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PART 7000 LEGAL AUTHORITY

Section 7000.1. Legal authority

(a) Article XVII, section 5, of the New York State Constitution provides that there shall be a State Commission of Correction which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime.

(b) Article 3, section 45, of the New York State Correction Law defines the following as basic functions of the State Commission of Correction:

(1) promulgate rules and regulations establishing minimum standards for the care, custody, correctional treatment, supervision, discipline and other correctional programs for all persons confined in local correctional institutions; (Note: As used in this statute, the term local correctional institution means any county penitentiary, county jail, city jail, court detentional pen, hospital prison ward, or town, village or county lockup.)

(2) aid in securing humane and economic administration and best sanitary conditions of the institutions subject to inspection;

(3) investigate their management and conduct of their officials;

(4) approve or reject plans for construction or renovation;

(5) collect statistical information with respect to the inmates; and

(6) close any of the facilities subject to inspection which are unsafe, unsanitary or inadequate to provide for the separation and classification of prisoners as required by law or which has not adhered to or complied with the rules and regulations promulgated by the commission.

(c) Article 3, section 46, of the Correction Law provides that, in any case where a sheriff, superintendent, officer or employee of an institution subject to inspection by the State Commission of Correction shall refuse or cause admission to be refused to any member, officer or inspector of the commission for the purpose of visitation and inspection, or shall refuse or neglect to furnish the information required by the commission or by any of its members, officers or inspectors, the commission may apply to the Supreme Court for an order directing such person to comply therewith; and, upon such application, the court may issue such order as may be just. A failure to comply with the court's order shall be a contempt of court and punishable as such.

(d) On or before the first day of February of each year, each sheriff, superintendent, commissioner, or other officer in charge of a county jail or county penitentiary shall submit a statistical report containing data with respect to prisoners received and discharged during the preceding calendar year. Forms on which such data is to be reported will be forwarded by the commission at the appropriate time.

(e) On or before the first day of February of each year, each sheriff, superintendent, commissioner, or other officer in charge of a local correctional facility shall submit a report to the Commission of Correction (“the Commission” detailing every use of restraints on a woman, report-able under section 611 of the Correction Law, which occurred during the preceding calendar year. Such report shall be submitted in a form and manner prescribed by the Chairperson of the Commission, and shall minimally include, for each individual use of restraints, the following:

(1) the full name of the restrained woman;

(2) the restrained woman's date of birth;

(3) the date and time the restraint was applied;

(4) the date and time the restraint was removed;

(5) a description of the type(s) of restraint(s) used;

(6) the intended transport destination;

(7) the name and rank of the official or officer who authorized the restraint; and

(8) a description of the facts and reasons justifying the use of restraints.

(f) On or before the first day of February of each year, each sheriff, superintendent, commissioner, or other officer in charge of a local correctional facility shall submit a report to the Commission of Correction detailing all aspects of segregated confinement and residential rehabilitation units occurring in the facility during the preceding calendar year. Such report shall be submitted in a form and manner prescribed by the Chair of the Commission.

(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.

History

Sec. added by renum. 5100.1, Title 7, filed June 26, 1976; amds. filed: June 9, 1987; Aug. 17, 1993 eff. Sept. 1, 1993; amd. filed Dec. 20, 2016 eff. Jan. 4, 2017; emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022); emergency rulemaking eff. Oct. 7, 2022, expires Jan. 3, 2023 (Register dated Oct. 26, 2022); emergency rulemaking eff. Jan. 2, 2023, expires March 2, 2023 (Register dated Jan. 18, 2023); amd. filed Jan. 25, 2023 eff. Feb. 15, 2023 (Register dated Feb. 15, 2023).

PART 7001 CONSTRUCTION AND RENOVATION

Section 7001.1. Construction and renovation

(a) Correction Law, section 45, subdivision 10, requires that any plans and specifications for the construction or renovation of detention facilities must be submitted for review to the State Commission of Correction.

(b) Approval of the commission must be obtained before a construction or renovation project is advertised for bids. If it is not contemplated that a bidding procedure is to be followed, approval must be obtained before any construction or renovation is undertaken.

(c) Information as to general requirements to be observed in the construction or renovation of county jails and county penitentiaries is available and will be provided on request to the commission office at Albany.

History

Sec. added by renum. 5100.2, Title 7, filed June 26, 1976; amd. filed June 9, 1987 eff. June 9, 1987. Amended (a).

PART 7002 ADMISSIONS

Section 7002.1. Policy

(a) Consistent with the requirements of this Part, each local correctional facility shall establish policies and procedures designed to ensure that all prisoners are admitted to such facility in accordance with law, and in a manner designed to protect the safety of all persons and the security of the facility.

(b) Only persons lawfully committed to a local correctional facility shall be admitted to such facility.

History

Sec. added by renum. 5100.3, Title 7, filed June 26, 1979; repealed, new filed Oct. 3, 1979 eff. Oct. 3, 1979.

Section 7002.2. Authority for admissions

(a) Prior to the admission of any prisoner, facility staff performing receiving and admissions functions shall examine the committing instrument or document which serves as the basis for the admission. Prisoners shall be admitted to a facility only when:

(1) an examination of available prisoner identification confirms that a prisoner's identity corresponds with any information accompanying such document;

(2) reasonable efforts have been made to confirm that the prisoner is of proper age for admission to a correctional facility in the State of New York. If the prisoner has not reached his or her 16th birthday, such prisoner shall not be admitted to the facility, except in accordance with section 304.1 of the Family Court Act or section 510.15 of the Criminal Procedure Law;

(3) reasonable efforts have been made to confirm that the commitment document bears the signature of a magistrate or other appropriate authority;

(4) it has been confirmed that the prisoner has been committed or otherwise authorized for admission to the receiving facility, and is not intended for commitment to another facility;

(5) it has been determined that the commitment document is not otherwise defective so as to render the admission of a prisoner unlawful; and

(6) an examination of the sentencing commitment, for eligible inmates of another state detained by agreement pursuant to Part 7205 of this Title, confirms that such inmate has been sentenced by a court of the other state to a term of imprisonment allowable pursuant to section 500-o of the Correction Law.

(b) The chief administrative officer shall designate facility staff members to be responsible for admitting prisoners in accordance with the provisions of this Part.

(c) Persons delivering a prisoner to a facility shall present identification as required by the admitting facility staff person.

(d) The admissions process shall include the recording of:

(1) the name of the prisoner received;

(2) the authority for admission to the facility;

(3) an itemization of all documents and property received with the prisoner;

(4) the date and time of admission; and

(5) the name, rank, badge number and authority of delivering officer.

History

Sec. filed Oct. 3, 1979; amd. filed Aug. 17, 1993 eff. Sept. 1, 1993; amd. filed June 19, 2012 eff. July 3, 2012; amd. filed Sept. 17, 2013 eff. Oct. 2, 2013.

Section 7002.3. Identification

(a) Consistent with the requirements of this section, identification procedures, including fingerprinting, shall be established for prisoners confined in local correctional facilities.

