



# Commission of Correction

**ALLEN RILEY**  
Chairman

**THOMAS J. LOUGHREN**  
Commissioner

**YOLANDA CANTY**  
Commissioner

## MEMORANDUM

**TO:** COMMISSION MEMBERS

**FROM:** Brian Callahan, General Counsel *BC*

**RE:** AGENDA FOR COMMISSION MEETING

**DATE:** July 26, 2022 at 11:00AM

**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. MINUTES

#### **SCOC**

June 28, 2022 Commission Meeting

#### **CPCRC**

July 14, 2022

#### **MRB**

Administrative Closures

### II. VARIANCES

#### **A. Westchester County Department of Correction Westchester County Jail**

**20-W-001**

Waiver – Inmate Possession of Medication  
Section 7010.3

#### **B. New York City Department of Correction**

**10-V-02**

Kiosk Service Fee  
Section 7016.2

**C. Suffolk County Sheriff's Office**  
**Suffolk County Jail Riverhead**  
**20-V-07**  
Visitation  
7008.2(b) and 7008.3(c)

**D. Suffolk County Sheriff's Office**  
**Suffolk County Jail Yaphank**  
**20-V-08**  
Visitation  
7008.2(b) and 7008.3(c)

**E. Ulster County Sheriff's Office**  
**Ulster County Jail**  
**22-V-10**  
Correspondence  
7004.1 and 7004.3

**III. MFC**

**F. Otsego County Sheriff's Office**  
**Otsego County Jail**  
Revised MFC

**IV. CONSTRUCTION**

**G. New York City Department of Correction**  
**Rose M. Singer Center**  
**22-C-056**  
Outdoor Family Visiting Area

**H. Monroe County Sheriff's Office**  
**Monroe County Jail**  
**21-C-007**  
Jail Entry Vestibule Renewal

**V. REGULATORY**

**I. Notice of Adoption**  
9 NYCRR section 7001.1(f), *et al*  
Minimum standards for the imposition of segregated confinement  
and the operation of RRUs in jails



# Commission of Correction

ALLEN RILEY  
Chairman

THOMAS J. LOUGHREN  
Commissioner

YOLANDA CANTY  
Commissioner

## MINUTES Commission Meeting

### STATE COMMISSION OF CORRECTION

#### LOCATION:

Albany Location  
80 S. Swan Street, 12<sup>th</sup> Floor  
Albany, New York 12210

**DATE OF MEETING: June 28, 2022**

Chairman Riley called the meeting to order at 10:57 a.m.

#### **PRESENT:**

- Allen Riley, Chairman
- Thomas Loughren, Commissioner
- Yolanda Canty, Commissioner
- Tricia Amati, Assistant to Chairman/Commissioner
- Brian Callahan, Counsel
- Debbie Slack-Bean, Associate Attorney
- Terry Moran, Director of Operations
- Cynthia Allen, Correctional Specialist 3
- Chis Ost, Correctional Specialist 3
- Larry Roe, Correctional Specialist 3
- Ellen Tryon, Correctional Specialist 3
- Adam Tilbe, Correctional Facility Specialist 2
- Sean Desch, Correctional Facility Specialist 1
- Elizabeth Laubach, Correctional Facility Specialist 1

#### **I. MINUTES**

##### **SCOC**

May 17, 2022 Commission Meeting

**Approved Unanimous  
Canty/Loughren**

June 2, 2022 Supplemental Commission Meeting

**Approved Unanimous  
Canty/Loughren**

##### **CPCRC**

June 9, 2022

**Approved Unanimous  
Canty/Loughren**

**MRB**  
Administrative Closures

**Approved Unanimous**  
**Loughren/Canty**

June 2, 2022 Medical Review Board Meeting

**Approved Unanimous**  
**Loughren/Canty**

**II. VARIANCES**

**A. Genesee Sheriff's Office**  
**Genesee County Jail**  
**21-V-03**  
Capacity  
Section 7040

**Approved Unanimous**  
**July 1, 2023**  
**Canty/Loughren**

**B. New York City Department of Correction**  
**George R. Vierno Center**  
**20-V-16**  
Inmate Confinement  
Section 7075.4(a)

**Approved Unanimous**  
**October 1, 2022**  
**Canty/Loughren**

**C. Albany County Sheriff's Office**  
**Albany County Jail**  
**19-V-09**  
Prisoner Correspondence  
Sections 7004.1 and 7004.3

**Approved Unanimous**  
**July 1, 2023**  
**Canty/Loughren**

**D. Broome County Sheriff's Office**  
**Broome County Jail**  
**21-V-15**  
Prisoner Correspondence  
Sections 7004.1 and 7004.3

**Approved Unanimous**  
**July 1, 2023**  
**Canty/Loughren**

**E. Cattaraugus County Sheriff's Office**  
**Cattaraugus County Jail**  
**21-V-23**  
Prisoner Correspondence  
Sections 7004.1 and 7004.3

**Approved Unanimous**  
**July 1, 2023**  
**Canty/Loughren**

**F. Chautauqua County Sheriff's Office**  
**Chautauqua County Jail**  
**21-V-09**  
Prisoner Correspondence  
Sections 7004.1 and 7004.3

**Approved Unanimous**  
**July 1, 2023**  
**Canty/Loughren**

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|---|--|
| <p><b>G. Chenango County Sheriff's Office</b><br/> <b>Chenango County Jail</b><br/> <b>22-V-02</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>   | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>H. Cayuga County Sheriff's Office</b><br/> <b>Cayuga County Jail</b><br/> <b>21-V-07</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>       | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>I. Dutchess County Sheriff's Office</b><br/> <b>Dutchess County Jail</b><br/> <b>21-V-12</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>   | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>J. Erie County Holding Center</b><br/> <b>21-V-05</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>  | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>K. Erie County Correctional Facility</b><br/> <b>21-V-06</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>                                   | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>L. Franklin County Sheriff's Office</b><br/> <b>Franklin County Jail</b><br/> <b>22-V-03</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>   | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>M. Greene County Sheriff's Office</b><br/> <b>Greene County Jail</b><br/> <b>21-V-18</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>       | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>N. Jefferson County Sheriff's Office</b><br/> <b>Jefferson County Jail</b><br/> <b>20-V-20</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p> | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |

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|---|--|
| <p><b>O. Livingston County Sheriff's Office</b><br/> <b>Livingston County Jail</b><br/> <b>20-V-14</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p> | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>P. Madison County Sheriff's Office</b><br/> <b>Madison County Jail</b><br/> <b>21-V-20</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>       | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>Q. Monroe County Sheriff's Office</b><br/> <b>Monroe County Jail</b><br/> <b>20-V-06</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>         | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>R. Nassau County Sheriff's Office</b><br/> <b>Nassau County Jail</b><br/> <b>21-V-20</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>         | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>S. Niagara County Sheriff's Office</b><br/> <b>Niagara County Jail</b><br/> <b>21-V-04</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>       | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>T. Oneida County Sheriff's Office</b><br/> <b>Oneida County Jail</b><br/> <b>21-V-11</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>         | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>U. Onondaga Corrections</b><br/> <b>21-V-10</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>  | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>V. Onondaga Custody</b><br/> <b>21-V-13</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>  | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |

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| <p><b>W. Ontario County Sheriff's Office</b><br/> <b>Ontario County Jail</b><br/> <b>22-V-01</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>          | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>X. Oswego County Sheriff's Office</b><br/> <b>Oswego County Jail</b><br/> <b>20-V-22</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>            | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>Y. Orange County Sheriff's Office</b><br/> <b>Orange County Jail</b><br/> <b>20-V-24</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>            | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>Z1. Orleans County Sheriff's Office</b><br/> <b>Orleans County Jail</b><br/> <b>21-V-17</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>         | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>Z2. Putnam County Sheriff's Office</b><br/> <b>Putnam County Jail</b><br/> <b>21-V-24</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>           | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>Z3. Rockland County Sheriff's Office</b><br/> <b>Rockland County Jail</b><br/> <b>20-V-25</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p>       | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |
| <p><b>Z4. Schenectady County Sheriff's Office</b><br/> <b>Schenectady County Jail</b><br/> <b>20-V-29</b><br/> Prisoner Correspondence<br/> Sections 7004.1 and 7004.3</p> | <p><b>Approved Unanimous</b><br/> <b>July 1, 2023</b><br/> <b>Canty/Loughren</b></p> |

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| <p><b>Z5. Suffolk County Sheriff's Office<br/>Suffolk Riverhead and Yaphank<br/>21-V-19</b><br/>Prisoner Correspondence<br/>Sections 7004.1 and 7004.3</p>       | <p><b>Approved Unanimous<br/>July 1, 2023<br/>Canty/Loughren</b></p> |
| <p><b>Z6. Sullivan County Sheriff's Office<br/>Sullivan County Jail<br/>21-V-02</b><br/>Prisoner Correspondence<br/>Sections 7004.1 and 7004.3</p>               | <p><b>Approved Unanimous<br/>July 1, 2023<br/>Canty/Loughren</b></p> |
| <p><b>Z7. St. Lawrence County Sheriff's Office<br/>St. Lawrence County Jail<br/>21-V-21</b><br/>Prisoner Correspondence<br/>Sections 7004.1 and 7004.3</p>       | <p><b>Approved Unanimous<br/>July 1, 2023<br/>Canty/Loughren</b></p> |
| <p><b>Z8. Westchester County Department of Correction<br/>Westchester County Jail<br/>20-V-27</b><br/>Prisoner Correspondence<br/>Sections 7004.1 and 7004.3</p> | <p><b>Approved Unanimous<br/>July 1, 2023<br/>Canty/Loughren</b></p> |
| <p><b>Z9. Otsego County Sheriff's Office<br/>Otsego County Jail<br/>22-V-06 NEW</b><br/>Prisoner Correspondence<br/>Sections 7004.1 and 7004.3</p>               | <p><b>Approved Unanimous<br/>July 1, 2023<br/>Canty/Loughren</b></p> |
| <p><b>Z10. Erie County Sheriff's Office<br/>Erie County Holding Center<br/>20-V-12</b><br/>Visitation<br/>7008.2(b) and 7008.3(c)</p>                            | <p><b>Denied Unanimous<br/>Loughren/Canty</b></p>                    |
| <p><b>Z11. Erie County Sheriff's Office<br/>Erie County Correctional Facility<br/>20-V-13</b><br/>Visitation<br/>7008.2(b) and 7008.3(c)</p>                     | <p><b>Denied Unanimous<br/>Loughren/Canty</b></p>                    |
| <p><b>Z12. Onondaga County Sheriff's Office<br/>Onondaga County Corrections Department<br/>21-V-16</b><br/>Visitation<br/>7008.2(b) and 7008.3(c)</p>            | <p><b>Denied Unanimous<br/>Loughren/Canty</b></p>                    |



