



ALLEN RILEY
Chairman

THOMAS J. LOUGHREN
Commissioner

CHAIRMAN'S MEMORANDUM

NO: 2-2021

DATE: February 8, 2021

TO: SHERIFFS, COMMISSIONERS OF CORRECTION, JAIL ADMINISTRATORS and WARDENS

RE: New Regulations Governing Special Housing

Please be advised that, on January 26, 2021, the New York State Commission of Correction voted to adopt regulations limiting the use of confinement and segregation in special housing units. Effective February 10, 2021, 9 NYCRR Parts 7006, 7013, 7040, 7041, 7070 and 7075 are amended to:

(a) prohibit the operation of a special housing area unless such area has been so designated on the Commission's maximum facility capacity formulation;

(b) prohibit disciplinary confinement or administrative segregation in special housing for incarcerated individuals that are pregnant, within 8 weeks of pregnancy outcome, mentally/physically disabled, or have a serious mental illness;

(c) limit disciplinary confinement of an incarcerated individual in special housing to violations of rules of inmate conduct that pose an unreasonable risk to the health, safety or security of staff, incarcerated individuals, or facility security; limited to no more than:

- 90 days, effective on and after April 1, 2021;
- 60 days, effective on and after October 1, 2021; and
- 30 days, effective on and after April 1, 2022.

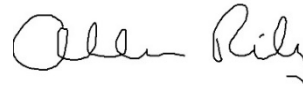
(d) limit administrative segregation of an incarcerated individual in special housing to circumstances where such individual's presence in general housing would pose an unreasonable and demonstrable risk to the safety and security of staff, incarcerated individuals, the facility, or would present an unreasonable risk of escape; and is limited to no more than:

- 90 days, effective on and after April 1, 2021;
- 60 days, effective on and after October 1, 2021; and
- 30 days, effective on and after April 1, 2022.

To continue the administrative segregation of an incarcerated individual in special housing beyond the time limits above, the chief administrative officer must make a written determination

stating why such incarcerated individual poses an immediate or continuing and unacceptable threat. Any such determination must be reviewed at least every seven days and incorporate consultation with qualified facility health staff.

For your reference, attached please find the text of the regulatory additions and amendments. Should you have any questions regarding the regulations, it is recommended that you contact the Commission of Correction's Office of Counsel at (518) 485-2346.

A handwritten signature in cursive script that reads "Allen Riley".

Allen Riley, Chairman

Text:

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 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;

(ii) 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

(iii) no incarcerated individual shall be sanctioned to 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;

Subdivision (h) of section 7013.2 of Title 9 is amended to read as follows:

(h) *Special housing* shall [include, but not be limited to: admissions/orientation housing; medical/mental health observation; and] mean any incarcerated individual housing area, or subdivision thereof, used principally for punitive or administrative segregation.

Paragraph (1) of subdivision (a) of section 7013.6 of Title 9 is amended to read as follows:

(1) special housing[as defined in section 7013.2(h) of this Part], admissions/orientation housing, and medical/mental health observation, provided minors and adults are separately grouped to prevent access between such classification categories;

Subdivision (b) of section 7013.6 of Title 9 is amended to read as follows:

(b) Males and females shall not be commingled in areas designated as special housing, admissions/orientation housing, or medical/mental health observation [as defined in section 7013.2(h) of this Part].

Section 7040.2 of Title 9 is amended to read as follows:

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

(a) [m]Maximum facility capacity shall mean the greatest number of [inmates] incarcerated individuals that may be confined at one time within each correctional facility, as formulated by the commission pursuant to the requirements of this Part.

(b) Special housing shall have the same meaning as defined in section 7013.2(h) of this Title.

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] incarcerated individuals 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 individual occupancy housing units in housing areas designated for admissions/orientation, medical and mental health observation, and [any other] special housing[units];

(2) the number of properly equipped multiple occupancy housing units, including the number of properly equipped multiple occupancy housing units in housing areas designated for admissions/orientation, medical and mental health observation, and [any other] special housing[units]; and

(3) the facility's ability to provide required programs and services and to comply with other rules and regulations of this Chapter which are related to facility capacity.

Paragraph (4) of subdivision (a) of section 7041.2 of Title 9 is amended to read as follows:

(4) special housing, admissions/orientation housing, and medical/mental health observation [area] supervision;

Paragraph (11) of subdivision (c) of section 7070.3 of Title 9 is amended to read as follows:

(11) pursuant to the requirements of section 7070.7(a) and (b) of this Part, provision of educational services to eligible youth confined in special housing, admissions/orientation housing, and medical/mental health observation units; and

Subdivision (a) of section 7070.7 of Title 9 is amended to read as follows:

(a) Eligible youth confined in special housing, admissions/orientation housing, and medical/mental health observation units shall not be denied access to educational services solely on the basis of their classification status.

A new subdivision (h) of section 7075.2 of Title 9 is added to read as follows:

(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.

A new subdivision (i) of section 7075.2 of Title 9 is added to read as follows:

(i) *Administratively segregated incarcerated individual* shall mean any incarcerated individual subject to administrative segregation.

A new subdivision (j) of section 7075.2 of Title 9 is added to read as follows:

(j) *Special housing* shall have the same meaning as defined in section 7013.2(h) of this Title.

Subdivision (b) of section 7075.4 is amended to read as follows:

(b) Absent exigent circumstances, no [inmate] incarcerated individual shall be confined in any housing unit, cell, room or other area of the facility that is not listed as appropriate housing on 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.

New subdivisions (g), (h), (i), (j) and (k) of section 7075.4 of Title 9 are added to read as follows:

(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) 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.