

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.