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|---|---|
| <p><b>Z13. Rensselaer County Sheriff's Office<br/>Rensselaer County Jail<br/>22-V-07</b><br/>Visitation<br/>7008.2(b) and 7008.3(c)</p>           | <p><b>Denied Unanimous<br/>Loughren/Canty</b></p>                       |
| <p><b>Z14. Suffolk County Sheriff's Office<br/>Suffolk County Jail Riverhead<br/>20-V-07</b><br/>Visitation<br/>7008.2(b) and 7008.3(c)</p>       | <p><b>Approved Unanimous<br/>August 1, 2022<br/>Loughren/Canty</b></p>  |
| <p><b>Z15. Suffolk County Sheriff's Office<br/>Suffolk County Jail Yaphank<br/>20-V-08</b><br/>Visitation<br/>7008.2(b) and 7008.3(c)</p>         | <p><b>Approved Unanimous<br/>August 1, 2022<br/>Loughren/Canty</b></p>  |
| <p><b>Z16. Westchester County Department of Correction<br/>Westchester County Jail<br/>20-V-23</b><br/>Visitation<br/>7008.2(b) and 7008.3(c)</p> | <p><b>Denied Unanimous<br/>Loughren/Canty</b></p>                       |
| <p><b>Z17. Nassau Police Department<br/>22-V-08 NEW</b><br/>Visitation<br/>7008.2(b) and 7008.3(c)</p>  | <p><b>Approved Unanimous<br/>January 1, 2023<br/>Canty/Loughren</b></p> |
| <p><b>III. <u>MFC</u></b></p>   |   |
| <p><b>Z18. Fulton County Sheriff's Office<br/>Fulton County Jail</b><br/>Revision</p>   | <p><b>Approved Unanimous<br/>Loughren/Canty</b></p>                     |
| <p><b>Z19. Montgomery County Sheriff's Office<br/>Montgomery County Jail</b><br/>Revision</p>   | <p><b>Approved Unanimous<br/>Loughren/Canty</b></p>                     |
| <p><b>Z20. Oneida County Sheriff's Office<br/>Oneida County Jail</b><br/>Revision</p>   | <p><b>Approved Unanimous<br/>Loughren/Canty</b></p>                     |
| <p><b>Z21. Putnam County Sheriff's Office<br/>Putnam County Jail</b><br/>Revision</p>   | <p><b>Approved Unanimous<br/>Loughren/Canty</b></p>                     |

**Z22. Tioga County Sheriff's Office** **Approved Unanimous**  
**Tioga County Jail** **Loughren/Canty**  
Revision

**Z23. Washington County Sheriff's Office** **Approved Unanimous**  
**Washington County Jail** **Loughren/Canty**  
Revision

**IV. CONSTRUCTION**

**Z24. Saratoga County Sheriff's Office** **Approved Unanimous**  
**Saratoga County Jail** **Loughren/Canty**  
**22-C-035**  
Renovations to Medical, Vehicle Sallyport, Intake Areas

**Z25. Greene County Sheriff's Office** **Approved Unanimous**  
**Greene County Jail** **Loughren/Canty**  
**22-C-052**  
Furnish Mezzanine Cells

**Z26. Seneca County Sheriff's Office** **Approved Unanimous**  
**Seneca County Jail** **Loughren/Canty**  
**22-V-09**  
Prisoner Correspondence  
Sections 7004.1 and 7004.3

Commissioner Canty made a motion to go into executive session at 11:02 a.m. to discuss Variances, Construction and Medical Review Board items which was seconded by Commissioner Loughren. Commissioner Canty made a motion to exit Executive Session and return to general session at 11:20 a.m., which was seconded by Commissioner Loughren.

The meeting resumed at 11:20 a.m. Motion was made by Commissioner Canty to ratify actions taken in Executive Session regarding Variances, Construction and Medical Review Board items, seconded by Commissioner Loughren. Commissioner Loughren made a motion to adjourn at 11:21 a.m. which was seconded by Commissioner Canty.

Respectfully submitted,

Tricia Amati  
Assistant to Chairman/Commissioners



# Commission of Correction

**ALLEN RILEY**  
Chairman

**THOMAS J. LOUGHREN**  
Commissioner

**YOLANDA CANTY**  
Commissioner

## **EXECUTIVE SESSION**

### **MINUTES**

#### **LOCATION:**

#### **Commission Meeting**

#### **STATE COMMISSION OF CORRECTION**

##### **LOCATION:**

Albany Location  
80 S. Swan Street, 12<sup>th</sup> Floor  
Albany, New York 12210

#### **DATE OF MEETING: June 28, 2022**

Chairman Riley called the meeting to order at 10:57 a.m.

#### **PRESENT:**

Allen Riley, Chairman  
Thomas Loughren, Commissioner  
Yolanda Canty, Commissioner  
Tricia Amati, Assistant to Chairman/Commissioner  
Brian Callahan, Counsel  
Debbie Slack-Bean, Associate Attorney  
Terry Moran, Director of Operations  
Cynthia Allen, Correctional Specialist 3  
Chis Ost, Correctional Specialist 3  
Larry Roe, Correctional Specialist 3  
Ellen Tryon, Correctional Specialist 3  
Adam Tilbe, Correctional Facility Specialist 2  
Sean Desch, Correctional Facility Specialist 1  
Elizabeth Laubach, Correctional Facility Specialist 1

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Respectfully submitted,

Tricia Amati  
Assistant to Chairman/Commissioners

CITIZENS' POLICY AND COMPLAINT REVIEW COUNCIL

July 14, 2022

NYS Commission of Correction  
at  
Alfred E. Smith Office Building  
80 South Swan Street, 12<sup>th</sup> Floor  
Albany, NY 12210  
**WEBEX Meeting**

PRESENT:

Commissioner Canty

Council Members:

Albany:

Martin Stanton

Also Present:

Commissioner Loughren

Terry Moran

Deborah Slack-Bean

Cynthia Allen

Elizabeth Laubach

Alyssa Nolin

Michael Busch

Vicky Connors

Commissioner Canty opened the meeting at 11:05 A.M.

Commissioner Canty asked for a motion to ratify all actions taken at the June 9, 2022 meeting. Martin Stanton made a motion to ratify all actions taken on June 9, 2022. Commissioner Canty seconded. Carried. Commissioner Canty asked for a motion to approve the minutes of the June 9, 2022 meeting. Martin Stanton made a motion to approve the minutes of the June 9, 2022 meeting. Commissioner Canty seconded. Carried.

Martin Stanton, Commissioner Canty, and Commissioner Loughren reviewed the Denied with Comment grievances for the month of July 2022. Martin Stanton and Commissioner Canty made motions to Deny with the appropriate comment the grievances that they reviewed. These motions were seconded by Commissioner Canty and Martin Stanton respectively, and unanimously passed. Upon the recommendation of Commissioner Loughren, Martin Stanton made a motion to Deny with the appropriate comment the grievances that Commissioner Loughren reviewed. This motion was seconded by Commissioner Canty, and unanimously passed.

Martin Stanton, Commissioner Canty, and Commissioner Loughren reviewed the Expedited grievances for the month July 2022. Martin Stanton and Commissioner Canty made motions to Deny the grievances that they reviewed. These motions were seconded by Commissioner Canty and Martin Stanton respectively, and unanimously passed. Upon the recommendation of Commissioner Loughren, Martin Stanton made a motion to Deny the grievances that Commissioner Loughren reviewed. This motion was seconded by Commissioner Canty, and

unanimously passed.

Martin Stanton, Commissioner Loughren, and Commissioner Canty reviewed nine (9) Facility Responses. Martin Stanton made a motion to refer St. Lawrence County Facility Responses to Grievance #151978, #151983, #151980, and #151981 to the Commission for follow up. This motion was seconded by Commissioner Canty, and unanimously passed

The Council reviewed the remaining grievances.