(b) All prisoner fingerprints shall be taken in accordance with the rules and methods prescribed by the Division of Criminal Justice Services. If the prisoner is sentenced for a felony or a misdemeanor, two copies of the prisoner's fingerprints shall be forwarded by the facility to the Division of Criminal Justice Services within 24 hours of the admission of such sentenced prisoner to the facility. One copy of such fingerprints shall be retained by the facility.

(c) When deemed necessary to maintain the safety and security of the facility, the chief administrative officer may:

(1) take the fingerprints of unsentenced prisoners; or

(2) take palmprints or a photograph of any prisoner.

History

Sec. filed Oct. 3, 1979; amds. filed: Aug. 3, 1992; May 15, 1995 eff. May 31, 1995. Amended (b).

Section 7002.4. Property confiscation

(a) Facility staff shall confiscate all contraband from prisoners admitted to the facility.

(b) As used in this section, the term contraband shall mean:

(1) any article or substance the possession of which would constitute an offense as that term is defined in the New York State Penal Law;

(2) any deadly weapon, as such weapon is defined in subdivision 12 of section 10.00 of the Penal Law;

(3) any article or substance the possession of which is specifically prohibited by written facility regulations;

(4) any article or substance the possession of which is specifically prohibited by the provisions of this Subtitle; and

(5) any article or substance which may present a substantial sanitation or health threat to the facility.

(c) All prisoner property confiscated by facility staff shall be inventoried and recorded in writing. Such inventory shall include:

(1) the name of the prisoner;

(2) an itemization of each personal property item confiscated with an accurate description of such item;

(3) the date of confiscation; and

(4) the name and signature of officer completing the inventory.

(d) The prisoner shall verify by signing the inventory that such inventory is a complete and accurate itemization of such prisoner's confiscated personal property. If, for any reason, a prisoner is not able to verify, or refuses to verify, that such listing is accurate or complete by signing the inventory, such inventory shall be witnessed and signed by a second facility staff member. If, at a later time, such prisoner is able or willing to effect such signature, the prisoner shall be permitted to do so. The prisoner shall be given a copy of the signed inventory, and at least one copy shall be retained in the facility.

(e) Except as provided in subdivisions (g), (h) and (i) of this section, all prisoner property confiscated pursuant to this section shall be kept in a safe and secure area.

(f) The chief administrative officer shall establish and maintain accurate books of account with respect to any money confiscated as contraband pursuant to this Part. Money confiscated as contraband pursuant to this section shall be deposited in the prisoner's account.

(g) A prisoner may designate, in writing, persons to receive property confiscated pursuant to this section. Personal property shall be released to persons designated by the prisoner when:

(1) such person has presented adequate identification;

(2) such person signs the personal property inventory; and

(3) the inventory has been amended to reflect the release of each item of property.

(h) If a prisoner is not able to designate a person to receive property, or if the designee refuses to receive such property, and if such property cannot be stored within the facility because such storage may present a substantial facility health or sanitation threat, such property may, upon the order of the chief administrative officer, be destroyed. Any such order shall be in writing and shall state:

(1) the name of the prisoner;

(2) the specific property being destroyed;

(3) the time and date of destruction of the property; and

(4) the specific facts and reasons why such property constitutes a facility health or sanitation threat.

(i) The chief administrative officer shall not release any confiscated prisoner property, the possession of which may constitute an offense, to any person except appropriate law enforcement officials. Any such release shall be in writing and shall state:

(1) a description of the property released to law enforcement officials;

(2) the time and date of release;

(3) the name of the prisoner from whom the property is confiscated; and

(4) the name and organization of the official to whom the property is released.

History

Sec. filed Oct. 3, 1979; amd. filed July 29, 1997 eff. Aug. 13, 1997. Amended (f).

Section 7002.5. Records

(a) Consistent with the requirements of section 500-f of the Correction Law, each local correctional facility shall record and maintain information concerning each prisoner admitted to a local correctional facility.

(b) A record shall be made of the name, address, telephone number and relationship to the prisoner, of a person designated by a prisoner to be notified in case of the death, serious illness or other serious incident involving the prisoner.

History

Sec. filed Oct. 3, 1979 eff. Oct. 3, 1979.

Section 7002.6. Medical screening

A medical screening questionnaire shall be administered by facility staff at the time of admission or prior to the placement of an individual 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.

History

Sec. filed Oct. 3, 1979 eff. Oct. 3, 1979; emergency rulemaking eff. Oct. 7, 2022, expires Jan. 3, 2023 (Register dated Oct. 26, 2022); emergency rulemaking eff. Jan. 2, 2023, expires March 2, 2023 (Register dated Jan. 18, 2023); amd. filed Jan. 25, 2023 eff. Feb. 15, 2023 (Register dated Feb. 15, 2023).

Section 7002.7. Personal hygiene and clothing issue

(a) Consistent with the requirements of Part 7005 of this Subtitle, all prisoners shall be provided at admission with an issue of personal hygiene items.

(b) Clothing shall be issued to prisoners when requested or required pursuant to the requirements of Part 7005 of this Subtitle.

History

Sec. filed Oct. 3, 1979 eff. Oct. 3, 1979.

Section 7002.8. Admissions telephone call

Consistent with the provisions of Part 7031 of this Subtitle, a prisoner shall be permitted to make telephone calls upon admission to a facility. Prisoners shall be informed upon admission of their rights to make such telephone calls.

History

Sec. filed Oct. 3, 1979 eff. Oct. 3, 1979.

Section 7002.9. Facility rules and information

(a) Each local correctional facility shall prepare and distribute to all prisoners, upon admission, a written copy of facility rules and information. Such rules and information shall include, but is not limited to, the following:

(1) facility rules of conduct, penalties for violation, and disciplinary procedures;

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

(3) telephone services and rules for use;

(4) exercise periods and rules;

(5) information and eligibility criteria for any available facility program including, but not limited to:

(i) temporary release programs;

(ii) educational programs;

(iii) counseling programs;

(iv) vocational programs; and

(v) work programs;

(6) commissary operations;

(7) lock-in and lock-out times, wake-up and lights-out times;

(8) rules for the use of television, radio or musical instrument playing;

(9) package rules and permissible items;

(10) correspondence rules;

(11) visitation rules and schedules;

(12) eligibility criteria and procedures for requesting funeral and deathbed visits;

(13) eligibility criteria and procedures, including application forms, for conditional release;

(14) divine worship schedules;

(15) grievance procedures;

(16) the availability of legal reference materials and supplies, including a specific reference to the availability of rules and regulations of the State Commission of Correction; and

(17) any additional information the chief administrative officer feels may assist prisoners.

(b) If any prisoner is illiterate or non-English speaking, reasonable efforts shall be made to assist such prisoner in the understanding of, and use of, necessary facility services and programs, as provided in section 7030.2 of this Title.

(c) Facility rules and information shall be updated and amended as needed.

