



Commission of Correction

ALLEN RILEY
Chairman

THOMAS J. LOUGHREN
Commissioner

YOLANDA CANTY
Commissioner

MEMORANDUM

TO: COMMISSION MEMBERS
FROM: Brian Callahan, General Counsel
RE: AGENDA FOR SUPPLEMENTAL COMMISSION MEETING
DATE: October 6, 2022 at 10:30 AM
LOCATION: Alfred E. Smith Building, 80 So. Swan Street, 12th Floor, Albany, New York. \*Please be advised that proper identification is required at front desk.

Adam Clayton Powell, Jr. State Office Building, 5th Floor, 163 W. 125th Street, New York, NY 10027 (Videoconference location)

Chenango County Sheriff's Office, 279 County Road 46, Norwich, New York 13815 (Videoconference location)

Whipple Administration Building, 5th Floor, 80 Eaton Street, Morrisville, New York 13408 (Videoconference location)

I. VARIANCES

- A. Wayne County Sheriff's Office
Wayne County Jail
22-V-14 NEW
Correspondence
7004.1 and 7004.3

II. REGULATORY

- B. Notice of Emergency Adoption and Proposed Rulemaking
9 NYCRR section 7000.1, et al
Minimum standards for a program of medication assisted treatment in jails

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Name of Facility: Wayne County Jail                      Variance # 22-V-14 NEW

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**New:** XX    **Renewal:**                      **Relief from Standard:** 7004.1 & 7004.3(a)

**Application by:** Sheriff Robert Milby    **Date Request Rec:** 9-29-22

**Last Approved:**            **Length of Approval:**                      **Expiration:**

**Write-up Prepared by:** Terry Moran

**Recommendation by Field Staff:** Recommend approval until July 1, 2023

**Recommendation at Briefing:** Approve until 7/1/23

**Final Recommendation:**

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### **SUMMARY OF VARIANCE REQUEST**

Sheriff Schrom is requesting this variance in an effort to protect all incarcerated individuals and personnel at the facility.

### **RECOMMENDATION BY STAFF**

It is recommended this variance be approved until July 1, 2023

### **RECOMMENDED CONDITIONS IF APPROVED**

Pursuant to this action, the following conditions shall apply:

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.

**CONSTRUCTION/RENOVATION PLANS**

N/A

**OTHER VARIANCES IN EFFECT**

N/A

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

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

March 30, 2021 Field Staff

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

Section 7003.1 Policy

[REDACTED]

Section 7015.3 Local health department inspections

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

N/A

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

This concern of contraband entering facilities is consistent with a recent trend within NYS where local correctional facilities have identified a method of introducing illicit substances into correctional facilities [REDACTED].

**REVIEWED BY REGIONAL SUPERVISOR:      DATE:**

**REVIEWED BY DIRECTOR: T. Moran              DATE: 10/4/22**

**COMMENTS BY DIRECTOR:**

**OFFICIAL USE ONLY:**

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



**OFFICE OF THE SHERIFF  
WAYNE COUNTY**

7376 Route 31, Suite 1000  
Lyons, NY 14489  
Phone 315.946.9711/Fax 315.946.5811  
www.waynecosherriff.org

Sheriff Robert E. Milby  
rmilby@co.wayne.ny.us

Undersheriff Tammy Ryndock  
tryndock@co.wayne.ny.us

September 29, 2022

Commissioner of Corrections  
80 South Swan Street, 12<sup>th</sup> Floor  
Albany, NY 12210

Re: County Jail/NYCDOC Non- capacity Variance Application Form- Part 7004 sections 3 & 4

Dear State Commission of Correction:

The Wayne County Correctional Facility is submitting a variance application for Part 7004 (correspondence). This request is solely to protect all incarcerated individuals and personnel that work within the Wayne County Correctional Facility.

