4) hour period must be reviewed at least every seven (7) days, with such review to include consultation with appropriate facility health staff;
- (e) any disciplinary or administrative segregation of an inmate who is under 18 years of age, 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, must be reviewed at intervals not to exceed seven (7) days, with such review to include consultation with appropriate facility health staff;

(f) essential services (any items or services guaranteed to inmates by regulation, such as clothing, outdoor exercise, toiletries, books, bedding, religious services, etc.) may not be withheld as punishment;

(g) a CAO may only deny an essential service where necessary to preserve the safety, security or good order of the facility;

(h) any CAO decision to withhold an essential service must be reviewed every seven (7) days; and

(i) any such CAO determination or review must be made in writing, shall state the specific reasons considered, and be maintained in a centralized record.

Additionally, existing regulations were amended to require the following:

(a) reporting of certain inmate cell confinement and essential service deprivation to SCOC;

(b) segregated inmates who are under eighteen (18) years of age or 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 entitled to two (2) hours of daily exercise;

(c) daily CAO review of any educational services denial or restriction; and

(d) cell plumbing may be turned off only when necessary for facility safety and security, but an inmate must be allowed to flush the toilet and be provided access to a sink at two (2) hour intervals.

For your reference, attached please find the text of the regulatory additions and amendments. Should you have any questions regarding the regulations, it is recommended that you contact the Commission of Correction's Office of Counsel at (518) 485-2346.



Allen Riley, Chairman

Text:

A new Part 7075 of Title 9 is added to read as follows:

Part 7075

Inmate Confinement and Deprivation

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

Sec.

7075.1 Purpose

7075.2 Definitions

7075.3 Policy

7075.4 Inmate confinement

7075.5 Deprivation of essential services

7075.6 Recordkeeping

§ 7075.1 Purpose.

The purpose of this Part shall be to ensure that inmates are confined to 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.

§ 7075.2 Definitions.

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 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 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 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 population count, or the provision of routine services, or temporary confinement necessary to quell a disturbance or incident.

(f) *Segregated inmate* shall mean any inmate 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.

§ 7075.3 Policy.

Consistent with the requirements of this Part, each facility shall establish and implement policies and procedures designed to ensure that the segregation of inmates, 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.

§ 7075.4 Inmate confinement.

(a) Other than inmates subject to segregation, voluntary confinement, confinement during established inmate sleep hours, confinement to a medical housing unit for purposes of medical observation or 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 population count, or the provision of routine services, or temporary confinement necessary to quell a disturbance or incident, any inmate assigned to an individual or multiple occupancy housing unit shall have unrestrained access to adjoining dayroom space.

(b) Absent exigent circumstances, no inmate 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.

(c) Each segregated inmate shall be allowed a minimum of four (4) hours per day outside his or her assigned individual occupancy housing unit, or a minimum of four (4) 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 (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 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 eighteen (18) years, and each segregated inmate who is 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 allowed a minimum of four (4) hours per day, exclusive of entitled exercise periods, outside his or her assigned individual occupancy housing unit, or a minimum of four (4) 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 eighteen (18) years, or any segregation of an inmate who is 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 reviewed

by the chief administrative officer, at intervals not to exceed seven (7) 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.

§ 7075.5 Deprivation of essential services.

- (a) Unless specifically allowed in this Chapter, the provision of an essential service to an inmate 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 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 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 (7) days. A review conducted by the chief administrative officer, pursuant to this subdivision, which may impact an inmate'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, whether such determination shall continue or cease, and state the specific facts and reasons underlying the continuance or termination.

§ 7075.6 Recordkeeping.

Each facility shall maintain a centralized record of all written determinations and reviews required by the provisions of this Part.

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 and/or staff involved;

(iii) facility staff response to such event or problem, including a summary of what occurred; [and]

(iv) a description of the condition of any prisoners involved[.];

(v) for each segregated inmate, as that term is defined in section 7075.2 of this Title, the date and time of each instance such inmate 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, as that term is defined in section 7075.2 of this Title, the date and time of each instance such inmate 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, as that term is defined in section 7075.2 of this Title, any refusal of such inmate to leave an individual occupancy housing unit, or the sleeping area of a multiple occupancy housing unit.