(d) The chief administrative officer may require that each prisoner sign a ledger or other record verifying that such prisoner has received the facility rules and information required pursuant to this section.

(e) The chief administrative officer may require that prisoners forfeit possession of their copy of facility rules and regulations upon discharge from the facility.

History

Sec. filed Oct. 3, 1979; amds. filed: Nov. 2, 1987 as emergency measure; Dec. 15, 1987 as emergency measure; Jan. 19, 1988; June 5, 1989 as emergency measure; Aug. 15, 1989; Oct. 21, 2005 eff. Nov. 9, 2005. Amended (a)(4); emergency rulemaking eff. Oct. 7, 2022, expires Jan. 3, 2023 (Register dated Oct. 26, 2022); emergency rulemaking eff. Jan. 2, 2023, expires March 2, 2023 (Register dated Jan. 18, 2023); amd. filed Jan. 25, 2023 eff. Feb. 15, 2023 (Register dated Feb. 15, 2023).

PART 7003 SECURITY AND SUPERVISION

Section 7003.1. Policy

Consistent with the requirements of this Part, each local correctional facility shall develop and employ policies and procedures designed to ensure that proper facility safety, security and supervision is maintained.

History

Sec. added by renum. 5100.4, Title 7, filed June 26, 1976; repealed, new filed Dec. 15, 1977 eff. Dec. 15, 1977.

Section 7003.2. Definitions

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

(a) *Supervisory visit* shall mean:

(1) a personal visual observation of each individual prisoner by facility staff responsible for the care and custody of such prisoners to monitor their presence and proper conduct; and

(2) a personal visual inspection of each occupied individual prisoner housing unit and the area immediately surrounding such housing unit by facility staff responsible for the care and custody of prisoners to ensure the safety, security and good order of the facility.

(b) *General supervision* shall mean the availability to prisoners of facility staff responsible for the care and custody of such prisoners which shall include supervisory visits conducted at 30-minute intervals.

(c) *Active supervision* shall mean the immediate availability to prisoners of facility staff responsible for the care and custody of such prisoners which shall include:

(1) uninterrupted ability to communicate orally with and respond to each prisoner unaided by any electronic or other artificial amplifying device; and

(2) the conducting of supervisory visits at 30-minute intervals;

(3) the ability of staff to immediately respond to emergency situations; and

(4) in any facility housing area in which more than 20 inmates are housed, the continuous occupation of a security post within such housing area.

(d) *Constant supervision* shall mean the uninterrupted personal visual observation of prisoners by facility staff responsible for the care and custody of such prisoners without the aid

of any electrical or mechanical surveillance devices. Facility staff shall provide continuous and direct supervision by permanently occupying an established post in close proximity to the prisoners under supervision which shall provide staff with:

(1) a continuous clear view of all prisoners under supervision; and

(2) the ability to immediately and directly intervene in response to situations or behavior observed which threaten the health or safety of prisoners or the good order of the facility.

History

Sec. filed Dec. 15, 1977; repealed, new filed March 10, 1987; amds. filed: Jan. 22, 1990; April 16, 1997 eff. May 7, 1997. Amended (a)(2) and (c)(2).

Section 7003.3. Supervision of prisoners in facility housing areas

(a) Active supervision shall be maintained in all facility housing areas, including multiple occupancy housing units, when any prisoners are confined in such areas but not secured in their individual housing units.

(b) Where a security post is not located within a facility housing area pursuant to section 7003.2(c)(4) of this Part, each supervisory visit conducted in the course of providing active supervision shall be entered in the housing area logbook at the time such visits are made.

(c) At a minimum, general supervision shall be maintained in all facility housing areas when all prisoners are secured in their individual housing units.

(d) Notwithstanding the requirements of this section, the chief administrative officer shall determine the type and manner of supervision to be provided to trustees while such trustees are confined in a facility housing area housing only trustees.

(e) Whenever all prisoners are secured in their individual housing units and general supervision is maintained, mechanical or electrical time recording devices shall be used to record the performance of supervisory visits conducted pursuant to the requirements of this section.

(f) The records resulting from the use of mechanical or electrical time recording devices shall be retained within the facility and reviewed periodically by the chief administrative officer.

(g) Mechanical or electrical time recording devices shall not be required to record the performance of supervisory visits conducted pursuant to the requirements of this section when active supervision is maintained.

(h) The chief administrative officer and/or the facility physician shall determine whether a prisoner requires additional supervision based on the prisoner's condition, illness or injury, and the chief administrative officer shall order such supervision if warranted. Additional supervision may include:

(1) more frequent supervisory visits;

(2) active supervision when only general supervision is required; or

(3) constant supervision.

(i) Consistent with the requirements of subdivision (j) of this section, such determinations and orders for additional supervision shall be recorded.

(j) All written records pertaining to facility housing supervision required pursuant to this section shall be recorded in ink in a bound ledger of consecutively numbered pages which shall be maintained in each housing area. Such records shall include, but not be limited to, the following information:

(1) the name of the facility housing area in which the supervision is being maintained;

(2) the name(s) of facility staff conducting the supervision;

(3) when active supervision is conducted, the date and time supervision is initiated and the date and time it ends;

(4) when general supervision is conducted, the date and time each supervisory visit is performed pursuant to the requirements of section 7003.2(b) of this Part and the signature of facility staff conducting the supervisory visit;

(5) when the chief administrative officer and/or the facility physician determine a prisoner requires additional supervision pursuant to subdivision (h) of this section:

(i) the reasons underlying such determination;

(ii) orders made requiring such additional supervision, including the dates and times when the supervision is to be initiated and end;

(iii) the name(s) of the individual(s) making such determination and/or ordering the supervision;

(iv) the dates and times when supervision was initiated and ended;

(v) the name(s) of facility staff conducting the supervision; and

(vi) periodic facility staff observations of the prisoner's condition or behavior;

(6) any significant events and activities occurring during supervision, including:

(i) the date and time of such event or problem;

(ii) the names of all incarcerated individuals and/or staff involved;

(iii) facility staff response to such event or problem, including a summary of what occurred;

(iv) a description of the condition of any incarcerated individuals involved;

(v) for each segregated individual, as that term is defined in section 7075.2 of this Title, incarcerated individual subject to segregated confinement, as that term is defined in section 7076.2 of this Title, or incarcerated individual assigned to a residential rehabilitation unit, as that term is defined in section 7077.2 of this Title, the date and time of each instance such individual is either confined to an individual occupancy housing unit, or confined to the sleeping area of a multiple occupancy housing unit;

(vi) for each segregated individual, as that term is defined in section 7075.2 of this Title, incarcerated individual subject to segregated confinement, as that term is defined in section 7076.2 of this Title, or incarcerated individual assigned to a residential rehabilitation unit, as that term is defined in section 7077.2 of this Title, the date and time of each instance such individual is either released from an individual occupancy housing unit, or no longer confined to the sleeping area of a multiple occupancy housing unit; and

(vii) for each segregated individual, as that term is defined in section 7075.2 of this Title, incarcerated individual subject to segregated confinement, as that term is defined in section 7076.2 of this Title, or incarcerated individual assigned to a residential rehabilitation unit, as that term is defined in section 7077.2 of this Title, any refusal of such individual to leave an individual occupancy housing unit, or the sleeping area of a multiple occupancy housing unit.