**ACCEPT IN PART**

163131  
Montgomery CJ Unanimous

162536  
Onondaga COR Unanimous

163055  
163038  
Steuben CJ Unanimous

163315  
Suffolk CJ Unanimous

**DENY WITH COMMENT**

163070  
Orange CJ Unanimous

163178  
Tompkins CJ Unanimous

**ADMINISTRATIVE CLOSURES**

**DENY**

163673  
Albany CJ Unanimous

162591  
162590  
162548  
162547  
162546  
162545  
162544  
Cattaraugus CJ Unanimous

162890  
Cayuga CJ Unanimous

163794  
163134  
163133  
163100  
162630  
162610  
Chautauqua CJ

Unanimous

163785  
163736  
163734  
163733  
163732  
163624  
163623  
163614  
163613  
163440  
163342  
163341  
163267  
163266  
163231  
163230  
162958  
162957  
162733  
162491  
162244

Chenango CJ

Unanimous

163147  
162321  
162255  
Columbia CJ

Unanimous

162915  
Delaware CJ

Unanimous

163331  
163154  
163151  
163150  
162571  
162502  
Dutchess CJ

Unanimous

163659	
163412	
163274	
162921	
162913	
162872	
162753	
162570	
162513	
162472	
Erie CF	Unanimous
163590	
162655	
Erie CJ	Unanimous
163786	
163616	
163550	
162830	
162619	
162595	
162594	
162593	
Fulton CJ	Unanimous
162599	
Genesee CJ	Unanimous
162817	
Greene CJ	Unanimous
162653	
162631	
Jefferson CJ	Unanimous
163033	
162130	
Lewis CJ	Unanimous
163471	
163470	
163202	
Madison CJ	Unanimous
163255	
163251	
163196	
163141	
163140	
163036	



163035  
162798  
162770  
162592  
Monroe CJ Unanimous

163901  
163474  
163473  
163472  
163439  
163390  
163203  
163135  
163132  
162971  
162970  
162931  
162924  
162916  
162690  
162670  
Montgomery CJ Unanimous

163393  
162154  
Nassau CJ Unanimous

163490  
162540  
162537  
Onondaga COR Unanimous

163897  
163300  
Onondaga CUS Unanimous

163130  
163052  
163039  
163037  
162953  
162950  
162715  
162612  
162151  
Ontario CJ Unanimous

163435 163351 162652 162650 162597 Orange CJ	Unanimous
162810 162790 162243 Orleans CJ	Unanimous
163570 Oswego CJ	Unanimous
162270 Putnam CJ	Unanimous
163790 Rensselaer CJ	Unanimous
163072 162925 163822 Rockland CJ	Unanimous
162396 Schenectady CJ	Unanimous
163870 163410 163257 163254 163253 163099 162659 162658 162657 162656 162596 St. Lawrence CJ	Unanimous
163096 Steuben CJ	Unanimous
163731 Sullivan CJ	Unanimous

163317  
163181  
162874  
162797  
162714  
162713  
162711  
162710  
Tompkins CJ Unanimous

163152  
163146  
163144  
163143  
162972  
162054  
162017  
Ulster CJ Unanimous

163776  
163662  
163661  
163311  
163091  
162495  
162274  
Warren CJ Unanimous

163797  
163397  
163075  
163074  
162515  
162503  
Wayne CJ Unanimous

163718  
163334  
163333  
163198  
162910  
162893  
162636  
162620  
162598  
Westchester CJ Unanimous

**DENIED WITH COMMENT**

163770  
Cattaraugus CJ Unanimous

163735  
163268  
162621  
Chenango CJ Unanimous

163411  
163210  
Greene CJ Unanimous

163057  
Herkimer CJ Unanimous

163145  
Livingston CJ Unanimous

163250  
163185  
163184  
Monroe CJ Unanimous

163475  
163187  
Montgomery CJ Unanimous

163010  
Onondaga COR Unanimous

163652  
162922  
162813  
162514  
Onondaga CUS Unanimous

163737  
163260  
163097  
163053  
162952  
162951  
162732  
162614  
163270  
Ontario CJ Unanimous

163572 163571 Oswego CJ	Unanimous
163276 Rensselaer CJ	Unanimous
163450 163073 Rockland CJ	Unanimous
163750 163510 162854 162853 162852 162716 Schenectady CJ	Unanimous
163098 St. Lawrence CJ	Unanimous
163717 Steuben CJ	Unanimous
163617 162955 162954 Sullivan CJ	Unanimous
163195 163194 163193 163192 163191 163183 163182 163180 163179 163177 163176 163174 163171 163170 162712 Tompkins CJ	Unanimous

163900  
163898  
163354  
163340  
163337  
Ulster CJ Unanimous

163777  
163775  
163774  
163312  
163296  
163295  
Warren CJ Unanimous

162543  
162542  
162362  
Washington CJ Unanimous

163798  
163627  
163625  
163395  
163394  
Wayne CJ Unanimous

162956  
162055  
Westchester CJ Unanimous

162914  
Yates CJ Unanimous

**FACILITY RESPONSES REFERRED TO THE COMMISSION**

151978  
151983  
151980  
151981  
St. Lawrence CJ Unanimous

The next CPCRC meeting will be held on Thursday August 11, 2022 at 11:00 A.M. via WebEx.

Commissioner Canty requested a motion to adjourn the meeting, which was made by Martin Stanton, seconded by Commissioner Canty, and carried. The meeting adjourned at 11:30 A.M.

Respectfully submitted,

Victoria Connors  
Administrative Assistant

Name of Facility: Westchester DOC

Waiver # 20-W-001

New:   Renewal: XX

Relief from Standard: 7010.3 (a)

Application by: Commissioner Spano

Date Request Rec: 7/5/22

Last Approved: 7/20/21

Length of Approval: 1 Year

Expiration: 8/1/22

Write-up Prepared by: Christopher Ost, CFS III

Recommendation by Forensic Staff: Approve for 1 year.

Recommendation at Briefing:

Final Recommendation:

**Waiver Requested:**

Sell over the counter medication in Commissary (7010.3 (a), 7016)

Keep medication on person (7010.3 (a) per 7010.3 (b))

**WAIVER HISTORY:**

7/5/21           Renewal request received.

7/9/21           Renewal request received.

7/6/20           Renewal request received.

4/27/20          New Waiver Request

**CONSTRUCTION/RENOVATION PLANS**

None

**OTHER WAIVERS IN EFFECT**

None

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

Scheduled for 7-19-21.

**ANY OPEN 7010 VIOLATIONS:**

None

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

None

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

**7/26/22**

Westchester County Dept. of Correction is requesting a renewal of their waiver to §7010.3 (a) requirements pursuant to §7010.3(b) that allows for most general population inmates to possess approved medications and self-administer them. The initial waiver period was for 3 months for review during the COVID 19 Pandemic period, then it was renewed for a full year. Status report for Westchester DOC as of 7/7/22 indicated that they have 2 incarcerated individuals with active COVID 19 with 49 individuals tested in the last 7 days. 31 individuals were on quarantine. There have been no reported incidents, grievances, or complaints received regarding medication administration since implemented. Westchester DOC reports the program is working well and has benefitted in maintaining social distancing needs during the pandemic. It is recommended the waiver be approved and extended for 1 year.

**7/20/21**

Westchester County Dept. of Correction is requesting a renewal of their waiver to §7010.3 (a) requirements pursuant to §7010.3(b) that allows for most general population inmates to possess approved medications and self-administer them. The initial waiver period was for 3 months for review during the COVID 19 Pandemic period, then it was renewed for a full year. Status report for Westchester DOC as of 7/7/21 indicated that they have had 94 inmates and 254 staff test positive for COVID 19 during the pandemic. The facility(s) report no current inmate quarantines and only 1 staff under current quarantine. There have been no reported incidents, grievances, or complaints received regarding medication administration since implemented. Westchester DOC reports the program is working well and has benefitted in maintaining social distancing needs during the pandemic. It is recommended the waiver be approved and extended for 1 year.

**7/21/20**

Westchester County Dept. of Correction is requesting a renewal of their waiver to §7010.3 (a) requirements pursuant to §7010.3(b) that allows for most general population inmates to possess approved medications and self-administer them. The initial waiver period was for 3 months for review during the COVID 19 Pandemic period. Status report for Westchester DOC as of 7/1/20 indicated that they have had 58 inmates and 158 staff test positive for COVID 19 during the pandemic. The facility(s) report no current inmate quarantines and 24 staff under quarantine. There have been no reported incidents, grievances, or complaints received regarding medication administration since implemented. Westchester DOC reports the program is working well and has benefitted in maintaining social distancing needs during the pandemic. It is recommended the waiver be approved and extended for 1 year.

**4/27/20**

This is a special request from the Westchester County Dept. of Correction for a waiver to the 7010.3 (a) requirements regarding possession of medication by inmates. Westchester DOC is applying for a waiver pursuant to 7010.3 (b). Due to the COVID-19 virus, Westchester DOC has experienced a significant increase in the number of inmates that require medical isolation and the number of housing areas that have to be placed into quarantine. This has increased the amount of time that nursing staff must use to perform individual medication deliveries. This has also led to increased person to person contacts. In an effort to facilitate social distancing practices, decrease demand on available nursing staff, and to prevent further spread of the COVID – 19 virus to staff and inmates within the facility, Westchester DOC is seeking to implement a Keep on Person (KOP) program that would permit certain medications be possessed and self-administered within the inmate population. The KOP program will include:



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Initial approval should be for 3 months with a follow up and review by Forensic Staff. Extended length of approval will be considered after the first 3 months.

**RECOMMENDED CONDITIONS IF APPROVED:**

**7/26/22**

1. The Jail Physician shall be responsible for all “keep on person medication” determinations including:
  - The type and quantity of medications that may be possessed by incarcerated individuals.
  - The quantity of medication may be permitted only up to a fourteen (14) day supply.
2. The Jail Physician shall assure that all “keep on person medications” are:
  - Dispensed by the physician or provider licensed to do so.
  - [REDACTED]  
[REDACTED].
3. The Jail Physician shall assure the incarcerated individual has been educated and provided instruction on the proper dosage and administration of the medication

**7-21-20**

1. The Jail Physician shall be responsible for all “keep on person medication” determinations including:
  - The type and quantity of medications that may be possessed by inmates.
  - The quantity of medication may be permitted only up to a fourteen (14) day supply.
2. The Jail Physician shall assure that all “keep on person medications” are:
  - Dispensed by the physician or provider licensed to do so.
  - [REDACTED]  
[REDACTED].
3. The Jail Physician shall assure the inmate has been educated and provided instruction on the proper dosage and administration of the medication.

