



**Commission of  
Correction**


**ALLEN RILEY**  
Chairman

**THOMAS J. LOUGHREN**  
Commissioner

**YOLANDA CANTY**  
Commissioner

**M E M O R A N D U M**

**TO:** COMMISSION MEMBERS

**FROM:** Brian Callahan, General Counsel 

**RE:** AGENDA FOR COMMISSION MEETING

**DATE:** November 16, 2021 at **11:00 A.M.**

**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 417 of the Laws of 2021, 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**

October 19, 2021 Commission Meeting

November 2, 2021 Supplemental Commission Meeting

**MRB**

Administrative Closures

**II. VARIANCES**

**A. Westchester County Department of Probation  
Woodfield Juvenile Detention Center  
19-V-08  
Use of West Wing  
Section 7320.4**

**III. CONSTRUCTION**

**B. New York City Department of Correction  
North Infirmary Command  
21-C-068  
Cell Conversion**

**C. New York State Office of Children and Family Services  
Brookwood Secure Center  
21-C-069  
Ceiling Project**

**IV. REGULATORY**

**D. Notice of Adoption  
Revision to 9 NYCRR Part 7041, *et al***



# 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: October 19, 2021**

Chairman Riley called the meeting to order at 11:00 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  
Keith, Zobel, Deputy Director of Operations  
Cynthia Allen, Correctional Specialist 3  
Debbie Clark, Correctional Specialist 3  
Ellen Tryon, Correctional Specialist 2  
Amanda Crawford Crowe, Correctional Facility Specialist 1  
Lloyd Robistow, Correctional Facility Specialist 1  
Adam Tilbe, Correctional Facility Specialist 1

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

#### **I. MINUTES**

##### **SCOC**

September 28, 2021 Commission Meeting

**Approved Unanimous  
Canty/Loughren**

##### **CPCRC**

October 14, 2021

**Approved Unanimous  
Canty/Loughren**

**MRB**  
Administrative Closures

**Approved Unanimous  
Loughren/Canty**

**II. VARIANCES**

**A. Suffolk County Sheriff's Office  
Suffolk County Jail  
21-V-19 NEW**  
Prisoner Correspondence  
Sections 7004.1 and 7004.3

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

**B. Nassau County Sheriff's Office  
Nassau County Jail  
21-V-20 NEW**  
Prisoner Correspondence  
Sections 7004.1 and 7004.3

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

**C. St. Lawrence County Sheriff's Office  
St. Lawrence County Jail  
21-V-21 NEW**  
Prisoner Correspondence  
Sections 7004.1 and 7004.3

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

**D. New York City Department of Correction  
Headquarters  
21-V-22 NEW**  
Prisoner Correspondence  
Sections 7004.1 and 7004.3

**Approved Unanimous  
Tabled  
Canty/Loughren**

**III. MAXIMUM FACILITY CAPACITY**

**E. Monroe County Sheriff's Office  
Monroe County Jail  
Revised MFC**

**Approved Unanimous  
Loughren/Canty**

**IV. CONSTRUCTION**

**F. Monroe County Sheriff's Office  
Monroe County Jail  
SCOC #21-C-060**  
Reception Shower Gate

**Approved Unanimous  
Canty/Loughren**

**G. Onondaga County Sheriff's Office**  
**Onondaga County Corrections Department**  
**SCOC #21-C-050**  
Renovation to Recreation Yard

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

**H. Menands Police Department**  
**SCOC #21-C-059**  
Removal of Holding Cells

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

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 11:13 a.m., which was seconded by Commissioner Loughren.

The meeting resumed at 11:13 a.m. Motion was made by Commissioner Loughren to ratify actions taken in Executive Session regarding Variances and Construction items, seconded by Commissioner Canty. Commissioner Canty made a motion to adjourn at 11:13 a.m. which was seconded by Commissioner Loughren.

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: October 19, 2021**

Chairman Riley called the meeting to order at 11a.m.