(k) Each entry recorded in the bound ledger required pursuant to this section shall be signed by the staff member making the entry.

(l) Alterations made by facility staff to any entries contained within such ledger shall be:

(1) accomplished by facility staff drawing a single line through the entry to be changed which does not prevent the original entry from being read; and

(2) dated and signed by the staff member making the alteration with the reason(s) noted why the record was altered.

(m) Notwithstanding the provisions of this section requiring a bound ledger, records pertaining to facility housing supervision may be recorded on a computerized log. Entries made on a computerized log shall identify the staff member making such entry. Entries made on a computerized log shall not be erased. Alterations to entries shall be made by making an additional entry.

History

Sec. filed Dec. 15, 1977; repealed, new filed March 10, 1987; amds. filed: Jan. 22, 1990; May 30, 1990; Dec. 5, 1995; April 16, 1997; March 24, 1998 eff. April 8, 1998; amd. filed May 21, 2019 eff. June 5, 2019; emergency rulemaking eff. March 31, 2022, expires June 26, 2022

(Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7003.4. Supervision of prisoners outside facility housing areas

(a) Except as otherwise provided in this section, active supervision shall be maintained whenever prisoners are participating in activities outside facility housing areas.

(b) The chief administrative officer may determine that supervision, other than active supervision, is required for prisoners participating in activities outside facility housing areas. Such supervision may, where appropriate, include:

(1) constant supervision; or

(2) supervision by:

(i) facility staff members primarily responsible for duties other than the care and custody of prisoners; or

(ii) other persons providing services within the facility, including persons conducting facility programs.

(c) Prisoners participating in temporary release programs as provided in articles 22-A and 27 of the Correction Law need not be supervised when such prisoners are outside the confines of the facility.

(d) The chief administrative officer shall determine the type and manner of supervision to be provided to trustees while such trustees are outside their facility housing areas.

History

Sec. filed Dec. 15, 1977; amds. filed: April 2, 1996; March 24, 1998 eff. April 8, 1998. Amended (d).

Section 7003.5. Prisoner population counts

(a) Prisoner population counts shall:

(1) be conducted at the completion and commencement of each regularly scheduled shift;

(2) be conducted by the facility staff member completing such regularly scheduled shift;

(3) be conducted by the facility staff member beginning the next regularly scheduled shift; and

(4) include an accounting of all prisoners housed in or otherwise assigned to the facility area in which such count is conducted.

(b) The results of each prisoner population count conducted pursuant to paragraphs (a)(2) and (3) of this section shall be recorded in writing. Such written records shall include the:

(1) date and time of the count;

(2) facility area in which the count was conducted;

(3) number of prisoners accounted for; and

(4) name of facility staff member conducting the count.

(c) Subsequent to each prisoner population count conducted pursuant to paragraph (a)(3) of this section, the written records of the results of each count compiled pursuant to subdivision (b) of this section shall be immediately forwarded to the chief administrative officer. Upon receipt of the results of all prisoner population counts, the chief administrative officer shall determine the total prisoner population count. Such total prisoner population count shall account for each prisoner committed to the facility.

(d) Total prisoner population counts shall be made in writing and shall include the:

(1) date and time of such count;

(2) the results of such count; and

(3) signature of the chief administrative officer.

(e) The chief administrative officer shall immediately initiate appropriate emergency procedures in response to any discrepancy in the prisoner population count.

History

Sec. filed Dec. 15, 1977 eff. Dec. 15, 1977; amds. filed Dec. 23, 2010 eff. Jan. 12, 2011.

Section 7003.6. Requirements of facility staff members prior to assuming responsibilities in an assigned facility area

(a) Each facility staff member shall, prior to assuming responsibilities in an assigned facility area, obtain all necessary keys for the assigned area in accordance with the provisions of section 7003.9 of this Part.

(b) Upon assuming responsibilities in an assigned area and following the completion of duties set forth in section 7003.5 of this Part, review the records maintained pursuant to section 7003.3(j) of this Part and, subsequent to such review, initial such written records.

(c) Where a facility member's assignment to a facility area is scheduled to exceed one hour, such facility staff member shall, upon assuming responsibilities in the assigned facility area and following the completion of duties set forth in subdivision (b) of this section, inspect all supplies, equipment, locks, gates, bars, screens, security windows and other securing devices, and perform any other necessary security functions as determined by the chief administrative officer.

History

Sec. filed Dec. 15, 1977; amds. filed: May 30, 1990; March 24, 1998 eff. April 8, 1998. Amended (a); amds. filed Dec. 23, 2010 eff. Jan. 12, 2011.

Section 7003.7. Prisoner transportation

(a) Except as otherwise provided in this Part, constant supervision of prisoners shall be provided by facility staff members when such prisoners are being transported to or from any local correctional facility by facility staff members.

(b) Facility staff members responsible for the transportation of a prisoner to or from a local correctional facility shall, prior to beginning such transportation, obtain:

(1) all necessary documents or other authorizations; and

(2) any other necessary information relative to such transportation.

(c) A written record pertaining to each incarcerated individual transported to or from the facility shall be maintained 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.

History

Sec. filed Dec. 15, 1977 eff. Dec. 15, 1977; amd. filed Feb. 26, 2025 eff. March 19, 2025 (Register dated March 19, 2025).

Section 7003.8. Firearms control

(a) Except as otherwise provided in this Part, firearms or ammunition shall not be permitted within the secure area of any local correctional facility.

(b) All persons in possession of any firearms or ammunition shall be required to deposit such items in a secure depository or with a facility staff member prior to entering the secure area of any local correctional facility. Any person so depositing firearms or ammunition may demand, and upon demand shall receive, a receipt for such items. Any firearms or ammunition deposited pursuant to this subdivision shall be maintained in a safe and secure manner.

(c) All facility firearms or ammunition shall be maintained in a safe and secure area. An inspection of all facility firearms or ammunition shall be conducted at least every six months. A written record of such inspections shall be maintained and shall include:

(1) the name of the person conducting the inspection;

(2) the date of inspection;

(3) the type and quantity of firearms or ammunition; and

(4) any other information relative to the condition of the firearms or ammunition.

(d) Facility firearms or ammunition shall be issued only upon the determination of the chief administrative officer. Such determination shall be in writing and shall include the:

(1) specific facts and reasons underlying the determination;

(2) date and time of issuance and return of any firearms or ammunition;

(3) type and serial number of firearms or ammunition issued; and

(4) name of any person issued the firearms or ammunition.

(e) Firearms or ammunition shall be issued only to facility staff members trained in the use of such equipment by a certified firearms instructor.