A new section 7004.7 of Title 9 is added to read as follows:

§ 7004.7 Inmate retention of correspondence.

Any and all correspondence delivered to the inmate may be retained by the inmate in his or her housing unit, subject to the provisions of section 7075.5 of this Title.

A new section 7005.12 of Title 9 is added to read as follows:

§ 7005.12 Deprivation of personal hygiene

Any decision to deny, restrict or limit an inmate of any right, service, item or article, guaranteed an inmate by the provisions of this Part, shall be done in accordance with section 7075.5 of this Title.

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

(c) The chief administrative officer shall review the administrative confinement within 24 hours of such confinement in order to determine if continued confinement is warranted, and thereafter at intervals not to exceed seven (7) days. Any such review shall be made by the chief administrative officer in writing, shall state the specific facts and reasons underlying the determination, and shall be maintained as part of the centralized record required by section 7075.6 of this Part.

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 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;

A new subdivision (d) of section 7006.9 of Title 9 is added to read as follows:

(d) The chief administrative officer may, at any time, suspend a sanction of confinement imposed pursuant to paragraph (5) of subdivision (a) of this section, in order to assess the behavioral adjustment of the inmate. At any time during such suspension, confinement may be reinstated at the discretion of the chief administrative officer.

Subdivision (a) of section 7006.11 of Title 9 is amended to read as follows:

(a) A disciplinary record shall be maintained by the facility which shall include the misbehavior report; the investigation report, if prepared; the formal disposition; sanctions imposed, if any; suspensions and reinstatements of such sanctions, if any; and the appeal documents.

Subdivision (c) of section 7013.10 of Title 9 is amended to read as follows:

(c) Except as otherwise prohibited or restricted by law, the facility medical director of each facility shall promptly disclose to the chief administrative officer information which he/she receives concerning an inmate

which is or may be relevant in determining the inmate's classification, transport or segregation status or may affect the life, safety or welfare of the inmate or any other person. Relevant inmate information subject to such disclosure shall include, but is not limited to, pregnancy, time elapsed from delivery or pregnancy outcome, mental or physical disability, or serious mental illness. The chief administrative officer shall then promptly disclose information as appropriate to facility staff responsible for making classification, transport or segregation decisions.

Subdivision (a) of section 7022.2 of Title 9 is amended to read as follows:

(a) The following general categories of incidents shall be reported to the commission pursuant to the requirements of this Part:

- (1) assaults;
- (2) sexual assaults;
- (3) contagious illnesses;
- (4) contraband;
- (5) deaths;
- (6) major maintenance/service disruptions;
- (7) major disturbances;
- (8) minor disturbances;
- (9) individual inmate disturbances;
- (10) natural/civil emergencies;
- (11) escapes;
- (12) attempted escapes;

- (13) abscondences;
- (14) fires;
- (15) firearm discharges;
- (16) inmate group actions;
- (17) personnel group actions;
- (18) hostage situations;
- (19) attempted suicides;
- (20) self-inflicted injuries; [and]
- (21) accidental injuries[.];
- (22) deprivation/limitation of essential services; and
- (23) inmate cell confinement.

Section 7024.11 of Title 9 is amended to read as follows:

(a) Any determination made by the chief administrative officer to limit the exercise of the religious beliefs of any prisoner shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination shall be given to any person affected by the determination.

(b) Any determination made pursuant to subdivision (a) of this section shall be reviewed and maintained in accordance with sections 7075.5 and 7075.6 of this Title.

A new section 7025.5 of Title 9 is added to read as follows:

§ 7025.5 Deprivation of packages

Any decision to deny, restrict or limit an inmate of any right, service, item or article, guaranteed an inmate by the provisions of this Part, shall be done in accordance with section 7075.5 of this Title.