The process that has been outlined in the incarcerated individual's rules and regulations handbook and WCSO General Order for Correspondence has been adjusted. Photo-copying of all incoming correspondence letters and envelopes and privileged correspondence will be done in the presence of the incarcerated individual. This variance has been approved with multiple Sheriff Office's within state of New York. This request still ensures that all incarcerated individuals get their incoming correspondence and privileged correspondence; while protecting all incarcerated individuals and personnel that work within the Wayne County Correctional Facility.

Respectfully Submitted,

Robert E. Milby  
Wayne County Sheriff

By:

A handwritten signature in black ink, appearing to read "James Miller".  
James Miller  
Corrections Major



**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: Wayne County

Person requesting: Major James Miller

(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: 3 & 4 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.

We are requesting that all mail be copied and once copied be placed in the I/I's property bag to take with him / her when he / she leaves the facility. Privileged mail would be opened by the I/I and copied in front of the I/I to not violate the standard. There would be no reading of the legal material simply placed in the copier and the original placed back in the envelope then placed in his / her property bag.

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.



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.

Incarcerated individuals know that there is no or minimal consequences for any attempts to smuggle contraband into the facility. This is due to the incarcerated individual population knowing about the HALT ACT and knowing that there is no or minimal punishment that the facility can hand down on individuals that attempt to smuggle in contraband into the facility. This variance has been approved with multiple Sheriff Office's within state of New York. For the safety and security of the facility and all of the personnel therein, the Commission of Corrections will alter the minimum standards to allow the copying of all mail both general mail, as we open it now anyway, and privileged mail we do in front of the I/I.



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

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

Maryn J. H. 9/28/22  
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 Emergency Adoption and Proposed Rule Making

Correction, State Commission of  
(SUBMITTING AGENCY)

- Approval has been granted by Executive Chamber to propose this rule making.
- This rule making does not require Executive Chamber approval.
- This adoption will amend the NYCRR.
- This adoption will not amend the NYCRR.

**NOTE: THIS FORM CANNOT BE USED FOR A CONSENSUS RULE MAKING.**

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.

1. A. Proposed action:

Addition of	sections 7001.1(g), Part 7011 of	Title 9	NYCRR
Amendment of	section 7002.6, 7002.9(a)(2), 7013.7(c) of	Title 9	NYCRR
_____	_____	Title _____	NYCRR
_____	_____	Title _____	NYCRR
_____	_____	Title _____	NYCRR
_____	_____	Title _____	NYCRR

2. Effective date of emergency rule:

- Date of filing.
- Other date (specify): 10/07/2022

3. History of emergency actions:

- This is the first time this emergency rule has been adopted.
- This is the first re-adoption of an emergency rule printed in the State Register on \_\_\_\_\_ under I.D. No. \_\_\_\_\_.

4. Statutory authority under which the rule was adopted:

Correction Law section 45(6), (15) and (18).

5. This emergency rule is necessary for the preservation of:

- public health
- public safety
- general welfare

6. The specific reasons underlying the finding of necessity, above, are as follows:

7. *Subject of the rule:*

Medication assisted treatment.

8. *Purpose of the rule:*

Set minimum standards for a program of medication assisted treatment in jails.

9. *Public hearings* (check box and complete as applicable):

- A public hearing is not scheduled. (*SKIP TO ITEM 12*)
- A public hearing is required by law and is scheduled below. (**Note:** first hearing date must be at least 60 days **after** publication of this notice unless a different time is specified in statute.)
- A public hearing is not required by law, but is scheduled below.

<i>Time:</i>	<i>Date:</i>	<i>Location:</i>

10. *Interpreter services* (check only if a public hearing is scheduled):

Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

11. *Accessibility* (check appropriate box only if a public hearing is scheduled):

- All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.
- Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

12. *Terms of rule* (SELECT A, B **or** C. Item D is required.):

- A.  The full text of the rule is attached because it does not exceed 2,000 words.
- B.  A summary of the rule is attached because the full text of the rule exceeds 2,000 words.
  - Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

C.  Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making]. Web posting of full text of such rule is not required [SAPA §202(1)(a)].

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).