(f) Except as otherwise provided in this subdivision, only firearms or ammunition issued by the facility shall be used by facility staff members in the performance of their official duties. Firearms other than facility issued firearms may be used by facility staff members in the performance of their official duties when:

(1) the chief administrative officer has approved such use in writing; and

(2) such facility staff members present certification of training in the use of such equipment by a certified firearms instructor.

(g) The storage, inspection, issuance and administration of chemical agents shall be in accordance with the provisions of Part 7063 of this Subtitle.

History

Sec. filed Dec. 15, 1977 eff. Dec. 15, 1977.

Section 7003.9. Key control

(a) Consistent with the requirements of this section, the chief administrative officer shall establish written procedures for the control and use of all keys in a local correctional facility.

(b) All keys used in a local correctional facility shall be maintained in a safe and secure area.

(c) The chief administrative officer shall ensure that a duplicate of every key used in a local correctional facility is maintained. Such duplicate keys shall be maintained in a safe and secure area and shall be readily accessible when needed.

(d) Each local correctional facility shall establish procedures to ensure that all keys issued within such facility are properly controlled. A written record shall be maintained with respect to the control and issuance of keys and shall include the:

(1) name of any facility staff member issued the keys;

(2) date and time of issuance of the keys; and

(3) date and time of return of the keys.

(e) All keys which could provide prisoners with a means of exit from any local correctional facility shall not be permitted in any area where prisoners may gain access to such keys.

History

Sec. filed Dec. 15, 1977 eff. Dec. 15, 1977.

Section 7003.10. Locks and other securing devices

The chief administrative officer shall ensure that all locks and other securing devices including, but not limited to, bars, security windows, fences and screens are inspected at intervals not to exceed 30 days to ensure that such locks and other securing devices are in proper working order. Written records of such inspections shall be maintained and shall include:

(1) the name of the facility staff member performing the inspection;

(2) the date of inspection;

(3) the condition of the locks and other securing devices; and

(4) any action taken to correct deficiencies in the locks and other securing devices.

History

Sec. filed Dec. 15, 1977 eff. Dec. 15, 1977; amd. filed April 19, 2011 eff. May 4, 2011.

PART 7004 CORRESPONDENCE

Section 7004.1. Policy

(a) Subject to the limitations of this Part, prisoners are entitled to correspond with any person.

(b) There shall be no restriction upon incoming or outgoing prisoner correspondence based upon:

(1) the amount of correspondence sent or received; or

(2) the language in which such correspondence is written.

(c) If a prisoner is unable to read or write, he may receive assistance with his correspondence from other persons designated by the chief administrative officer, including but not limited to facility employees and prisoners at times not unduly disruptive of the facility routine.

History

Sec. added by renum. and amd. 5100.5, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7004.2. Outgoing prisoner correspondence

(a) Each local correctional facility shall make available to indigent prisoners at facility expense stationery and postage for at least two one-ounce pieces of correspondence each week.

(b) Each facility shall make available for purchase by prisoners both stationery and postage.

(c) Outgoing prisoner correspondence shall bear at least the sender's name and the institutional post office box or street address in the upper left-hand corner of the envelope.

(d) Outgoing prisoner correspondence shall be sealed by the prisoner.

(e) All outgoing prisoner correspondence shall be collected and forwarded to the United States Postal Service at least once each business day.

(f) Outgoing prisoner nonprivileged correspondence shall not be opened or read except when the chief administrative officer determines there is reasonable suspicion to believe that the contents of such correspondence endanger or threaten the safety or security of the facility or the safety, security or health of another person.

(g) When the chief administrative officer makes such a determination, he shall issue a written order which shall state the specific facts and reasons why such action is necessary to maintain the safety and security of the facility or the safety and security of another person.

(h) A prisoner shall be notified in writing when his outgoing nonprivileged correspondence is opened pursuant to this section.

(i) A prisoner shall be present when his outgoing nonprivileged correspondence is read pursuant to this section.

(j) The chief administrative officer may delay notifying the inmate regarding the specific facts and reasons when such notification would endanger the safety, security and good order of the facility. As soon as the danger no longer exists, the chief administrative officer shall immediately notify the inmate.

History

Sec. added by renum. and amd. 5100.5, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988; amd. filed Nov. 19, 1996 eff. Dec. 4, 1996. Amended (a).

Section 7004.3. Incoming prisoner correspondence

(a) Incoming prisoner correspondence other than privileged correspondence may be opened and inspected outside the presence of the intended prisoner recipient. Such correspondence may be opened and inspected solely to ensure the absence of contraband.

(b) Incoming prisoner correspondence shall not be read except pursuant to a written order of the chief administrative officer. Such written order shall state the specific facts and reasons why such action is necessary to maintain the safety, security or good order of a facility, or the health of any individual.

(1) A copy of any order made pursuant to this subdivision shall be forwarded by the chief administrative officer to:

(i) the intended prisoner recipient; and

(ii) the sender of the correspondence at issue.

(2) A written record of correspondence read pursuant to this subdivision shall be maintained. Such record shall include:

(i) the name of the sender;

(ii) the name of the intended prisoner recipient;

(iii) the date the correspondence was read; and

(iv) the name of the reader.

(c) Should the chief administrative officer, upon reading any incoming prisoner correspondence pursuant to subdivision (b) of this section, determine that such correspondence or any portion thereof constitutes a threat to the safety, security or good order of the facility or other correctional facilities, except as provided in subdivision (d) of this section, he shall return the correspondence to the sender together with a written statement setting forth the specific facts

and reasons underlying the determination. A copy of this written statement shall be forwarded to the intended prisoner recipient.

(1) For the purposes of this Part, correspondence shall not be deemed to constitute a threat to the safety, security or good order of a facility solely because it:

(i) criticizes a correctional facility, its staff, or the correctional system; or

(ii) espouses unpopular ideas, including ideas that facility staff deem not conducive to rehabilitation or correctional treatment;

(2) Any reading or determination made pursuant to this subdivision shall be completed by the chief administrative officer within five business days after receipt of the correspondence at the facility.

(d) When any incoming prisoner correspondence read pursuant to subdivision (c) of this section may involve a criminal offense, it shall be forwarded by the chief administrative officer to the appropriate authority for criminal prosecution.

History

Sec. added by renum. and amd. 5100.5, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988; amd. filed Nov. 19, 1996 eff. Dec. 4, 1996. Amended (c)(1) and (2).

Section 7004.4. Privileged incoming and outgoing correspondence

(a) As used in this Part, legal privileged correspondence shall mean correspondence to or from attorneys and individuals under the direct supervision of attorneys, legal assistance agencies and individuals under the direct supervision of legal assistance agencies, and courts. General privileged correspondence shall mean correspondence to and from the State Commission of Correction and other correctional officials, local, State and Federal law enforcement agencies, and the media.

(b) Incoming general and legal privileged correspondence shall not be opened and inspected for contraband except in the presence of the recipient prisoner.