**7-20-21**

1. The Jail Physician shall be responsible for all “keep on person medication” determinations including:
  - The type and quantity of medications that may be possessed by incarcerated individuals.
  - The quantity of medication may be permitted only up to a fourteen (14) day supply.

2. The Jail Physician shall assure that all “keep on person medications” are:  
- Dispensed by the physician or provider licensed to do so.

- [REDACTED]  
[REDACTED].

3. The Jail Physician shall assure the incarcerated individual has been educated and provided instruction on the proper dosage and administration of the medication

**7-21-20**

1. The Jail Physician shall be responsible for all “keep on person medication” determinations including:  
- The type and quantity of medications that may be possessed by inmates.  
- The quantity of medication may be permitted only up to a fourteen (14) day supply.

2. The Jail Physician shall assure that all “keep on person medications” are:  
- Dispensed by the physician or provider licensed to do so.

- [REDACTED]  
[REDACTED].

3. The Jail Physician shall assure the inmate has been educated and provided instruction on the proper dosage and administration of the medication.

**4-27-20**

1. The Jail Physician shall develop a policy and procedure for the purpose of permitting the possession of certain medications by inmates on their person. The policy and procedure shall include:  
- Jail Physician makes all “keep on person medication” determinations.  
- The type and quantity of medications that may be possessed by inmates.  
- The quantity of medication may be permitted only up to a fourteen (14) day supply.  
- Procedures for verifying medication compliance and renewals.

2. The Jail Physician shall assure that all “keep on person medications” are:  
-Dispensed by the physician or provider licensed to do so.

[REDACTED]  
[REDACTED].

3. The Jail Physician shall assure the inmate has been educated and provided instruction on the proper dosage and administration of the medication.

4. A copy of the medication procedures permitted by this Waiver shall be forwarded to the Commission’s Forensic Medical Unit.

**REVIEWED BY REGIONAL SUPERVISOR: Christopher Ost**

**DATE: 7-12-22**

**REVIEWED BY DEPUTY DIRECTOR: T. Moran**

**DATE: 7/15/22**

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**OFFICIAL USE ONLY:**

NOTES OF MEETING: \_\_\_\_\_



**George Latimer**  
County Executive

Department of Correction  
Leandro Diaz  
Deputy Commissioner

July 5, 2022

**BY ELECTRONIC MAIL**  
Chairman Allen Riley  
New York State Commission of  
Correction Alfred E. Smith State  
Office Building  
80 S. Swan Street, 12th Floor  
Albany, New York 12210

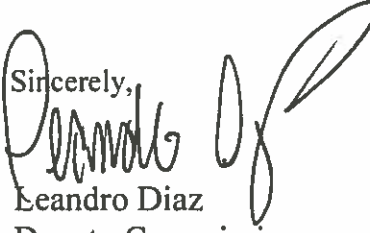
**Re: Extension Request- Waiver 20-W-001 (KOP Medication)**

Dear Chairman Riley:

I am respectfully requesting an extension of the Commission's approval for Waiver 20-W-001 dated July 20, 2021 and set to expire on August 1, 2022.


While we are pleased to notify the commission that we currently have only a few cases of COVID we believe that this "keep on person medication" protocol is an integral part of our overall success in combatting this pandemic by limiting exposure between staff and our population.

Thank you for your time and consideration in this matter. I am available by phone (914) 231-1326 or by e-mail [lidd@westchestergov.com](mailto:lidd@westchestergov.com) if you wish to discuss.

Sincerely,  
  
Leandro Diaz  
Deputy Commissioner





- **Prisoner Personal Hygiene**
  - Not Providing laundry services twice a week for personal clothing
  - Not consistently issuing pillows and pillow cases
  - Not consistently issuing uniforms due to order shortage
- **Discipline**
  - Facility Directive and Inmate Rulebook Issues
  - Disciplinary Hearing Processing Issues
  - Sanction Issues
  - Hearing Appeal Issues
- **Good Behavior Allowances**
  - Documentation Issues
- **Visitation**
  - Identification and Registration Issues
  - Department Policy and Procedure Issues
  - 
- **Food Service**
  - Policy and Procedure Issues on Nutritional Adequacy
  - Policy and Procedure Issues on Medical & Religious Diets
- **Sanitation**
  - Water Leaks and Water Damage Issues
  - Rust Issues
  - Peeling Paint Issues
  - Vermin Control/Sanitation Issues
  - Mold Issues
  - Repair Issues
  - Food Accumulation Issues
  - Clutter Issues
- **Commissary**
  - Commissary operation is not self-supporting
  - Commissary profits not deposited in a separate bank account
  - Commissary account not maintained in a manner which fully substantiates all purchases, sales, and expenditures
  - Last audit was in 2004
  - Unclaimed funds from inmate accounts are transferred to the Police Property Payable Fund
  - Department's commissary audit needs to include an audit of the accounting system being utilized (IFCOM) by the Department for inmate funds
  - No conspicuously posted signs that outlined the requirements of section 7016.2(e)
- **Religion**
  - Due to religious service advisor retirements and illnesses, some religious services programs have been canceled
- **Packages**
  - Each Facility had a different way of processing outgoing prisoner packages, and some did not have the prisoner package their outgoing package
  - Facility Staff and not the CAO were determining whether or not a prisoner could place personal property in secured property
  - Not consistently providing written notice to any person affected by the CAO determination to deny property or deem contraband

- **Exercise**
  - [REDACTED]
  - Not consistently providing outdoor exercise for all housing areas
- **Legal Services**
  - Department does not consistently provide access to a list of available legal reference materials that are sufficiently indexed to allow for component request by a chapter, article, and section; for prisoners who do not have direct access to such legal reference materials
  - Not consistently providing access to a notary within one business day of request
- **Chemical Agents**
  - Policy and Procedure Issues
  - Facility Health Services Training Issues
  - Recording the Use Of Chemical Agent Issues
  
- **Inmate Confinement and Deprivation**
  - Policy and Procedure Issues
  - Lack of documentation for out of cell time
  - Lack of documentation regarding record keeping

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

See above Commissary section under "Any Open Minimum Standard Violations".

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

NYC DOC has contracts with two companies to provide services for deposits to incarcerated individual's accounts (JPAY, and Western Union). In the Department's application are the associated fees for the companies based on the method of payment used.

The Department also allows for visitors to deposit funds, without charge, into an incarcerated individual's account via the Rikers Island Central Cashiers (RICC) and at each of the current operating borough facilities' cashiers.

Commission staff recommends that this variance be approved for 1 year. The service fees seem to be within a standard range of fees charged for similar Kiosk services elsewhere. Additionally, the Kiosk service is beneficial to the incarcerated population and their family and friends that use the system. Furthermore, NYCDOC reports that they receive no payment for this service and allow such service to be provided for the convenience of the incarcerated population and their family and friends. NYCDOC also has a system in place that allows persons to deposit monies into an incarcerated individual's account that does not impose a service fee.

**REVIEWED BY REGIONAL SUPERVISOR: Larry Roe DATE: 07/15/22**

**REVIEWED BY DIRECTOR: T. Moran DATE: 7/18/22**

**COMMENTS BY DIRECTOR:**

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**OFFICIAL USE ONLY:**

NOTES OF MEETING:



NEW YORK CITY DEPARTMENT OF CORRECTION  
Louis Molina, Commissioner  
Office of the Commissioner  
75-20 Astoria Boulevard, Suite 305  
East Elmhurst, New York. 11370

718 • 546 • 0890  
Fax 718 • 278 • 6022

July 8, 2022

Allen Riley  
Chairman  
NYS Commission of Correction  
Alfred E. Smith State Office Building  
80 South Swan Street, 12<sup>th</sup> Floor  
Albany, NY 12210

**Re: Variance Renewal Request on Maximum  
Five Dollar Service Fee/Variance #10-V-02**

Dear Chairman Riley:

I am writing to request the renewal of the variance from Minimum Standard 7016.2(b), which imposes a maximum service fee of five dollars on the use of “electronic kiosks, automated teller machines, or other similar devices or systems capable of allowing members of the public to deposit funds into an inmate’s institutional fund account.” The State Commission of Correction (SCOC) last approved this variance on July 20, 2021. The variance expires on August 1, 2022.

The Department of Correction’s completed SCOC Variance Application Form is attached.

Thank you for your consideration of this request for a variance renewal. Please contact me if you have any questions.

Sincerely,

Louis Molina  
Commissioner



Commission of Correction

New York State
Commission of Correction
80 S. Swan Street, 12th Floor
Albany, New York 12210
518-485-2346
correspondence@scoc.ny.gov

County Jail/NYCDOC Non-Capacity Variance Application Form

INSTRUCTIONS TO SHERIFF, COMMISSIONER OR CHIEF ADMINISTRATIVE OFFICER:

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and e-mail to the attention of Chairman/Commissioner, using the above e-mail address.

Facility: NYC Department of Correction

Person requesting: Louis Molina

(Sheriff/Commissioner/Chief Administrative Officer)

A. State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested: Example: 7008.2b states that, The visiting area shall be designed so as to allow physical contact between prisoners and their visitors. To request a variance to have physical barriers between inmates and visitors the citation should be listed as:

Ex. Part: 7008 Section: 2 Subdivision: b

Standard for which the variance is requested:

Part: 7016 Section: 2 Subdivision: b

B. In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. The number of characters you can type in the below space is limited. If necessary, please attach any additional information with your submittal.