#### **PRESENT:**

Allen Riley, Chairman  
Thomas Loughren, Commissioner  
Yolanda Canty, Commissioner  
Tricia Amati, Assistant to Chairman/Commissioner  
Brian Callahan, Counsel  
Debbie Slack-Bear, Associate Attorney  
Terry Moran, Director of Operations  
Keith, Zobel, Deputy Director of Operations  
Cynthia Allen, Correctional Specialist 3  
Debbie Clark, Correctional Specialist 3  
Ellen Tryon, Correctional Specialist 2  
Amanda Crawford Crowe, Correctional Facility Specialist 1  
Lloyd Robistow, Correctional Facility Specialist 1  
Adam Tilbe, Correctional Facility Specialist 1

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

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 11:13 a.m., which was seconded by Commissioner Loughren.

The meeting resumed at 11:13 a.m. Motion was made by Commissioner Loughren to ratify actions taken in Executive Session regarding Variances and Construction items, seconded by Commissioner Canty. Commissioner Canty made a motion to adjourn at 11:13 a.m. which was seconded by Commissioner Loughren.

Respectfully submitted,

Tricia Amati  
Assistant to Chairman/Commissioners



# Commission of Correction

ALLEN RILEY  
Chairman

THOMAS J. LOUGHREN  
Commissioner

YOLANDA CANTY  
Commissioner

## MINUTES Commission Meeting

### STATE COMMISSION OF CORRECTION LOCATIONS:

Alfred E. Smith Building, 80 So. Swan Street, 12<sup>th</sup> Floor, Albany, NY.,  
Adam Clayton Powell Building, 163 W 125<sup>th</sup> Street, 5<sup>th</sup> Floor, NY, NY  
and Oxford, NY

**DATE OF MEETING: November 2, 2021**

Chairman Riley called the meeting to order at 11:30 a.m.

#### **PRESENT:**

- Allen Riley, Chairman
- Thomas Loughren, Commissioner (*via WebEx*)
- Yolanda Canty, Commissioner (*via WebEx*)
- Tricia Amati, Assistant to Chairman/Commissioner
- Brian Callahan, Counsel
- Debbie Slack-Bean, Associate Attorney
- Terry Moran, Director of Operations
- Keith, Zobel, Deputy Director of Operations
- Cynthia Allen, Correctional Specialist 3
- Debbie Clark, Correctional Specialist 3
- Christopher Ost, Correctional Specialist 3
- Ellen Tryon, Correctional Specialist 3
- Richard Cellini, Correctional Facility Specialist 1
- Lloyd Robistow, Correctional Facility Specialist 2
- Adam Tilbe, Correctional Facility Specialist 2

**LOCATIONS:** Alfred E. Smith Building, 80 So. Swan Street, 12<sup>th</sup> Floor, Albany, NY.,  
Adam Clayton Powell Building, 163 W 125<sup>th</sup> Street, 5<sup>th</sup> Floor, NY, NY  
and Oxford, NY

#### **I. VARIANCES**

- |  |  |
|--|--|
| <p><b>A. Westchester County Department of Probation<br/>Woodfield Juvenile Detention Center<br/>21-V-08<br/>Use of West Wing Trailer 1<sup>st</sup> Floor<br/>Rooms 3, 5 and 9</b></p> | <p><b>Approved    Unanimous<br/>Revoked<br/>Loughren/Canty</b></p> |
|--|--|



**II. CONSTRUCTION**

**B. New York City Department of Correction  
George R. Vierno Center  
SCOC 21-C-051  
Convert Housing to Original Design**

**Approved Unanimous  
Canty/Loughren**

**C. New York City Department of Correction  
George R. Vierno Center  
SCOC 21-C-061  
Convert Housing to Program Space**

**Approved Unanimous  
Loughren/Canty**

**D. New York City Department of Correction  
North Infirmary Command  
SCOC 21-C-052  
Renovate Sub-dayrooms**

**Approved Unanimous  
Canty/Loughren**

Commissioner Canty made a motion to go into executive session at 11:31 a.m. to discuss Variances and Construction items which was seconded by Commissioner Loughren. Commissioner Canty made a motion to exit Executive Session and return to general session at 11:39 a.m., which was seconded by Commissioner Loughren.