(c) Outgoing general and legal privileged correspondence shall not be opened and inspected for contraband except where the chief administrative officer determines there is reasonable suspicion to believe that the contents of such privileged correspondence threaten the safety or security of the facility or the safety and security of another person. A prisoner shall be present when his outgoing general or legal privileged correspondence is opened pursuant to this subdivision.

(d) Incoming or outgoing prisoner legal privileged correspondence shall not be read except pursuant to a lawful search warrant. Such warrant shall be obtained within 24 hours of the

facility's receipt of such correspondence and shall be enforced immediately after its issuance. A prisoner shall be present when his privileged correspondence is read pursuant to this subdivision.

(e) Incoming and outgoing general privileged correspondence shall not be read except where the chief administrative officer determines there is reasonable suspicion to believe that the contents of such general privileged correspondence endanger or threaten the safety or security of the facility or the safety and security of another person. When the chief administrative officer makes such a determination, he shall issue a written order which shall state the specific facts and reasons why such action is necessary to maintain the safety and security of the facility or the safety and security of another person. The recipient inmate shall be present when his incoming and outgoing general privileged correspondence is read pursuant to this subdivision.

History

Sec. added by renum. and amd. 5100.5, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7004.5. Restrictions on correspondence

Nothing contained in this Part shall be deemed to prevent the chief administrative officer from establishing a list of correspondents whom prisoners shall be prohibited from corresponding with.

History

Sec. added by renum. and amd. 5100.5, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7004.6. Contraband found in incoming prisoner correspondence

(a) As used in this Part, the term contraband shall include all items which constitute a threat to the safety, security or good order of a facility.

(b) Incoming prisoner correspondence that is found to contain contraband shall be forwarded to the chief administrative officer for disposition.

(1) Contraband that may involve a criminal offense shall be forwarded by the chief administrative officer to the appropriate law enforcement authority.

(2) Contraband that does not involve a criminal offense shall be returned to the sender or retained with the prisoner's secured property for return upon the prisoner's release.

(3) Contraband that presents a threat to facility sanitation or health may, upon order of the chief administrative officer, be destroyed.

(4) Cash, checks, or money orders shall be deposited in the intended prisoner recipient's facility account or delivered to the chief administrative officer for disposition in accordance with facility rules and regulations. The prisoner shall be notified of all amounts received and the disposition of such.

(c) The chief administrative officer shall give written notice to the intended prisoner recipient of any determination made pursuant to this section. This written notice shall include:

(1) the name and address of the sender;

(2) the nature of the contraband; and

(3) a statement of the specific facts and reasons underlying the determination.

(d) Subsequent to any determination made pursuant to this section, the chief administrative officer shall, upon removal of the contraband contained in the correspondence, forward such correspondence to the intended prisoner recipient, except when such action may interfere with any pending criminal investigation of the matter.

History

Sec. filed May 31, 1988; amd. filed Nov. 18, 1998 eff. Dec. 9, 1998. Repealed (b)-(c); added (b)-(d).

Section 7004.7. Inmate retention of correspondence

Any and all correspondence delivered to the inmate may be retained by the inmate in his or her housing unit, subject to the provisions of section 7075.5 of this Title.

History

Sec. filed May 21, 2019 eff. June 5, 2019.

PART 7005 PRISONER PERSONAL HYGIENE

Section 7005.1. Policy

Consistent with the requirements of this Part, the chief administrative officer of each local correctional facility shall provide for and maintain reasonable standards of prisoner personal hygiene.

History

Sec. added by renum. 5100.6, Title 7, filed June 26, 1976; repealed, new filed July 27, 1977 eff. Aug. 1, 1977.

Section 7005.2. Showers

(a) Hot showers shall be made available to all prisoners daily. Consistent with facility health requirements, the chief administrative officer may require prisoners to shower periodically.

(b) Notwithstanding the requirements of subdivision (a) of this section, hot showers shall be made available to all prisoners confined in special housing, as that term is defined in section 7013.2(h) of this Title, at least three times per week.

(c) Absent exigent circumstances, an incarcerated individual may be confined to a shower or shower area only for the duration necessary to sufficiently complete the shower.

History

Sec. filed July 27, 1977; amd. filed Nov. 24, 2000 eff. Dec. 13, 2000; emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7005.3. Shaving

(a) Prisoners shall be permitted to shave daily. Necessary shaving items shall be provided at facility expense and shall be maintained in a safe and sanitary condition.

(b) Hot water sufficient to enable prisoners to shave with care and comfort shall be provided.

(c) Notwithstanding the requirements of subdivision (a) of this section, prisoners confined in special housing, as that term is defined in section 7013.2(h) of this Title, shall be permitted to shave at least three times per week.

History

Sec. filed July 27, 1977; amd. filed Nov. 24, 2000 eff. Dec. 13, 2000. Added (c).

Section 7005.4. Haircuts

(a) Hair shall be cut only by persons who, in the opinion of the chief administrative officer, are trained or skilled in the use of barber tools.

(b) Barber tools shall be maintained in a safe and sanitary condition.

(c) Haircuts shall be provided indigent prisoners at facility expense.

History

Sec. filed July 27, 1977; amd. filed July 29, 1997 eff. Aug. 13, 1997. Amended (a).

Section 7005.5. Hair styles

(a) Consistent with the requirements of Part 7024 of this Title, the chief administrative officer may establish rules for the permissible style and length of inmates' hair.

(b) Prisoners assigned to work in areas where food is stored, prepared, served or otherwise handled may be required to wear a hairnet or other head covering.

(c) The chief administrative officer may determine that certain work assignments constitute a safety hazard to those prisoners with long hair or beards. Prisoners unwilling or unable to conform to the safety requirements of such work assignments shall be assigned elsewhere.

(d) Should examination of a prisoner's hair reveal the presence of a health condition that may threaten the health of other persons, medical treatment shall be initiated immediately. Such medical treatment may include the cutting of a prisoner's hair upon the determination of the facility physician that such action is necessary. Such haircutting shall be performed under the direct supervision of a member of the facility health services staff.

(e) When in the opinion of the chief administrative officer, the growth or removal of a prisoner's hair, including facial hair, creates an identification problem, a new photograph may be taken of that prisoner.

History

Sec. filed July 27, 1977; amd. filed July 29, 1997 eff. Aug. 13, 1997.

Section 7005.6. Personal health care items

(a) Upon admission to a facility, all prisoners shall be provided at facility expense with an issue of a personal health care items, including but not limited to:

(1) soap;

(2) toothbrush;

(3) toothpaste;

(4) drinking cup;

(5) toilet paper; and

(6) bath towel.

(b) In addition to the items listed in subdivision (a) of this section, all female prisoners shall be provided at facility expense with necessary feminine hygiene items, including but not limited to:

(1) tampons; and

(2) sanitary napkins.

(c) All feminine hygiene items shall be stored and dispensed in a manner sufficient to ensure that they are sanitary.