See attached.

- C. In the space provided below include a detailed description regarding why this variance is necessary. **The number of characters you can type in the below space is limited. If necessary, please attach any additional information with your submittal.**

See attached.

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

365 Days      0 Weeks      0 Months

- E. Should this variance application be approved, please detail below any plans, provisions and timetables for achieving full compliance with the Minimum Standard regulation that is the subject of this application. **The number of characters you can type in the below space is limited. If necessary, please attach any additional information with your submittal.**

Not applicable.

F. Has this variance been previously approved by the Commission?

Yes  If yes, include the variance number 10-V-02 No



7/7/22

Signature (Sheriff), (Commissioner), (Chief Administrative Officer)

Date

**Additional copies of this form can be obtained by contacting the Commission, or by visiting [www.scoc.ny.gov](http://www.scoc.ny.gov)**

## **RESPONSE TO ITEM “C” OF THE SCOC VARIANCE APPLICATION FORM**

The NYC Department of Correction (DOC) requests renewal of the variance from Minimum Standard 7016.2 (b), which imposes a maximum service fee of five dollars on the use of “electronic kiosks, automated teller machines, or other similar devices or systems capable of allowing members of the public to deposit funds into an inmate’s institutional fund account.” The SCOC last approved this variance on July 20, 2021. The variance expires on August 1, 2022.

On January 28, 2010, DOC provided the SCOC with copies of the three vendor licensing agreements regarding the use of electronic kiosks, automated teller machines and similar devices. The SCOC had requested these documents in its variance approval letter dated January 20, 2010. In April 2011, the Department entered into an additional agreement with Continental Prison System, Inc. (CPSI), bringing the total to four, as discussed in a previously approved variance request. In August 2011, the licensing agreement with IC Solutions was terminated, bringing the total number of third-party vendors to three. In October 2012, the licensing agreement between the Department and Continental Prison System, Inc. (CPSI) was terminated, bringing the total number of third-party vendors to two. As of October 2018, two vendor licensing agreements remain in effect – Western Union and J-Pay. These vendor agreements have not been replaced, nor have any of these agreements expired or been terminated. In addition, no changes have occurred in the fees specified in the vendor agreements.

DOC’s justification for renewal of this variance remains unchanged from the previous variance requests. The SCOC’s maximum fee of five dollars is not viable in the economic marketplace in New York City. The five-dollar fee would essentially prevent the vendors, who currently make electronic deposits available to family and friends of DOC inmates, from continuing to provide those services, except for the most minimal of transactions. DOC understands and endorses the importance of facilitating the deposit of funds into incarcerated individual institutional fund accounts; however, DOC believes strongly that this principle would be better served by permitting the local vendors to continue providing their services at rates that are demonstrably affordable to them and to the public, than by imposing an artificial maximum that this local market will not bear. If these vendors stop providing their services in New York City, those wishing to make more than minimal deposits will be required to revert to the less convenient method of making those deposits at the DOC facilities in cash. (Those wishing to make deposits continue to have the option of depositing funds into inmate accounts with no fees at the Rikers Island Central Cashiers (RICC) and at the VCBC Cashier’s Office.)

Two vendors provide services to those seeking to make deposits in DOC’s inmate institutional fund accounts: J-Pay and Western Union. The consumer selects the vendor. The rates for J-Pay and Western Union continue to range from \$3.95 - \$11.95, depending on the type and size of the transaction (cash or credit, kiosk, internet, telephone agent, or walk-in). There were 45,908 internet deposits by credit card from April 1, 2021 through March 31, 2022 averaging \$50 each. Depending on the vendor and the nature of the transaction, the fee for a \$50 transaction continues to average below \$7.50. During the same period, vendors also processed 16,010 walk-in deposits, 67,841 telephone deposits and 319 kiosk deposits.

DOC continues not to receive any monetary benefit from the services offered by third-party money agents. DOC allows the third-party agents to provide “for fee” services, but DOC remains open to work with any third-party agent who can fulfill the standard terms of DOC’s “Money Transfer Agent License Agreement.” DOC has sought to promote price competition among the third-party agents and has tried to ensure that family members who choose to avail themselves of the services have several different options at a fair market price. DOC is willing to work with any qualified agent and does not accept any commission or fee.

DOC’s only goal in working with these third-party agents remains the provision of a valuable service to the incarcerated individual in custody and to their loved ones. DOC believes that this convenience is the reason that we have been accepting an average of 10,840 deposits per month through the third-party agents during the specified 12-month period.

From April 1, 2020 to March 31, 2021, there were 112,846 deposits through vendors, representing 93 percent of all deposits to institutional fund accounts for an average daily inmate population of 4534. The total amount deposited in this manner was \$7,274,092. From April 1, 2021 through March 31, 2022, there were 130,078 deposits through vendors, which represent 93 percent of all deposits to institutional fund accounts for an average daily inmate population of 5603. The total amount deposited in this manner during this period was \$8,494,275.

As noted above, the utilization of third-party vendors accounts for 93 percent of all deposits to inmate accounts for the period April 1, 2021 to March 31, 2022. This is a clear indication that these vendors continue to provide a valued service that enables more inmates to have more funds deposited to their institutional fund accounts than would be the case otherwise.

The availability of vendor services at market rates for electronic deposits to DOC inmate fund accounts continues to provide an effective and valued service, not only to the family and friends who make these deposits but also to the incarcerated individuals themselves.

Name of Facility: Suffolk County Jail (Riverhead)

Variance #20-V-07

**New:**            **Renewal:** x                            **Relief from Standard:** 7008.2(b) and 7008.3(c)

**Application by:** Warden M. Franchi                            **Date Request Rec:** 07/7/2022

**Last Approved:** 6/28/2022    **Length of Approval:** 1 month    **Expiration:** 8/1/2022

**Write-up Prepared by:** Susana Gonzalez CFSII

**Recommendation by Field Staff:** Recommending approval until September 1,2022.

**Recommendation at Briefing:**

**Final Recommendation:**

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**SUMMARY OF VARIANCE REQUEST**

The facility is requesting to continue limitation of physical contact during visitation and to limit inmates to one visitor per visit to continue to follow safety protocols that have been put in place for everyone’s safety and to stop the spread of COVID-19. The facility is reapplying for the Variance as their Community COVID Level is at medium based on the CDC’s report.

**VARIANCE HISTORY**

Approval until 10/1/20

Renewed until 1/1/21

Renewal until 4/1/21

Renewal until 7/1/21

Renewal until 10/1/21

Renewal until 1/1/22

Renewal until 4/1/22

Renewal until 5/1/22

Denied            4/29/22 - Extension request denied, as the community transmission rate was low at that time for the County, according to the Centers for Disease Control data.

Renewed until 7/1/22

Renewed until 8/1/22

**CONSTRUCTION/RENOVATION PLANS**

None at this time

**OTHER VARIANCES IN EFFECT**

20-v-08 applies the same conditions of this variance to the Department’s Yaphank facility.

21-V-19 applies to Correspondence.

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

3/1/2022



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

3/1/2022 - MSE

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

7002.4 (Property Confiscation)  
7003 (Security and Supervision)  
7009 (Food Service policy)  
7015.2(Sanitation General)  
7075.3 Policy  
7075.4 (d & f) Reviews of determinations  
7075.5(b) Determinations by CAO  
7075.5(c) Reviews of determinations

**OTHER INFORMATION**

A review of grievances and complaint letters revealed that there were none submitted from this facility that were associated to the topic related to this variance.

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

None

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

As of July 13, 2022, the CDC's website is documenting Suffolk County's Community Level to be at medium for COVID-19 transmission rate. Additionally, to allow visitation while protecting the health and safety of the facility and visitors.

**RECOMMENDED CONDITIONS IF APPROVED**

This variance is approved with the following conditions:

1. Any and all visitation limitations requires the ongoing review and determination of the chief administrative officer pursuant to 9 NYCRR §7008.8;
2. Upon expiration of this variance, renovations made will be removed and the visiting area will be restored to its previous design within seven (7) days;
3. The facility shall maintain a sufficient supply of Personal Protective Equipment (PPE) for staff and incarcerated individuals as part as part of the visitation program;
4. The screening of all prospective visitors shall include search, taking of temperature, symptomology observations and questionnaire;
5. The exception to any one visitor limitation is for any person accompanying a visitor under eighteen (18);
6. Incarcerated individuals and visitors shall wear face coverings;

7. Social distancing (at least six feet apart) between visitors shall be maintained;
8. The visitation schedule and scheduling procedures shall be implemented;
9. Incarcerated individuals shall have equal access to visitation;
10. Visitation areas shall be disinfected in between sessions; and

**REVIEWED BY REGIONAL SUPERVISOR: Larry Roe      DATE: 7/13/22**

**REVIEWED BY DIRECTOR:      T. Moran      DATE: 7/15/22**

**COMMENTS BY DIRECTOR:**

---

**OFFICIAL USE ONLY:**

NOTES OF MEETING:

# COUNTY OF SUFFOLK



OFFICE OF THE SHERIFF

ERROL D. TOULON, Jr., Ed.D.  
SHERIFF

July 7, 2022

Allen Riley  
Chairman  
New York State Commission of Correction  
80 South Swan Street, 12<sup>th</sup> Floor  
Albany, NY 12210

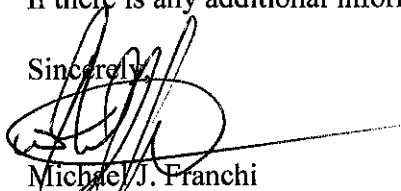
Dear Chairman Riley,

The Suffolk County Sheriff's Office is requesting a continuance for existing variances, 20-V-07 and 20-V-08 for Part 7008.2 (b), permitting physical contact during visitation, and Part 7008.3 (c), allowing visitation with more than one person at a time, at our correctional facilities until the number of COVID-19 cases decrease.