The meeting resumed at 11:39 a.m. Motion was made by Commissioner Loughren to ratify actions taken in Executive Session regarding Variances and Construction items, seconded by Commissioner Canty. Commissioner Loughren made a motion to adjourn at 11:40 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

#### LOCATIONS:

#### Commission Meeting

#### STATE COMMISSION OF CORRECTION

##### LOCATIONS:

Alfred E. Smith Building, 80 So. Swan Street, 12<sup>th</sup> Floor, Albany, NY.,  
Adam Clayton Powell Building, 163 W 125<sup>th</sup> Street, 5<sup>th</sup> Floor, NY, NY  
and Oxford, NY

#### DATE OF MEETING: November 2, 2021

Chairman Riley called the meeting to order at 11:30 a.m.

#### **PRESENT:**

Allen Riley, Chairman  
Thomas Loughren, Commissioner (*via WebEx*)  
Yolanda Canty, Commissioner (*via WebEx*)  
Tricia Amati, Assistant to Chairman/Commissioner  
Brian Callahan, Counsel  
Debbie Slack-Bean, Associate Attorney  
Terry Moran, Director of Operations  
Keith, Zobel, Deputy Director of Operations  
Cynthia Allen, Correctional Specialist 3  
Debbie Clark, Correctional Specialist 3  
Christopher Ost, Correctional Specialist 3  
Ellen Tryon, Correctional Specialist 3  
Richard Cellini, Correctional Facility Specialist 1  
Lloyd Robistow, Correctional Facility Specialist 2  
Adam Tilbe, Correctional Facility Specialist 2

**LOCATIONS:** Alfred E. Smith Building, 80 So. Swan Street, 12<sup>th</sup> Floor, Albany, NY.,  
Adam Clayton Powell Building, 163 W 125<sup>th</sup> Street, 5<sup>th</sup> Floor, NY, NY  
and Oxford, NY

Commissioner Canty made a motion to go into executive session at 11:31 a.m. to discuss Variances and Construction items which was seconded by Commissioner Loughren. Commissioner Canty made a motion to exit Executive Session and return to general session at 11:39 a.m., which was seconded by Commissioner Loughren.

The meeting resumed at 11:39 a.m. Motion was made by Commissioner Loughren to ratify actions taken in Executive Session regarding Variances and Construction items, seconded by Commissioner Canty. Commissioner Loughren made a motion to adjourn at 11:40 a.m. which was seconded by Commissioner Canty.

Respectfully submitted,

Tricia Amati  
Assistant to Chairman/Commissioners

New:     Renewal:  X

Relief from Standard: 7320.4

Application by: Director Dean DeKranis

Date Request Rec: NA

Last Approved: Length of Approval: until 3/1/22

Expiration: 3/1/22

Write-up Prepared by: Terry Moran

Recommendation by Field Staff: Modify the conditions of this variance.

Recommendation at Briefing:

Final Recommendation: [REDACTED]

[REDACTED], it is recommended that conditions 6, 9 and 10 be added to this variance, which is authorized until March 1, 2022

**SUMMARY OF VARIANCE REQUEST**

**VARIANCE HISTORY**

This variance started due to the SCOC zeroing out the MFC in these areas [REDACTED]