13. *Emergency expiration date* (A first emergency rule is effective and enforceable for up to 90 days from the **date of filing**. Second and subsequent emergency rules are effective and enforceable for up to 60 days from their **date of filing** UNLESS the agency specifies an earlier date). This rule expires:

- 90 days after filing
- 60 days after filing
- Other (*specify date*): \_\_\_\_\_ .

14. Proposed expiration date (check only if applicable):

- This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102 (2)(a)(ii).

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

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

16. *Submit data, views or arguments to* (complete only if different than previously named agency contact):

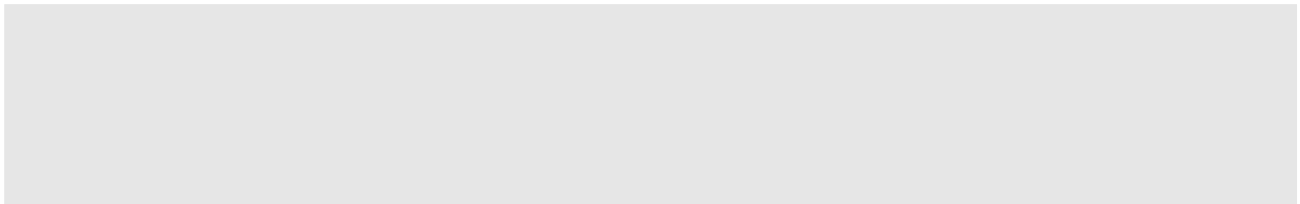
<i>Agency contact</i>	_____		
<i>Agency name</i>	_____		
<i>Office address</i>	_____		
	_____		
<i>Telephone</i>	_____	<i>E-mail</i>	_____

17. *Public comment will be received until:*

- 60 days after publication of this notice (MINIMUM public comment period).
- 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing).
- Other: (*specify*) \_\_\_\_\_ .

18. *Additional matter required by statute:*

- YES (include below material required by statute).



- NO additional material required by statute.

19. *Regulatory Agenda* [see SAPA §202-d(1)]:

- This action was a Regulatory Agenda item in the following issue of the *State Register*: \_\_\_\_\_ .
- This action was not under consideration at the time this agency's Regulatory Agenda was submitted for publication in the *Register*.
- Not applicable.

**20. Regulatory Impact Statement (RIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits])

A. The attached RIS contains:

The full text of the RIS.

A summary of the RIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not** attached:

because this rule is subject to a consolidated RIS printed in the *Register* under I.D. No.: \_\_\_\_\_ - \_\_\_\_\_ ; issue date: \_\_\_\_\_ .

because this rule is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

but will be published in the *Register* within 30 days of the rule's effective date.

C.  A **statement is attached** claiming exemption pursuant to SAPA §202-a (technical amendment).

**21. 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 RFA contains:

The full text of the RFA.

A summary of the RFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RFA, because this rule is one of a series of closely related rules.

B.  A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

C. A RFA is **not attached**:

because this rule is subject to a consolidated RFA printed in the *Register* under I.D. No.: \_\_\_\_\_ - \_\_\_\_\_ ; issue date: \_\_\_\_\_ .

because this rule is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

but will be published in the *Register* within 30 days of the rule's effective date.

**22. Rural Area Flexibility Analysis (RAFA)**

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

A. The attached RAFA contains:

 The full text of the RAFA. A summary of the RAFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

 A consolidated RAFA, because this rule is one of a series of closely related rules.B.  A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.C. A RAFA is **not attached**: because this rule is subject to a consolidated RAFA printed in the *Register* under I.D. No.: \_\_\_\_\_ - \_\_\_\_\_ ; issue date: \_\_\_\_\_ . because this rule is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. but will be published in the *Register* within 30 days of the rule's effective date.**23. Job Impact Statement (JIS)**

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

A. The attached JIS contains:

 The full text of the JIS. A summary of the JIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

 A consolidated JIS, because this rule is one of a series of closely related rules.B.  A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and 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. A JIS/Request for Assistance is submitted with this notice.C. A JIS is **not attached** : because this rule is subject to a consolidated JIS printed in the *Register* under I.D. No.: \_\_\_\_\_ - \_\_\_\_\_ ; issue date: \_\_\_\_\_ . because this rule is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. because this rule was proposed by the State Comptroller or Attorney General. but will be published in the *Register* within 30 days of the rule's effective date.