The community level for COVID-19 in Suffolk County is very **high** based on cases and hospitalizations according to the most recent update from the C.D.C. An average of 468 cases per day were reported in Suffolk County, a 20 percent increase from the average two weeks ago. The latest data indicates an average of 31.6 cases per 100,000 people. In order to keep moving safely through this pandemic, we need to continue to limit contact visits as well as reduce the number of visitors during each session. Also, due to enhanced cleaning and sanitizing measures of the visiting room after each session, each visit has been limited to thirty (30) minutes. I will monitor these restrictions regularly and notify our incarcerated individual population of these temporary visiting conditions. All previously required conditions will be continued during this public health emergency.

If there is any additional information that you need, please do not hesitate to contact me.

Sincerely,



Michael J. Franchi  
Warden

Suffolk County Sheriff's Office  
(631)-852-2282

cc: Sheriff Errol D. Toulon Jr.  
Undersheriff Steven J. Kuehhas  
Undersheriff Kevin T. Catalina  
Undersheriff Michael J. Catuosco

100 CENTER DRIVE  
RIVERHEAD, NY 11901-  
3390



ACCREDITED LAW  
ENFORCEMENT AGENCY  
(631) 852-2200



VISIT US ONLINE AT  
SUFFOLKSHERIFF.COM



**Commission of  
Correction**

# **VARIANCE APPLICATION FORM**

## **Non-Capacity Variance**

## **County Jail and NYCDOC**



**Commission of  
Correction**

**New York State  
Commission of Correction  
80 S. Swan Street, 12<sup>th</sup> Floor  
Albany, New York 12210  
518-485-2346  
correspondence@scoc.ny.gov**

**County Jail/NYCDOC Non-Capacity Variance Application Form**

**INSTRUCTIONS TO SHERIFF, COMMISSIONER OR CHIEF  
ADMINISTRATIVE OFFICER:**

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and e-mail to the attention of Chairman/Commissioner, using the above e-mail address.

Facility: Suffolk County Correctional Facility-Riverhead

Person requesting: Warden Michael J. Franchi

(Sheriff/Commissioner/Chief Administrative Officer)

A. State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested: *Example: 7008.2b states that, The visiting area shall be designed so as to allow physical contact between prisoners and their visitors. To request a variance to have physical barriers between inmates and visitors the citation should be listed as:*

Ex. Part: 7008      Section: 2      Subdivision: b

Standard for which the variance is requested:

Part: 7008      Section: 2(b) and 3(c)      Subdivision: \_\_\_\_\_

B. In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. The number of characters you can type in the below space is limited. If necessary, please attach any additional information with your submittal. The Suffolk County Sheriff's Office is requesting a continuation of a variance permitting the use of non-contact visits only and limitations on the number of visitors for the duration of the COVID-19 pandemic. Our greatest concern continues to be the safety and well-being of our employees and those individuals within our care, custody and supervision. Modification to the existing visiting room provides for social distancing and proper cleaning between visits.

C. In the space provided below include a detailed description regarding why this variance is necessary. The number of characters you can type in the below space is limited. If necessary, please attach any additional information with your submittal.

Due to the ongoing COVID-19 pandemic, social distancing is required as we continue to utilize the visiting rooms at our correctional facilities. It is critical that we continue to follow safety protocols that have been put in place for everyone's safety to stop the spread of COVID-19.

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

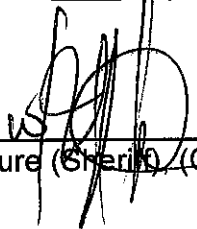
30 Days      \_\_\_\_\_ Weeks      \_\_\_\_\_ Months

E. Should this variance application be approved, please detail below any plans, provisions and timetables for achieving full compliance with the Minimum Standard regulation that is the subject of this application. The number of characters you can type in the below space is limited. If necessary, please attach any additional information with your submittal.

While we cannot be in compliance with Part 7008.2(b) and Part 7008.3(c) until the Governor lifts the personal social distance requirements, this will allow us to permit personal visitation while still maintaining safety and sanitation protocols. The space available will permit a maximum of 420 30-minute visits per week. The current population is 400 in the Riverhead Facility. YTD the Riverhead Facility is operating at 52 % capacity for visits.

F. Has this variance been previously approved by the Commission?

Yes  If yes, include the variance number 20-V-07 No

  
\_\_\_\_\_  
Signature (Sheriff), (Commissioner), (Chief Administrative Officer) 07 JULY 2022  
Date

**Additional copies of this form can be obtained by contacting the Commission, or by visiting [www.scoc.ny.gov](http://www.scoc.ny.gov)**

Name of Facility: Suffolk County Jail (Yaphank)

Variance #20-V-08

**New:**           **Renewal:** x                           **Relief from Standard:** 7008.2(b) and 7008.3(c)

**Application by:** Warden M. Franchi                           **Date Request Rec:** 07/7/2022

**Last Approved:** 6/28/2022   **Length of Approval:** 1 month   **Expiration:** 8/1/2022

**Write-up Prepared by:** Susana Gonzalez CFSII

**Recommendation by Field Staff:** Recommending approval until September 1,2022.

**Recommendation at Briefing:**

**Final Recommendation:**

---

**SUMMARY OF VARIANCE REQUEST**

The facility is requesting to continue limitation of physical contact during visitation and to limit inmates to one visitor per visit to continue to follow safety protocols that have been put in place for everyone’s safety and to stop the spread of COVID-19. The facility is reapplying for the Variance as their Community COVID Level is at Medium based on the CDC’s report.

**VARIANCE HISTORY**

Approval until 10/1/20

Renewed until 1/1/21

Renewal until 4/1/21

Renewal until 7/1/21

Renewal until 10/1/21

Renewal until 1/1/22

Renewal until 4/1/22

Renewal until 5/1/22

Denied           4/29/22 - Extension request denied, as the community transmission rate was low at that time for the County, according to the Centers for Disease Control data.

Renewal until 7/1/22

Renewal until 8/1/22

**CONSTRUCTION/RENOVATION PLANS**

None at this time

**OTHER VARIANCES IN EFFECT**

20-v-08 applies the same conditions of this variance to the Department’s Riverhead facility.

21-V-19 applies to Correspondence.

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

3/1/2022



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

3/1/2022 - MSE

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

7002.4 (Property Confiscation)  
7003 (Security and Supervision)  
7009 (Food Service policy)  
7015.2(Sanitation General)  
7075.3 Policy  
7075.4 (d & f) Reviews of determinations  
7075.5(b) Determinations by CAO  
7075.5(c) Reviews of determinations

**OTHER INFORMATION**

A review of grievances and complaint letters revealed that there were none submitted from this facility that were associated to the topic related to this variance.

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

None

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

As of July 13, 2022, the CDC's website is documenting Suffolk County's Community Level to be at medium for COVID-19 transmission rate. Additionally, to allow visitation while protecting the health and safety of the facility and visitors.

**RECOMMENDED CONDITIONS IF APPROVED**

This variance is approved with the following conditions:

1. Any and all visitation limitations requires the ongoing review and determination of the chief administrative officer pursuant to 9 NYCRR §7008.8;
2. Upon expiration of this variance, renovations made will be removed and the visiting area will be restored to its previous design within seven (7) days;
3. The facility shall maintain a sufficient supply of Personal Protective Equipment (PPE) for staff and incarcerated individuals as part as part of the visitation program;
4. The screening of all prospective visitors shall include search, taking of temperature, symptomology observations and questionnaire;
5. The exception to any one visitor limitation is for any person accompanying a visitor under eighteen (18);
6. Incarcerated individuals and visitors shall wear face coverings;

7. Social distancing (at least six feet apart) between visitors shall be maintained;
8. The visitation schedule and scheduling procedures shall be implemented;
9. Incarcerated individuals shall have equal access to visitation;
10. Visitation areas shall be disinfected in between sessions; and

**REVIEWED BY REGIONAL SUPERVISOR: Larry Roe      DATE: 7/13/22**

**REVIEWED BY DIRECTOR:                      T. Moran                      DATE: 7/15/22**

**COMMENTS BY DIRECTOR:**

---

**OFFICIAL USE ONLY:**

NOTES OF MEETING:

# COUNTY OF SUFFOLK



OFFICE OF THE SHERIFF

ERROL D. TOULON, Jr., Ed.D.  
SHERIFF

July 7, 2022

Allen Riley  
Chairman  
New York State Commission of Correction  
80 South Swan Street, 12<sup>th</sup> Floor  
Albany, NY 12210

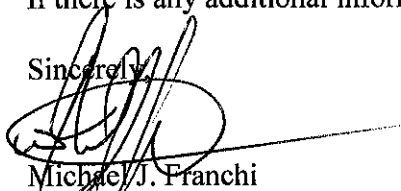
Dear Chairman Riley,

The Suffolk County Sheriff's Office is requesting a continuance for existing variances, 20-V-07 and 20-V-08 for Part 7008.2 (b), permitting physical contact during visitation, and Part 7008.3 (c), allowing visitation with more than one person at a time, at our correctional facilities until the number of COVID-19 cases decrease.

