

Regulatory Impact Statement (RIS):

The New York State Commission of Correction ("Commission") seeks to add a new Part 7075, amend paragraph (6) of subdivision (j) of section 7003.3, add a new section 7004.7, add a new section 7005.12, amend subdivision (c) of section 7006.7, amend paragraph (5) of subdivision (a) of section 7006.9, add a new subdivision (d) of section 7006.9, amend subdivision (a) of section 7006.11, amend subdivision (c) of section 7013.10, amend subdivision (a) of section 7022.2, amend section 7024.11, add a new section 7025.5, amend section 7026.3, amend subdivision (d) of section 7028.2, add a new subdivision (c) of section 7028.6, add a new subdivision (f) of section 7040.4, add a new subdivision (g) of section 7040.4, add a new subdivision (e) of section 7040.5, add a new subdivision (f) of section 7040.5, amend subdivision (h) of section 7070.7, and amend subdivision (j) of section 7070.7 of Title 9 NYCRR.

1.) Statutory authority:

Subdivision (6) of section 45 of the Correction Law authorizes the Commission to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all person confined in the correctional facilities of New York State. 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 and oversight authority, the Legislature intended the Commission to enact regulations that better enable the agency to identify and monitor local correctional facilities for misuse of inmate cell confinement or essential service deprivation.

3.) Needs and Benefits:

While New York State Correction Law provides jail administrators the discretion and authority to confine inmates as necessary for order and discipline, there exists no statutory or regulatory requirement that such determinations and their justification be documented, reviewed on a timely basis to assess if continuation is warranted, or reported to the New York State Commission of Correction (SCOC), as the jail oversight and regulatory entity. Consequently, SCOC's ability to sufficiently monitor and oversee such confinement, and deprivations of essential inmate services, is limited by an absence of regulations requiring jails to record, review and report this activity.

Recent, publicized civil rights actions, SCOC field work, and formal inmate grievances appealed to SCOC's Citizen's Policy and Complaint Review Council have revealed a prevalent misuse of solitary confinement and deprivation of essential services in county jails, particularly as applied to the 16 and 17-year-old inmate population. Such confinement has included the solitary segregation of inmates, for insufficient reasons and prolonged periods, that likely violate the Eighth and Fourteenth Amendments of the U.S. Constitution. Similar unlawful and unconstitutional inmate treatment has occurred in jails' improper deprivation of essential inmate services, such as access to health services, participation in compulsory educational services, the provision of clothing, bedding and toiletries, access to printed materials and publications, participation in outdoor exercise, and access to religious services and materials.

As a resolution, SCOC has developed local correctional facility regulations which provide segregated inmates a presumptive minimum of four (4) hours a day out of their cell and continuous access to all essential services. Segregated inmates under the age of eighteen (18) years, and segregated inmates 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, are provided a presumptive minimum

of four (4) hours a day out of their cell, exclusive of an entitled two (2) hours of recreation time. While the four (4) hour period and access to essential services may be denied when necessary to preserve facility safety and security, the regulations require the facility administration to record, review and report such determinations in a manner that allows for sufficient oversight by SCOC.

4.) Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: Minimal. Any determination by local correctional facility administrators to deny segregated inmates four (4) hours out-of-cell time, to segregate any inmate under the age of eighteen (18), 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, or to deny an essential inmate service to any inmate must be made in writing, reviewed every seven (7) days, and in certain circumstances reported to SCOC. Consequently, compliance with the proposed rule would result only in minimal costs associated with such recordkeeping and reporting.

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

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

5.) Local government mandates:

The regulation imposes a duty on local correctional facilities to provide segregated inmates a presumptive minimum of 4 hours a day out of their cell and continuous access to all essential services. While the 4-hour

period and access to essential services may be denied when necessary to preserve facility safety and security, the regulations require the jail to record, review and report such determinations in a manner that allows for sufficient oversight.

6.) Paperwork:

As set forth above, any determination by local correctional facility administrators to deny segregated inmates four (4) hours out-of-cell time, to segregate any inmate under the age of eighteen (18), 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, or to deny an essential inmate service to any inmate must be made in writing, reviewed every seven (7) days, and in certain circumstances reported to SCOC.

7.) Duplication:

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

8.) Alternatives:

The alternative, not promulgating regulations requiring local correctional facilities to record, review and report determinations to subject inmates to cell confinement and deprive essential inmate services, was dismissed by SCOC due to the agency's immediate need to sufficiently monitor and oversee such confinement and deprivation.

9.) Federal standards:

There are no applicable minimum standards of the federal government.

10.) Compliance schedule:

Each local correctional facility is expected to be able to achieve compliance with the proposed rule once effective, which shall occur immediately upon publication of a Notice of Adoption in the *State Register*.