24. Referenced material:

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


**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 10/06/2022

**Please read before submitting this notice:**

Reset Form

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.

## Finding of Necessity:

On October 7, 2021, Governor Hochul signed into law legislation (Chapter 432 of the Laws of 2021), which generally serves to allow incarcerated individuals with certain substance use disorders the opportunity to participate in a medication assisted treatment (MAT) program. Subsequent lawmaking (Chapter 432 of the Laws of 2021) postponed the effective date of the legislation to October 7, 2022.

The legislation requires the Office of Addiction Services and Supports (OASAS) to implement, in consultation with the county sheriff and other county governmental units, a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for persons with substance use disorder who are incarcerated in jails. Services provided by each program must be in accordance with plans developed by the county and approved by the OASAS Commissioner, to include alcohol and substance abuse withdrawal management, medication assisted treatment formulations, group and individual counseling and clinical support, peer support, discharge planning and re-entry and transitional supports.

The addition of subdivision (18) of section 45 of the Correction Law requires the New York State Commission of Correction (SCOC) to establish standards and guidelines for a program of MAT for incarcerated individuals in local correctional facilities equivalent to the program established in state correctional facilities, and to submit an annual report to the Governor and legislative leaders on the effectiveness of the programs established. The legislation imposes numerous and precise requirements on the plan, screening, placement, participation, and other requirements of each local correctional facility's substance use disorder treatment and transition services program. Consequently, the proposed rulemaking is immediately necessary to conform with this enactment and to provide local governments with the rules necessary to comply with the legislation.



For the aforementioned reasons, SCOC finds that immediate adoption of the rule is necessary for the preservation of public safety and general welfare, and that compliance with the rulemaking procedures set forth in State Administrative Procedure Act section 202(1) would be contrary to the public interest. By immediately adopting these regulations, SCOC will be able to ensure that each local correctional facility implement a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for incarcerated individuals with substance use disorder. Given the upcoming statutory deadline, emergency adoption is needed to require timely compliance with the legislation. Thus, SCOC finds that the regulation must be adopted and implemented effective October 7, 2022 on an emergency basis, and compliance with the minimum periods of notice, public comment and other requirements of State Administrative Procedure Act section 202(1) would be contrary to the public interest.

Text:

A new subdivision (g) of section 7000.1 of Title 9 is added to read as follows:

(g) 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, in conjunction with the jail physician, shall submit a report to the Commission of Correction detailing the operation, function and effectiveness of the facility's substance use disorder treatment and transition services program during the preceding calendar year. Such report shall be submitted in a form and manner prescribed by the Chair of the Commission.

Section 7002.6 of Title 9 is amended to read as follows:

A medical screening questionnaire shall be administered by facility staff at the time of admission or prior to the placement of an individual [prisoner] in a facility housing unit. Any screening response indicating a history of alcohol or substance abuse shall result in an immediate referral for additional medical screening pursuant to section 7011.5 of this Title.

Paragraph (2) of subdivision (a) of section 7002.9 of Title 9 is amended to read as follows:

(2) available health services, including physician visits, [and] sick calls and substance use disorder treatment and transition services;

A new Part 7011 of Title 9 is added to read as follows:

Part 7011

Substance Use Disorder Treatment and Transition Services

(Statutory authority: Correction Law §§45(6), 45(15), 45(18))

Sec.

7011.1 Purpose

7011.2 Definitions

7011.3 Policy

7011.4 Plan for providing services

7011.5 Program screening, placement and participation

7011.6 Program requirements

7011.7 Recordkeeping

§ 7011.1 Purpose.

The purpose of this Part shall be to ensure that each local correctional facility implement a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for incarcerated individuals with substance use disorder.

§ 7011.2 Definitions.