The community level for COVID-19 in Suffolk County is very **high** based on cases and hospitalizations according to the most recent update from the C.D.C. An average of 468 cases per day were reported in Suffolk County, a 20 percent increase from the average two weeks ago. The latest data indicates an average of 31.6 cases per 100,000 people. In order to keep moving safely through this pandemic, we need to continue to limit contact visits as well as reduce the number of visitors during each session. Also, due to enhanced cleaning and sanitizing measures of the visiting room after each session, each visit has been limited to thirty (30) minutes. I will monitor these restrictions regularly and notify our incarcerated individual population of these temporary visiting conditions. All previously required conditions will be continued during this public health emergency.

If there is any additional information that you need, please do not hesitate to contact me.

Sincerely,



Michael J. Franchi  
Warden

Suffolk County Sheriff's Office  
(631)-852-2282

cc: Sheriff Errol D. Toulon Jr.  
Undersheriff Steven J. Kuehhas  
Undersheriff Kevin T. Catalina  
Undersheriff Michael J. Catuosco

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**Commission of  
Correction**

# **VARIANCE APPLICATION FORM**

## **Non-Capacity Variance**

### **County Jail and NYCDOC**



**Commission of  
Correction**

**New York State  
Commission of Correction  
80 S. Swan Street, 12<sup>th</sup> Floor  
Albany, New York 12210  
518-485-2346  
correspondence@scoc.ny.gov**

**County Jail/NYCDOC Non-Capacity Variance Application Form**

**INSTRUCTIONS TO SHERIFF, COMMISSIONER OR CHIEF  
ADMINISTRATIVE OFFICER:**

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and e-mail to the attention of Chairman/Commissioner, using the above e-mail address.

Facility: Suffolk County Correctional Facility-Yaphank

Person requesting: Warden Michael J. Franchi

(Sheriff/Commissioner/Chief Administrative Officer)

A. State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested: *Example: 7008.2b states that, The visiting area shall be designed so as to allow physical contact between prisoners and their visitors. To request a variance to have physical barriers between inmates and visitors the citation should be listed as:*

Ex. Part: 7008      Section: 2      Subdivision: b

Standard for which the variance is requested:

Part: 7008      Section: 2(b) and 3(c)      Subdivision: \_\_\_\_\_

B. In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. The number of characters you can type in the below space is limited. If necessary, please attach any additional information with your submittal. The Suffolk County Sheriff's Office is requesting a continuation of a variance permitting the use of non-contact visits only and limitations on the number of visitors for the duration of the COVID-19 pandemic. Our greatest concern continues to be the safety and well-being of our employees and those individuals within our care, custody and supervision. Modification to the existing visiting room provides for social distancing and proper cleaning between visits.

C. In the space provided below include a detailed description regarding why this variance is necessary. The number of characters you can type in the below space is limited. If necessary, please attach any additional information with your submittal.

Due to the ongoing COVID-19 pandemic, social distancing is required as we continue to utilize the visiting rooms at our correctional facilities. It is critical that we continue to follow safety protocols that have been put in place for everyone's safety to stop the spread of COVID-19.

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

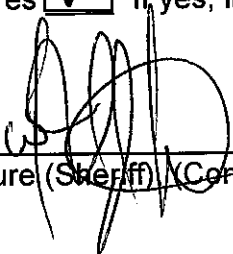
30 Days                      \_\_\_\_\_ Weeks                      \_\_\_\_\_ Months

E. Should this variance application be approved, please detail below any plans, provisions and timetables for achieving full compliance with the Minimum Standard regulation that is the subject of this application. The number of characters you can type in the below space is limited. If necessary, please attach any additional information with your submittal.

While we cannot be in compliance with Part 7008.2(b) and Part 7008.3(c) until the Governor lifts the personal social distance requirements, this will allow us to permit personal visitation while still maintaining safety and sanitation protocols. The space available will permit a maximum of 330 30-minute visits per week. The current population is 459 in the Yaphank Facility. YTD the Yaphank Facility is operating at 62 % capacity for visits.

F. Has this variance been previously approved by the Commission?

Yes  If yes, include the variance number 20-V-08 No

  
\_\_\_\_\_  
Signature (Sheriff) (Commissioner), (Chief Administrative Officer) 07 JULY 2022  
Date

**Additional copies of this form can be obtained by contacting the Commission, or by visiting [www.scoc.ny.gov](http://www.scoc.ny.gov)**

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Name of Facility: **Ulster County Jail** Variance # 22-V-10 NEW

---

New: X Renewal: Relief from Standard: 7004.1 & 7004.3

Application by: Captain Jason Bleau Date Request Rec: 07/11/2022

Last Approved: NEW Length of Approval: N/A Expiration: N/A

Write-up Prepared By: Susana Gonzalez, CFS II

Recommendation by Field Staff: Approved until July 1, 2023

Recommendation at Briefing:

**Final Recommendation**

---

**SUMMARY OF VARIANCE REQUEST**

The facility is requesting authorization to provide incarcerated individuals with photocopies of their incoming non-general and legal privileged correspondence to control the introduction of drugs into the facility. All original correspondence will be placed in the recipient's personal property.

**VARIANCE HISTORY**

N/A

**CONSTRUCTION /RENOVATION PLANS**

NO

**OTHER VARIANCES IN EFFECT**

NA

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

LAST SITE VISIT WAS JANUARY 12-14, 2022.

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

JANUARY 12-14, 2022.

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

7003: SECURITY AND SUPERVISION; AND 7015: SANITATION.

**OTHER INFORMATION**

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

NO

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

[REDACTED]

**RECOMMENDED CONDITIONS IF APPROVED**

Pursuant to this action, the following conditions shall apply:



SCOC VARIANCE WRITE-UP FORM: EFFECTIVE JANUARY 2010

1. Non-privileged correspondence and accompanying envelope may be photocopied and provided to the recipient prisoner. The original non-privileged incoming correspondence and accompanying envelope shall be placed in the recipient prisoner's personal property.
2. Incoming general and legal privileged correspondence may only be opened and inspected for contraband in the presence of the recipient prisoner.
3. Incoming general and legal privileged correspondence and accompanying envelope may only be photocopied in the presence of the recipient prisoner. The original incoming general and legal privileged correspondence and accompanying envelope shall, in the presence of the recipient prisoner, be placed in a sealed envelope in a manner that does not allow the correspondence to be read, and thereafter secured in the recipient prisoner's personal property.
4. The scanning of incoming general and legal privileged correspondence is strictly prohibited.
5. Outside the presence of recipient prisoner, the facility may use a drug detecting device to scan incoming general and legal privileged correspondence for illicit drugs without opening the envelope. In instances where the envelope must be opened in order to perform such scan, the opening and scanning of the envelope must occur only while in the presence of the recipient prisoner.
6. Approval of this variance does not relieve the facility from its duty to comply with United States Postal Services' regulations and statutes.
7. Except for incoming non-general and legal privileged correspondence forwarded to the chief administrative officer, the facility shall make available correspondence for incarcerated individual view within one business day of delivery by the United States Postal Service.
8. The facility shall ensure that incarcerated individuals are provided, **at no cost**, the opportunity to:
  - a. be provided with their original correspondence and enclosed contents (i.e., photos, cards, etc.), that are non-criminal in nature, immediately upon release/transfer from the facility; and
  - b. be permitted to designate a person(s) who may obtain such original correspondence from the facility.
9. The facility shall provide incarcerated individuals the opportunity to have their original correspondence forwarded to a third party.
10. All relevant protocols concerning the photocopying of correspondence shall be included in the facility's incarcerated individual rulebook. If the rulebook is not yet scheduled for reprinting, such information shall be posted conspicuously in all housing areas until such reprinting has been completed and issued.

11. Any costs associated with the correspondence photocopying program shall be borne by the facility and not through the use of commissary profits.
12. The facility shall ensure that all correspondence-related reportable incidents are submitted to the Commission in accordance with Part 7022, Reportable Incidents.

**REVIEWED BY REGIONAL SUPERVISOR: Larry Roe      DATE: 7/14/22**

**REVIEWED BY DIRECTOR:                      T. Moran                      DATE: 7/15/22**

**COMMENTS BY DIRECTOR:**

---

**OFFICIAL USE ONLY:**

NOTES OF MEETING: \_\_\_\_\_



**Commission of  
Correction**

# **VARIANCE APPLICATION FORM**

**Non-Capacity Variance**

**County Jail and NYCDOC**



Commission of Correction

New York State
Commission of Correction
80 S. Swan Street, 12th Floor
Albany, New York 12210
518-485-2346
correspondence@scoc.ny.gov

County Jail/NYCDOC Non-Capacity Variance Application Form

INSTRUCTIONS TO SHERIFF, COMMISSIONER OR CHIEF ADMINISTRATIVE OFFICER:

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and e-mail to the attention of Chairman/Commissioner, using the above e-mail address.

Facility: Ulster County Jail

Person requesting: Captain Jason Bleau

(Sheriff/Commissioner/Chief Administrative Officer)

- A. State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested: Example: 7008.2b states that, The visiting area shall be designed so as to allow physical contact between prisoners and their visitors. To request a variance to have physical barriers between inmates and visitors the citation should be listed as:

Ex. Part: 7008 Section: 2 Subdivision: b

Standard for which the variance is requested:

Part: 7004 Section: Subdivision:

- B. In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. The number of characters you can type in the below space is limited. If necessary, please attach any additional information with your submittal. The Ulster County Jail is looking to copy all incoming correspondence that is addressed to the I/I population. All privileged mail would be copied and the copies would be given to them in the presence of the I/I. All non-privileged mail would be copied and the copies given to the I/I. Either way, all original documents would be secured in the I/I's personal property and be given to them at the completion of their stay upon release. Please see the attached draft of our correspondence policy.