**RECOMMENDED CONDITIONS IF APPROVED**

If approved, conditions should be as follows

1. Only youth quarantined at the direction of the medical director may be housed on the second floor of the West Wing trailer.
2. The maximum number of youth authorized on the second floor of the West Wing trailer is seven (7) youth. This does not increase the Maximum facility capacity. Further, these youth must maintain an allocated bed within the facility, and once cleared by medical the youth is to be placed back into their original individual living unit.
3. The facility shall maintain a staffing plan consistent with the requirements as outlined in OCFS and SCOC regulations.
4. Prior to the utilization of any housing units the facility shall submit a staffing plan consistent with the requirements as outlined in OCFS and SCOC regulations.
5. [REDACTED]  
[REDACTED]  
[REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]

6. [REDACTED]

7. [REDACTED]

8. [REDACTED]

9. A documented tour of the West Wing Trailer’s second floor shall be completed at least twice per shift by the individual assigned to serve as shift supervisor to ensure order and safety is maintained.

10. The Director of the Woodfield Detention Center shall complete a documented tour of the West Wing Trailer’s second floor at least once per week to ensure order and safety is maintained.

11. The outside fire egress path to the trailers shall always remain clear.

**CONSTRUCTION/RENOVATION PLANS**

**OTHER VARIANCES IN EFFECT**

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

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

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

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

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

**REVIEWED BY REGIONAL SUPERVISOR: DATE:**

**OFFICIAL USE ONLY:**

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

## 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 7003.7(c) and 7041.5, amendment of sections 7022.2(a)(17), 7040.7(b), 7041.1, 7041.2, 7041.3(c) and 7041.4 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 sections 45(6) and 45(15).

### 4. Subject of the rule:

Jail staffing requirements.

### 5. Purpose of the rule:

To provide county governments and the City of New York an increased role and flexibility in determining officer staffing levels.

6. Terms and identification of rule :

A. I.D. No. of original notice of **proposed** or **emergency/proposed** rule making: CMC-34-21-00001 - P

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 for nonsubstantive changes]

● *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 for rate making details]

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 for additional matter]

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:

--	--	--	--

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 2026, 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 11/16/2021

---

---

**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 (c) of section 7003.7 of Title 9 is added to read as follows:

(c) A written record pertaining to each incarcerated individual transported to or from the facility shall be maintained in a bound ledger in a manner consistent with the requirements of subdivisions (j), (k), (l) and (m) of section 7003.3 of this Part, and shall provide:

- (1) the name of the incarcerated individual(s) transported;
- (2) the name, rank/title, and badge number or other assigned identifier of every staff member conducting the transportation;
- (3) the intended destination;
- (4) the date and time of departure; and
- (5) the date and time of return.

Paragraph (17) of subdivision (a) of section 7022.2 of Title 9 is amended to read as follows:

- (17) personnel deficiencies/group actions;

Subdivision (b) of section 7040.7 of Title 9 is amended to read as follows:

(b) In formulating the maximum facility capacity of a facility, the commission shall determine the maximum number of inmates that can be housed in each individual and multiple occupancy housing unit pursuant to the requirements of this Part. Such determination shall be based on the following:

(1) the number of properly equipped individual occupancy housing units, including the number of properly equipped admissions, medical and mental health, and [any other] special housing units;

(2) the number of properly equipped multiple occupancy housing units, including the number of properly equipped admissions, medical and mental health, and [any other] special housing units; and

(3) the facility's ability to maintain the required post complement, as that term is defined in section 7041.1 of this Title, to provide required programs and services and to comply with other rules and regulations of this Chapter which are related to facility capacity.

Section 7041.1 of Title 9 is amended to read as follows:

Section 7041.1 Policy and definitions.

(a) Each local correctional facility shall employ that number of persons necessary to provide care, custody and control for all prisoners and to perform all other necessary facility functions. In no case shall the number of such persons be less than the minimum facility staffing requirement as determined by the [State Commission of Correction] chief executive officer, in consultation with the chief administrative officer, in accordance with the provisions of this Part.

(b) As used in this Part, the term *minimum facility staffing requirement* shall mean the number of persons necessary to provide care, custody and control for all prisoners and to perform all other necessary facility functions.