Section 7026.3 of Title 9 is amended to read as follows:

§ 7026.3 Limitation and deprivation of incoming printed material and publications

(a) The chief administrative officer shall adopt rules and regulations which may limit the amount of printed material and other paper materials retained within a prisoner's living area, in furtherance of the safety, security and good order of the facility, especially safety from the risk of fire.

(b) Besides the limitations allowed by subdivision (a) of this section, any decision to deny, restrict or limit an inmate of any right, service, item or article, guaranteed an inmate by the provisions of this Part, shall be done in accordance with section 7075.5 of this Title.

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

(d) Inmates 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 eighteen (18) years, or 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 entitled to an exercise period of at least two hours, seven days a week.

A new subdivision (c) of section 7028.6 of Title 9 is added to read as follows:

(c) Each inmate shall be free from mechanical restraints during his or her exercise period, unless 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. Any determination to mechanically restrain an inmate during his or her exercise period shall be made by the chief administrative officer in writing, shall state the restraints employed and the specific facts and reasons underlying such determination, and shall be maintained as part of the centralized record required by section 7075.6 of this Part.

A new subdivision (f) of section 7040.4 of Title 9 is added to read as follows:

(f) Despite the requirement of subdivision (b) of this section that each individual occupancy housing unit contain one functioning toilet and sink, a toilet and sink may be deliberately rendered nonfunctioning when the chief administrative officer determines that doing so is necessary to preserve the safety, security, or good order of the facility, or the safety, security, or health of the inmate, staff or other inmates. Any such determination shall be made by the chief administrative officer in writing, shall state the specific facts and reasons underlying the determination, shall provide that dates and times the determination was in effect, and shall be maintained as part of the centralized record required by section 7075.6 of this Part. In any such instance, the toilet shall be flushed, and the inmate shall have brief access to a functioning sink, at intervals not to exceed two (2) hours.

A new subdivision (g) of section 7040.4 of Title 9 is added to read as follows:

(g) Any determination made pursuant to subdivision (f) of this section shall be reviewed by the chief administrative officer at intervals not to exceed twenty-four (24) hours. Following each such review, the chief

administrative officer shall document, in writing, whether such determination shall continue or cease, and state the specific facts and reasons underlying the continuance or termination.

A new subdivision (e) of section 7040.5 of Title 9 is added to read as follows:

(e) Despite the requirement of subdivision (c) of this section that each multiple occupancy housing unit contain one functioning toilet and sink for every 12 inmates, a toilet and sink may be deliberately rendered nonfunctioning when the chief administrative officer determines that doing so is necessary to preserve the safety, security, or good order of the facility, or the safety, security, or health of the inmate, staff or other inmates. Any such determination shall be made by the chief administrative officer in writing, shall state the specific facts and reasons underlying the determination, shall provide that dates and times the determination was in effect, and shall be maintained as part of the centralized record required by section 7075.6 of this Part. In any such instance, the toilet shall be flushed, and the inmate shall have brief access to a functioning sink, at intervals not to exceed two (2) hours.

A new subdivision (f) of section 7040.5 of Title 9 is added to read as follows:

(f) Any determination made pursuant to subdivision (e) of this section shall be reviewed by the chief administrative officer at intervals not to exceed twenty-four (24) hours. Following each such review, the chief administrative officer shall document, in writing, whether such determination shall continue or cease, and state the specific facts and reasons underlying the continuance or termination.

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

(h) Whenever a determination is made to restrict or deny an eligible youth's participation in educational services pursuant to paragraph (c)(1) of this section, the chief administrative officer shall review such determination in writing within [14 days] one (1) school day and [at least every 14 days] every school day thereafter while such restriction or denial is in effect.

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

(j) Copies of each determination and review made pursuant to this section shall be distributed as follows by the end of the next school day following the date of the determination or review:

- (1) provided to each eligible youth;
- (2) placed and retained in the youth's facility file; [and]
- (3) forwarded to the youth's instructor(s)[.]; and
- (4) placed in and retained as part of the centralized record required by section 7075.6 of this Part.