As used in this Part, the following definitions shall apply to the terms listed below:

- (a) *Commissioner* shall mean the Commissioner of the New York State Office of Addiction Services and Supports.
- (b) *Jail physician* shall mean the physician appointed or designated pursuant to section 501 of the Correction Law.
- (c) *Medication assisted treatment* shall mean the treatment of chemical dependence or abuse and concomitant conditions with medications requiring a prescription or order from an authorized prescribing professional.
- (d) *Chief administrative officer* shall mean the highest-ranking official of the facility.
- (e) *Sheriff* shall mean the individual having custody of a local correctional facility pursuant to subdivisions (1) and (2) of section 500-c of the Correction Law.

#### § 7011.3 Policy.

Consistent with the requirements of this Part, each facility shall establish and implement policies and procedures for the operation of a substance use disorder treatment and transition services program pursuant to a plan approved by the Commissioner in accordance with section 19.18-c of the Mental Hygiene Law.

#### § 7011.4 Plan for providing services.

- (a) Services to be provided by a facility's substance use disorder treatment and transition services program shall be in accordance with a plan developed by participating local governmental units, in collaboration with the sheriff, taking into account local needs and available resources.
- (b) Any such plan required by subdivision (a) of this section shall include, but not be limited to, the following:
- (1) Alcohol, benzodiazepine, heroin and opioid withdrawal management;
  - (2) At least one formulation of every form of medication assisted treatments approved for the treatment of a substance use disorder by the Federal Food and Drug Administration necessary to ensure that each individual

participating in the program receives the particular form found to be the most effective at treating and meeting their individual needs. The Commissioner may allow a facility a limited exemption to providing opioid full agonist treatment medications where the Commissioner determines that no providers that have received the required accreditation are located within a reasonable distance of the facility. A facility that does not have the resources available to meet standards set forth herein may apply to the Commissioner for a limited exception allowing such facility to enter into an agreement with a community- or jail-based program offering substance use disorder treatment and transition services to provide such services to individuals in the facility. Any such determination shall be reviewed on a regular basis;

(3) Group and individual counseling and clinical support;

(4) Peer support;

(5) Discharge planning; and

(6) Re-entry and transitional supports.

(c) Prior to implementation, the plan required by subdivision (a) of this section shall be approved by the Commissioner.

(d) A copy of the plan required by subdivision (a) of this section, any and all amendments and revisions thereof, and any approvals, exemptions and exceptions granted by the Commissioner shall be maintained within the facility by both the chief administrative officer and the jail physician.

§ 7011.5 Program screening, placement and participation.

(a) Without unnecessary delay, but no later than seventy-two (72) hours following a referral, an incarcerated individual shall receive a medical screening to determine if the individual suffers from a substance use disorder for which medication assisted treatment exists.

(b) Following the medical screening, an incarcerated individual who is determined to suffer from a substance use disorder for which medication assisted treatment exists shall be offered placement in the medication assisted treatment program. Placement in such program shall not be mandatory. The offer of placement shall be made in writing, and the decision to accept or deny placement shall be verified by the incarcerated individual's signature and witnessed and signed by an appropriate staff member. If, for any reason, the incarcerated individual is not able to verify, or refuses to verify the decision, the same must be recorded in writing on the offer of placement and witnessed and signed by two (2) appropriate staff members.

(c) Participation in the medication assisted treatment program shall not be unreasonably withheld from a qualified incarcerated individual. An incarcerated individual using medication assisted treatment prior to such individual's incarceration shall be eligible to, upon request by such individual, continue such treatment in the medication assisted treatment program for any period of time during such individual's incarceration.

(d) No individual shall be denied participation in the program on the basis of a positive drug screening upon entering custody or upon intake into the program; nor shall any individual receive a disciplinary infraction for such positive drug screening. No individual shall be removed from, or denied participation in the program on the basis of having received any disciplinary infraction before entry into the program, or during participation in the program.

(e) An incarcerated individual may enter into such program at any time during the individual's incarceration, and an individual's request to participate in the program shall result in an immediate referral for additional medical screening pursuant to subdivision (a) of this section.