(c) As used in this Part, the term *required post complement* shall mean the number of staff necessary to perform facility functions during each shift regularly scheduled within a 24-hour period.

(d) As used in this Part, the term *chief administrative officer* shall have the same meaning as that term is defined in subdivision (1) of section 500-b of the Correction Law.

(e) As used in this Part, the term *chief executive officer* shall have the same meaning as that term is defined in subdivision (5-a) of section 2.00 of the Local Finance Law.

Section 7041.2 of Title 9 is amended to read as follows:

(a) The State Commission of Correction shall, in determining the [minimum facility staffing requirement] required post complement for each local correctional facility, ascertain the functions to be performed by facility staff including, but not limited to:

- (1) general facility administration and management;
- (2) control room operation;
- (3) general housing area supervision;
- (4) special housing area supervision;
- (5) medical services;
- (6) visitation;
- (7) correspondence;
- (8) exercise;
- (9) facility maintenance;
- (10) library;
- (11) commissary;
- (12) religious services;
- [(13) prisoner transportation; ]and

(13[4]) any other facility program or service.

(b) The State Commission of Correction shall, in determining the [minimum facility staffing requirement] required post complement for each local correctional facility, consider the following factors, among others:

(1) the physical plant of the facility;

(2) the maximum prisoner capacity of such facility established pursuant to Part 7040 of this Subtitle; and

(3) any other factors including those unique to a particular facility.

(c) The State Commission of Correction shall, upon compliance with subdivisions (a) and (b) of this section, determine the [number of man hours necessary to perform each facility function during each shift regularly scheduled within a 24-hour period] required post complement. Upon making such determination, the State Commission of Correction shall determine the total number of persons necessary to perform such functions during each such shift. Such determination shall additionally identify any posts or functions that may be left unstaffed due to unpopulated housing areas or other specified criteria.

Subdivision (c) of section 7041.3 of Title 9 is amended to read as follows:

(c) The [State Commission of Correction] chief executive officer, in consultation with the chief administrative officer shall, in determining the estimated on-duty days, subtract from 365 days the total estimated number of off-duty days. The total estimated number of off-duty days shall be determined by totaling the following for a 365-day period:

(1) normal days off;

(2) holidays;

(3) personal leave;

(4) vacation leave;

- (5) average sick leave; and
- (6) other [short-term] leave.

Section 7041.4 of Title 9 is amended to read as follows:

To determine the minimum facility staffing requirement, the [number of persons necessary to perform facility functions during each shift regularly scheduled within a 24-hour period] required post complement, as determined pursuant to section 7041.2 of this Part, shall be multiplied by the full coverage factor.

A new section 7041.5 of Title 9 is added to read as follows:

Section 7041.5 Facility shift roster

(a) Each facility shall maintain, for every regularly scheduled shift, a roster of every staff assigned to perform facility functions. Such rosters shall be maintained in a centralized location, with the prisoner population count records required by section 7003.5 of the Title, and shall provide, for every individual staff assigned:

- \_\_\_ (1) name;
- \_\_\_ (2) rank/title;
- \_\_\_ (3) badge number or other assigned identifier; and
- \_\_\_ (4) assigned post(s).

(b) Immediately following the completion of each total prisoner population count required by section 7003.5 of this Title, the highest-ranking facility official present shall ensure that the facility shift roster is complete and accurate, that each assigned staff has reported and is present, and shall verify such review by affixing, in writing upon the roster, the official's signature and the date and time of the review.

(c) Should the number of available staff fall below the required post complement, for any period of time during a regularly scheduled shift, the highest-ranking facility official present shall make a record of the facts and circumstances of the deficiency on the facility shift roster.

(d) Any posts or functions left unstaffed due to unpopulated housing areas or other specified criteria, as permitted by the required post complement pursuant to subdivision (c) of section 7041.2 of this Part, shall be recorded on the facility shift roster during the review required by subdivision (b) of this section.