(d) Bath towels shall be exchanged weekly, or more frequently when necessary. All other personal health care items issued pursuant to subdivisions (a) and (b) of this section shall be replenished or replaced as needed.

History

Sec. filed July 27, 1977 eff. Aug. 1, 1977.

Section 7005.7. Clothing

(a) All prisoners shall be entitled to wear facility-issued clothing. Facility-issued clothing shall be provided at facility expense and shall include, but is not limited to:

(1) For men:

(i) one shirt; and

(ii) one pair of trousers.

(2) For women:

(i) one shirt or blouse; and

(ii) one skirt, smock, dress or pair of slacks.

(3) For men and women:

(i) two pairs of socks;

(ii) two sets of undergarments;

(iii) one pair of suitable footwear when needed; and

(iv) one sweater, sweatshirt or jacket to be issued during cold weather.

(b) When the facility clothing issue provided women prisoners pursuant to this section does not include slacks, women prisoners shall be permitted to receive slacks from any source, and to wear such slacks within the facility.

(c) Women prisoners shall be permitted to wear brassieres. Women prisoners shall be permitted to receive brassieres from any source, subject to the limitations of section 7025.2(d) of this Title, and to wear such brassieres within the facility.

(d) When weather conditions necessitate additional clothing for prisoners who will be outside the facility, such additional clothing shall be provided such prisoners as needed.

(e) At the discretion of the chief administrative officer, sentenced and/or unsentenced prisoners may be required to wear facility-issued clothing.

(f) Prisoners who are not required to wear facility-issued clothing shall be permitted to wear clothing worn by such prisoners at the time of admission to the facility and clothing received from any other source, subject to the limitations of section 7025.2(d) of this Title.

(g) All prisoner clothing shall be limited to those items that, in the opinion of the chief administrative officer, do not constitute a threat to the safety, security or good order of a facility. Prisoners clothing may be limited to that amount which can be safely stored within a facility. Prisoner clothing may be limited to items that may be easily washed.

(h) Prisoners engaged in work assignments requiring special clothing shall be provided with such clothing at facility expense.

History

Sec. filed July 27, 1977; amd. filed Sept. 24, 1987 eff. Sept. 24, 1987; amd. filed Feb. 20, 2013 eff. March 13, 2013.

Section 7005.8. Laundry and repair of clothing

(a) Laundry services sufficient to provide all prisoners with a clean change of any clothing permitted or required pursuant to section 7005.7 of this Part shall be provided at facility expense twice a week and more frequently when necessary.

(b) Reasonable repairs of any clothing permitted or required pursuant to section 7005.7 of this Part shall be made at facility expense.

(c) When a prisoner is without clothing items as listed in subdivision (a) of section 7005.7 of this Part, as the result of clothing having been collected for laundering or repair, such prisoner shall be immediately provided with such items.

(d) All facility-issued clothing shall be laundered and repaired prior to being reissued to another prisoner.

History

Sec. filed July 27, 1977 eff. Aug. 1, 1977.

Section 7005.9. Bedding

(a) Upon admission to a facility, all prisoners shall be provided at facility expense with an issue of clean bedding in good condition.

(b) Pillowcases and sheets shall be exchanged weekly or more frequently when necessary. All other bedding items issued pursuant to subdivision (a) of this section shall be exchanged when necessary.

(c) All bedding items issued or exchanged pursuant to this section shall be cleaned, checked for damage and repaired when necessary before reissue.

(d) Mattresses should be constructed of fire-retardant material. When issued, mattress covers should be constructed of materials both water-resistant and easily sanitized.

History

Sec. filed July 27, 1977; amd. filed July 29, 1997 eff. Aug. 13, 1997. Amended (a).

Section 7005.10. Storage of clothing and bedding

All items of clothing and bedding stored within the facility shall be maintained in a safe and sanitary manner.

History

Sec. filed July 27, 1977 eff. Aug. 1, 1977.

Section 7005.11. Housing area maintenance

A supply of brooms, mops, pails, soap, disinfectant and other materials sufficient to properly clean and maintain facility housing areas shall be provided prisoners at facility expense.

History

Sec. filed July 27, 1977 eff. Aug. 1, 1977.

Section 7005.12. Deprivation of personal hygiene

Any decision to deny, restrict or limit an inmate of any right, service, item or article, guaranteed an inmate by the provisions of this Part, shall be done in accordance with section 7075.5 of this Title.

History

Sec. filed May 21, 2019 eff. June 5, 2019.

PART 7006 DISCIPLINE

Section 7006.1. Policy and definitions

(a) In order to promote the safety, security and welfare of all incarcerated individuals and staff within local correctional facilities, the chief administrative officer of each facility shall establish and maintain a system of discipline designed to set standards of appropriate behavior, encourage self-control and punish misbehavior fairly, impartially and consistently.

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

(1) *Segregated confinement* shall mean the confinement of an incarcerated individual to an individual occupancy housing unit, in any form, for more than seventeen (17) hours a day, other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment.

(2) *Special population* shall mean any incarcerated individual:

(i) 21 years of age or younger;

(ii) 55 years of age or older;

(iii) with a disability, as defined in section 292 of the Executive Law; or

(iv) who is pregnant, in the first eight (8) weeks of the post-partum recovery period after giving birth, or caring for a child in the facility.

(3) Residential rehabilitation unit shall mean a separate housing unit used for therapy, treatment, and rehabilitative programming of incarcerated individuals who have been determined to require more than fifteen (15) days of segregated confinement pursuant to facility proceedings.

(4) *Chief administrative officer* shall mean the highest-ranking facility official present during the time period in which a determination must be rendered.

(5) *Violent felony act* shall mean conduct of an incarcerated individual that constitutes:

(i) causing or attempting to cause serious physical injury or death to another person or making an imminent threat of such serious physical injury or death if the person has a history of causing such physical injury or death and the chief administrative officer reasonably determines that there is a strong likelihood that the person will carry out such threat;

(ii) compelling or attempting to compel another person, by force or threat of force, to engage in a sexual act;

(iii) extorting another, by force or threat of force, for property or money;

(iv) coercing another, by force or threat of force, to violate any rule;

(v) leading, organizing, inciting, or attempting to cause a riot, insurrection, or other similarly serious disturbance that results in the taking of a hostage, major property damage, or physical harm to another person;

(vi) procuring a deadly weapon or other dangerous contraband that poses a serious threat to the security of the facility; or

(vii) escaping, attempting to escape or facilitating an escape from a facility or escaping or attempting to escape while under supervision outside such facility.

(6) *Maximum facility capacity* shall have the same meaning as provided in section 7040.2 of this Title.

History

Sec. added by renum. 5100.7, Title 7, filed June 26, 1976; amd. filed June 9, 1987; repealed, new filed Aug. 3, 1992 eff. Aug. 19, 1992; emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7006.2. Facility policies and procedures

The chief administrative officer of each local correctional facility shall develop and implement written policies and procedures consistent with this Part.