§ 7011.6 Program requirements.

- (a) Each participating incarcerated individual shall work with an authorized specialist to develop an individualized treatment plan, including an appropriate level of counseling and planning for continuity of care upon return to the community.
- (b) Decisions regarding type, dosage, or duration of any medication regimen shall be made by a qualified health care professional licensed or certified under Title VIII of the Education Law who is authorized to administer such medication in conjunction with the incarcerated individual.
- (c) Such program shall also include conditions for a reentry strategy for incarcerated individuals who have participated in medication assisted treatment. Such strategy shall include, but not be limited to, providing each participating incarcerated individual with information on available treatment facilities in their area, information on available housing and employment resources, and any other information that will assist the incarcerated individual in continued recovery once released. Such program shall also assist the incarcerated individual in Medicaid enrollment, prior to release.
- (d) Such program shall provide participating incarcerated individuals preparing for release from the facility with a one-week supply of any necessary medication, where permissible under federal laws and regulations to continue their medication assisted treatment in an effort to prevent relapse.

§ 7011.7 Recordkeeping.

- (a) Records detailing each individual's screening, placement and participation, and each participating individual's program required by sections 7011.5 and 7011.6 of this Title including, but not limited to, the offer of placement, individualized treatment plan, medication regimen, conditions for a reentry strategy, and medication supply to released individuals, shall be maintained in writing or electronically, and shall sufficiently report the name of the incarcerated individual, the names of all facility/program staff involved, the date, and the name of the recording individual.

(b) Contemporary medication administration records shall be maintained for every incarcerated individual receiving medication assisted treatment pursuant to a facility's substance use disorder treatment and transition services program.

(c) The jail physician and other designated facility health staff shall retain all records required by this section in the facility, or shall otherwise have the ability to immediately access such records as necessary.

Subdivision (c) of section 7013.7 of Title 9 is amended to read as follows:

(c) An immediate decision concerning the disposition of each incarcerated individual [inmate] shall be made on the basis of information gathered during initial screening and risk assessment. Such disposition may include, but is not limited to, referrals to outside medical and mental health service providers. Any gathered information indicating a history of alcohol or substance abuse shall result in an immediate referral for additional medical screening pursuant to section 7011.5 of this Title.



## Regulatory Impact Statement (RIS):

The New York State Commission of Correction ("Commission") seeks to add a new subdivision (g) of section 7000.1, amend section 7002.6, amend paragraph (2) of subdivision (a) of section 7002.9, add a new Part 7011, and amend paragraph (2) of subdivision (a) of section 7002.9 of Title 9 NYCRR.

### 1.) Statutory authority:

Subsection (6) of section 45 of the Correction Law authorizes the Commission to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all person confined in the correctional facilities of New York State.

Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties.

Subdivision (18) of section 45 of the Correction Law requires the Commission to establish standards and guidelines for a program of medication assisted treatment for incarcerated individuals in county jails and/or county correctional facilities equivalent to the program established in state correctional facilities and submit an annual report to the Governor and legislative leaders on the effectiveness of the programs established.

### 2.) Legislative objectives:

By vesting the Commission with this rulemaking authority, and recently adding Correction Law section 45(18) to require the Commission to establish standards and guidelines for a program of medication assisted treatment for incarcerated individuals in county jails and/or county correctional facilities equivalent to the program established in state correctional facilities and submit an annual report to the Governor and legislative

leaders on the effectiveness of the programs established, the Legislature intended the Commission to promulgate minimum standards consistent with this duty.

### 3.) Needs and Benefits:

On October 7, 2021, Governor Hochul signed into law legislation (Chapter 432 of the Laws of 2021), which generally serves to allow incarcerated individuals with certain substance use disorders the opportunity to participate in a medication assisted treatment (MAT) program. Subsequent lawmaking (Chapter 432 of the Laws of 2021) postponed the effective date of the legislation to October 7, 2022.