## Assessment of Public Comment

The New York State Commission of Correction (hereinafter “Commission”) received formal comments from Peter R. Kehoe, Esq., Executive Director of the New York State Sheriffs’ Association, Inc. (hereinafter “NYSSA”), Chemung County Sheriff William A. Schrom, Montgomery County Sheriff Jeffrey T. Smith, and Jullian Harris-Calvin, a Program Director with the Vera Institute of Justice (hereinafter “Vera Institute”).

NYSSA and both Sheriffs generally opposed the proposed regulations upon the belief that the minimum number of correction staff needed to safely operate a jail should be determined by the Commission, in consultation with the sheriffs. As most other county officials have little or no experience in the operation or staffing of a jail, the comments expressed concern that vesting staffing determinations with such county officials may prove dangerous if frugality prevailed over interests of safety and security. The recent pandemic was cited as an example of such necessity, as additional housing units were operated, and thus additional staff deployed, to quarantine infected individuals and isolate new admissions pending test results and observation.

The Commission is confident that the proposed regulations will continue to provide a system for the sufficient staffing of local jails. Possessing the requisite experience and knowledge of jail staffing, the Commission will retain the role of identifying the minimum number of staff necessary to operate a facility for each regularly scheduled shift. It will then be incumbent upon county officials to hire and maintain a staff of officers sufficient to cover each such required shift post every day of the year. In determining total staffing needs, county officials will be required to weigh the desired use of overtime, the use of part-time staff, and account for decreased staffing needs caused by unpopulated housing units. As before, the Sheriff will retain control of the facility, including the closure of unpopulated units and the use of units for quarantine, medical isolation, etc.

NYSSA further objected to the need for jails to maintain a staffing roster and to the removal of transportation staff from the Commission’s identified and required staff posts. Jail transportation duties include

conveying incarcerated individuals to court appearances, hospital visits and other healthcare appointments, funeral and deathbed visits, and transfers to state and other local correctional facilities. It has been the Commission's experience that the number of facility staff needed to conduct all such transports can fluctuate greatly on an annual, or even day-to-day basis. For this reason, many Sheriffs currently use deputies to perform some or all transportation functions. Consequently, it is the Commission's position that attempting to quantify a minimum number of facility transport posts for each shift is impracticable, would require constant and frequent adjustment, and would likely lead to either wasteful overstaffing or insufficient deployment. Facility shift rosters, as required by the proposed regulation, will list every staff assigned to perform facility functions for every scheduled shift. Based on the Commission's experience, such rosters are already maintained in some form by most local correctional facilities, and are necessary for the Commission's oversight functions to provide verification that a sufficient complement of security staff are deployed for each shift.

Conversely, the Vera Institute's comments provided that "[j]ail staffing requirements for correctional officers must change to account for New York State's plummeting jail population. To accomplish this, Vera Institute suggested computing minimum staffing requirements based on average daily jail population numbers, and to consider national benchmarks regarding jail staffing ratios. Additionally, it was suggested that the proposed regulations be amended to allow posts to remain unstaffed in "underpopulated" housing areas.

Commission regulations, and basic correctional practice, require that incarcerated individuals be supervised by correction officers at all times. Generally, when incarcerated individuals are not confined to a cell and have physical access to one another, officers must have the uninterrupted ability to communicate orally with and respond to each incarcerated individual in the housing unit unaided by any electronic or other artificial amplifying device, as well as the ability to immediately respond to any emergency situation. Accordingly, the Commission's minimum shift staffing determination is not dependent upon fluctuating incarcerated populations or benchmark jail staffing ratios, but rather the size and number of a facility's housing areas. In most instances,

a housing area will require the posting of a correction officer whether it contains 60 incarcerated individuals, or is “underpopulated” with only 3. Of course, where a decrease in the incarcerated population and classification determinations allow for the complete closure of one or more facility housing areas, the proposed regulations clarify that any such area need not be staffed.