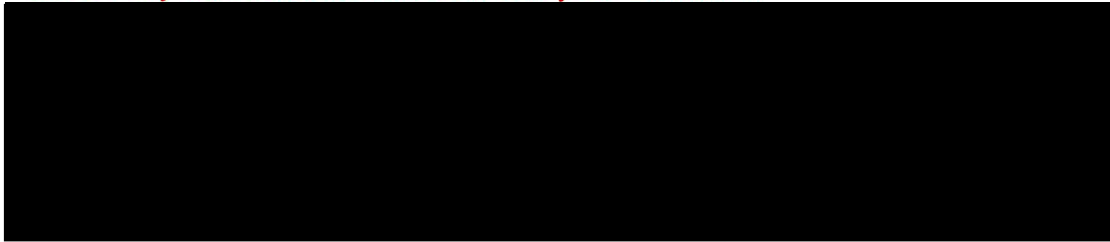
- C. In the space provided below include a detailed description regarding why this variance is necessary. **The number of characters you can type in the below space is limited. If necessary, please attach any additional information with your submittal.**

A large black rectangular redaction box covering the entire content area for question C.

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

\_\_\_\_\_ Days      \_\_\_\_\_ Weeks      12 Months

- E. Should this variance application be approved, please detail below any plans, provisions and timetables for achieving full compliance with the Minimum Standard regulation that is the subject of this application. **The number of characters you can type in the below space is limited. If necessary, please attach any additional information with your submittal.**

A large black rectangular redaction box covering the entire content area for question E.

F. Has this variance been previously approved by the Commission?

Yes  If yes, include the variance number \_\_\_\_\_ No



7.11.22

\_\_\_\_\_  
Signature (Sheriff), (Commissioner), (Chief Administrative Officer)

\_\_\_\_\_  
Date

**Additional copies of this form can be obtained by contacting the Commission, or by visiting [www.scoc.ny.gov](http://www.scoc.ny.gov)**

## Notice of Adoption

Correction, State Commission of  
(SUBMITTING AGENCY)

- This adoption will amend the NYCRR.  
 This adoption will not amend the NYCRR.

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

### 1. Action taken:

Addition of sections 7001.1(f), 7005.2(c), Parts 7076 and 7077, amendment of sections 7003.3(j)(6), 7006.1, 7006.7(a), 7006.8, 7006.9(a)(5), 7017.1, 7028.2(d), 7075.1, 7075.2, 7075.3, 7075.4, and 7075.5 of Title 9 NYCRR.

"X" box if the rule was originally proposed as a consensus rule making.

### 2. Effective date of rule:

Date this notice is published in the *State Register*.

This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:

Date of filing.

Other date (*specify*):

Other date (*specify*):

\_\_\_ days after filing.

### 3. Statutory authority under which the rule was adopted:

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

### 4. Subject of the rule:

Segregated confinement.

### 5. Purpose of the rule:

Set minimum standards for the imposition of segregated confinement and the operation of RRUs in jails.



6. Terms and identification of rule :

A. I.D. No. of original notice of **proposed** or **emergency/proposed** rule making: CMC-15-22-00007 - EP

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

No changes were made to the proposed rule.

● *Text/Summary does not need to be republished in the State Register. If the last previously published RIS, RFA, RAFA or JIS remain adequate and do not require correction, SKIP ITEMS 9-12 and do NOT attach any such statements. If any of the most recently published statements were deemed inadequate or required correction, complete Item 9, 10, 11, or 12 as applicable, do NOT attach previously published statements. Be sure to complete C (if applicable), and D, as well as remaining Items 7-8 and 13-14.*

Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:

[Redacted boxes]

● *Text/Summary is required to be republished in the State Register. Attach the original of the text as adopted (if proposed as full text, submit full text; if proposed as a summary, submit a summary) typed in scannable format. Do not skip Items 9-12; revised statements or explanatory statements are required.*

Text attached.  
 Summary attached.

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

[Redacted boxes]

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

Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_ -  
Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_ -

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

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

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

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

8. Additional matter required by statute:

Yes (include below material required by statute).

[Redacted area]

No additional material required by statute.

9. Revised Regulatory Impact Statement (RIS)

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

A. The attached Revised RIS contains:

- The full text of the Revised RIS.
- A summary of the Revised RIS.

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

- Changes made to the last published rule do not necessitate revision to the previously published RIS.
- This is a technical amendment exempt from SAPA §202-a.



C.  A revised RIS is **not** attached because this rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

A revised RIS is **not** attached because this rule was proposed as a consensus rule as defined in SAPA

10. **Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments**

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

A. The attached Revised RFA contains:

The full text of the Revised RFA.

A summary of the Revised RFA.

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

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

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

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

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

11. **Revised Rural Area Flexibility Analysis (RAFA)**

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

A. The attached Revised RAFA contains:

The full text of the Revised RAFA.

A summary of the Revised RAFA.

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

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

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

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

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

12. **Revised Job Impact Statement (JIS)**

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

A. The attached Revised JIS contains:

The full text of the Revised JIS.

A summary of the Revised JIS.

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

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

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

C. A revised JIS is **not** attached because:

This rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

This rule was proposed by the State Comptroller or Attorney General.

13. **Assessment of Public Comment** (includes legislative comments)

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

- Attached is an assessment of public comment.  
No particular form is required, and it need **only** include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.
- An assessment is not attached because no comments were received.
- An assessment is not required because this action is for a “rate making” as defined in SAPA §102(2)(a)(ii).

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

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

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

(SELECT AND COMPLETE ONE)

- A.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year \_\_\_\_\_ which is no later than the 3<sup>rd</sup> year after the year in which this rule is being adopted.
- B.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year \_\_\_\_\_ which is the 4<sup>th</sup> or 5<sup>th</sup> year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:
  - Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period; or
  - An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.
- C.  As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 5<sup>th</sup> year after the year in which this rule is being adopted.
- D.  Not Applicable. This is a “rate making” or a “consensus rule,” or a repeal of a rule.

**AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)**

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

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

Name Brian M. Callahan Signature \_\_\_\_\_

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

Telephone (518) 485-2346 E-mail Brian.Callahan@scoc.ny.gov

Date 07/26/2022

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**Please read before submitting this notice:**

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.
2. Rule making notices, with any necessary attachments (in MS Word unless otherwise specified), should be e-filed via the Department of State website.

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.

## Assessment of Public Comment:

The New York State Commission of Correction (hereinafter “Commission”) received formal comments from members of the public, an advocacy group, and an elected official.

One commenter suggested amending the definition of “special population,” which includes any person “in the first eight (8) weeks of the post-partum recovery period after giving birth, or caring for a child in the facility.” The commenter suggested amending the definition to account for any pregnancy outcome regardless of how the pregnancy ended, to eliminate any possible ambiguity for an individual who loses a child before birth. Given the 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 contained in the Humane Alternatives to Long-Term Solitary Confinement (HALT) Act, and to avoid any confusion and inconsistencies between the Act and Commission’s regulations, the Commission prefers to maintain the current definition of “special population,” which is identical to the definition contained in the Act pursuant to section 2(33) of the Correction Law.

The same commenter suggested amending the 37 hours of hearing officer training required by 9 NYCRR section 7006.8(b) to align with the 37 hours and 30 minutes required by Correction Law section 137(6)(n). The Commission elects to maintain the required training at 37 hours, which is the total currently required by Correction Law section 137(6)(n).

Other commenters questioned the sufficiency of the regulations’ definition of “violent felony act” for two separate reasons. First, the definition does not require, as set forth in HALT, that the act be “so heinous or destructive” that the individual poses a “significant risk of imminent serious physical injury.” Secondly, the definition makes no mention that an individual’s engagement in such an act on two occasions may constitute a listed exception to the HALT Act’s general limit of segregated confinement of 20 days in any 60 day period.

Initially, the only requirement under the HALT Act that a violent felony act be “so heinous or destructive” that the individual poses a “significant risk of imminent serious physical injury” is to substantiate a determination to place an individual in segregated confinement beyond three consecutive days, or longer than six days in any thirty-day period, or in a residential rehabilitation unit pursuant to Correction Law section 137(6)(k)(ii). While not set forth in the definition of a “violent felony act,” the amendment to 9 NYCRR section 7006.9(a)(5)(iii) does require a finding that 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” to warrant extended segregated confinement or placement in a residential rehabilitation unit. Similarly, the provision that an individual’s engagement in a violent felony act on two occasions may constitute a listed exception to the HALT Act’s general limit of segregated confinement of 20 days in any 60 day period is provided in the addition of 9 NYCRR section 7076.6(c). Consequently, the Commission does not find a reason to amend the definition of “violent felony act.”

Commenters additionally suggested that the Commission’s regulations should be modified to explicitly and clearly state “that administrative segregation and any segregation must comply with all of those requirements related to segregated confinement.” As proposed, the Commission’s regulations incorporate every time limitation, provision of programming, standard of review, etc. required by the HALT Act with regard to individuals placed in segregated confinement, namely confinement to a cell for more than 17 hours per day. At this time, the Commission does not find a benefit in adopting regulations which impose such facility requirements for the segregation of incarcerated individuals who are free to leave their cells more than seven hours per day.

Lastly, a commenter was concerned that 9 NYCRR section 7028.2(d) provides for a daily hour of exercise, but makes no mention of an entitlement to congregate programming, and that the definition of “segregation”



does not apply to individuals confined to a housing unit designated for classification purposes. As the referenced exercise provision is an existing regulation contained under the Part controlling exercise only, it is unnecessary to provide any reference to congregate programming, which are controlled by Parts 7076 and 7077 of Title 9. Similarly, while individuals confined to a housing unit designated for classification purposes do not fall under the definition of “segregation,” their confinement to a cell for more than seventeen hours a day, other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment would still constitute “segregated confinement,” and would invoke all the requirements and entitlements of the HALT Act and the Commission’s regulations.