The legislation requires the Office of Addiction Services and Supports (OASAS) to implement, in consultation with the county sheriff and other county governmental units, a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for persons with substance use disorder who are incarcerated in jails. Services provided by each program must be in accordance with plans developed by the county and approved by the OASAS Commissioner, to include alcohol and substance abuse withdrawal management, medication assisted treatment formulations, group and individual counseling and clinical support, peer support, discharge planning and re-entry and transitional supports.

The addition of subdivision (18) of section 45 of the Correction Law requires the New York State Commission of Correction (SCOC) to establish standards and guidelines for a program of MAT for incarcerated individuals in local correctional facilities equivalent to the program established in state correctional facilities, and to submit an annual report to the Governor and legislative leaders on the effectiveness of the programs established. The legislation imposes numerous and precise requirements on the plan, screening, placement, participation, and other requirements of each local correctional facility's substance use disorder treatment and

transition services program. Consequently, the proposed rulemaking is immediately necessary to conform with this enactment and to provide local governments with the rules necessary to comply with the legislation.

4.) Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None. As set forth above, a jail's establishment and operation of a substance use disorder treatment and transition services program was required by recent legislation. Compliance with the proposed rule will not result in any additional costs to county and municipal agencies operating such jails.

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

c. This statement detailing the projected costs of the rule is based upon the Commission's oversight and experience relative to the operation and function of adult jails.

5.) Local government mandates:

The rulemaking mirrors recent legislation that requires the establishment and operation of a substance use disorder treatment and transition services program in local correctional facilities, effective October 7, 2022.

6.) Paperwork:

The rulemaking requires that records be maintained, in writing or electronically, of each incarcerated individual's screening, placement and participation in the program, to include an individualized treatment plan, medication regimen, conditions for a reentry strategy, and medication supply upon release. Although this rule does not constitute an additional recordkeeping requirement, it does reaffirm existing regulations of 9 NYCRR

§7010.2(j) that adequate health service and medical records of incarcerated individuals be maintained to include diagnosis, medication/treatment prescribed, and medication administered.

7.) Duplication:

The rule conforms to recent legislation that requires the establishment and operation of a substance use disorder treatment and transition services program in local correctional facilities, effective October 7, 2022.

8.) Alternatives:

Given the legislation that requires the establishment and operation of a substance use disorder treatment and transition services program in local correctional facilities, the Commission did not see any alternative to promulgating conforming regulations.

9.) Federal standards:

There are no applicable minimum standards of the federal government.

10.) Compliance schedule:

Each local jurisdiction is expected to be able to achieve compliance with the proposed rule effective October 7, 2022.

Regulatory Flexibility Analysis (RFA) for small businesses and local governments:

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses or local governments. The proposed rule seeks only to conform regulations to recent legislation that requires local correctional facilities to operate a substance use disorder treatment and transition services program pursuant to a plan approved by the Commissioner of the Office of Addiction Services and Supports in accordance with section 19.18–c of the mental hygiene law. The proposed rule does not impose any new mandates on local facilities, just reiterates the program planning, screening, placement and participation requirements added to the Correction Law and Mental Hygiene Law. Consequently, the rule will not have an adverse impact on small businesses or local governments, nor impose any additional significant reporting, record keeping, or other compliance requirements on small businesses or local governments.

Job Impact Statement (JIS):

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to conform regulations to recent legislation that requires local correctional facilities to operate a substance use disorder treatment and transition services program pursuant to a plan approved by the Commissioner of the Office of Addiction Services and Supports in accordance with section 19.18–c of the mental hygiene law. As such, there will be no impact on jobs and employment opportunities.

Rural Area Flexibility Analysis (RAFA):

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to conform regulations to recent legislation that requires local correctional facilities to operate a substance use disorder treatment and transition services program pursuant to a plan approved by the Commissioner of the Office of Addiction Services and Supports in accordance with section 19.18–c of the mental hygiene law. Consequently, it will not impose an adverse economic impact on rural areas, nor impose any additional significant record keeping, reporting, or other compliance requirements on private or public entities in rural areas.