History

Sec. filed Aug. 3, 1992 eff. Aug. 19, 1992.

Section 7006.3. Rules of inmate conduct

(a) The chief administrative officer of each facility shall develop written rules of inmate conduct which contain a list of all rules and regulations governing inmate behavior.

(b) The rules of inmate conduct shall include:

(1) all chargeable offenses;

(2) the range of punishments that may be imposed for each violation, consistent with the seriousness of the conduct prohibited; and

(3) a detailed description and an explanation of the facility's disciplinary procedures.

(c) Each inmate shall be provided with a copy of the rules of inmate conduct upon admission to the facility, and a copy shall also be maintained in the facility law library.

(d) Non-English speaking and illiterate inmates shall be assisted to understand the rules of inmate conduct.

History

Sec. filed Aug. 3, 1992 eff. Aug. 19, 1992.

Section 7006.4. Misbehavior reports

(a) When a staff member has a reasonable belief that an inmate has committed an offense that constitutes a violation of the facility's rules of inmate conduct, and such violation is not informally resolved, such staff member shall prepare a written misbehavior report.

(b) Each misbehavior report shall include:

(1) the name(s) of the inmate(s) charged with the misconduct;

(2) the date, time and place of occurrence;

(3) a description of the incident or behavior involved and the rule(s) allegedly violated;

(4) the date and time the report is written;

(5) the reporting staff member's printed name and signature.

(c) If two or more violations are involved, all may be incorporated in a single report, separately stated. Each violation shall be disposed of separately in accordance with facility policies and procedures.

(d) If more than one inmate is involved in any incident, the facts and circumstances surrounding each inmate's involvement shall be separately stated in the misbehavior report.

(e) The inmate charged with the violation shall be issued a copy of the misbehavior report as soon as practicable, but in no event later than 24 hours prior to a hearing based upon the incident giving rise to such report.

History

Sec. filed Aug. 3, 1992 eff. Aug. 19, 1992.

Section 7006.5. Investigative processes

(a) An investigation into the facts and circumstances of the incident shall be initiated if the chief administrative officer determines that the circumstances warrant such an investigation.

(b) In those cases where an investigation is deemed necessary, the investigation shall be conducted by persons who were not involved in the incident, and a completed report shall be provided to the hearing officer prior to any hearing based on the incident investigated.

History

Sec. filed Aug. 3, 1992; amd. filed Feb. 25, 1997 eff. March 12, 1997. Amended (a).

Section 7006.6. Assistance to inmates

(a) If an inmate is non-English speaking, illiterate, or for any other reason is unable to prepare a defense, assistance shall be provided to the inmate by a person designated by the chief administrative officer at least 24 hours prior to the hearing.

(b) Such assistance shall include:

(1) interviewing witnesses;

(2) obtaining evidence and/or written statements;

(3) providing assistance at the disciplinary hearing;

(4) providing assistance understanding administrative segregation decisions;

(5) providing assistance understanding the evidence relied on by the hearing officer and the reasons for action taken;

(6) providing assistance understanding the waiver of any rights provided by this Part; and

(7) providing assistance in filing an appeal as provided by this Part.

(c) The chief administrative officer may limit the number of witnesses interviewed and the evidence and/or written statements obtained where it is determined that such witnesses, evidence, and/or statements are irrelevant or redundant. Such determination shall be documented in the hearing record.

History

Sec. filed Aug. 3, 1992 eff. Aug. 19, 1992.

Section 7006.7. Administrative segregation pending a disciplinary hearing

(a) An incarcerated individual who threatens the safety, security, and good order of the facility may be immediately confined in a cell or room pending a disciplinary hearing and may be

retained in administrative segregation until the completion of the disciplinary process, subject to the limitations of Parts 7075, 7076 and 7077 of this Chapter, provided that:

(1) any such administration segregation shall not constitute segregated confinement unless the chief administrative officer reasonably believes, and issues a written determination that, the individual fits the specified criteria for segregated confinement set forth in subparagraph (iii) of paragraph (5) of subdivision (a) of section 7006.9 of this Part; and

(2) any incarcerated individual of a special population placed in segregated confinement pending a disciplinary hearing shall, as expeditiously as possible, but in no case longer than forty-eight (48) hours from the time of such placement, be given at least seven (7) hours a day outside his or her assigned individual occupancy unit or shall, in a facility with a maximum facility capacity exceeding five hundred (500), be transferred to a residential rehabilitation unit.

(b) Within 24 hours of such confinement, the inmate shall be provided with a written statement setting forth the reason(s) for such confinement. Upon receipt of the written statement, the inmate shall be provided with an opportunity to respond to such statement orally or in writing to the chief administrative officer.

(c) The chief administrative officer shall review the administrative confinement within 24 hours of such confinement in order to determine if continued confinement is warranted, and thereafter at intervals not to exceed seven days. Any such review shall be made by the chief administrative officer in writing, shall state the specific facts and reasons underlying the determination, and shall be maintained as part of the centralized record required by section 7075.6 of this Part.

History

Sec. filed Aug. 3, 1992 eff. Aug. 19, 1992; amd. filed May 21, 2019 eff. June 5, 2019; emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7006.8. The disciplinary hearing

(a) An incarcerated individual charged with a violation in accordance with section 7006.4 of this Part shall receive a hearing within 15 business days of receipt of the misbehavior report. In the event an incarcerated individual is placed in segregated confinement pending a disciplinary hearing pursuant to subdivision (a) of section 7006.7 of this Part, a hearing shall occur as soon as reasonably practicable and at most within five (5) days of such placement, unless the charged individual seeks postponement of the hearing. The incarcerated individual shall be given at least 24 hours prior written notice of the hearing. A hearing shall be completed within

five business days of its convening unless otherwise authorized by the chief administrative officer. The time frames required by this subdivision may be waived by the incarcerated individual, however, such waiver shall not be effective unless made in writing.

(b) The chief administrative officer shall appoint one or more impartial persons to serve as hearing officer or as members of a hearing panel during the disciplinary hearing. Prior to presiding over any hearings, a hearing officer shall undergo a minimum of thirty-seven hours of training, with one additional day of training annually thereafter, on relevant topics, including but not limited to, the physical and psychological effects of segregated confinement, procedural and due process rights of the accused, and restorative justice remedies.

(c) The incarcerated individual shall be allowed to be present at the hearing unless the individual has waived the right to be present or the hearing officer determines that the individual's presence will jeopardize the safety, security, or good order of the facility. A waiver of the right to be present shall be made in writing and signed by the incarcerated individual. If the incarcerated individual refuses to sign such waiver, it shall be so noted in the record. A hearing officer's determination that an individual's presence will jeopardize the safety, security, or good order of the facility shall be documented in the hearing record. For any hearing in which segregated confinement is an authorized sanction upon a finding of guilt, the incarcerated individual shall be permitted to be represented by any attorney or law student, or by any paralegal or incarcerated individual unless the chief administrative officer reasonably disapproves of such paralegal or incarcerated person based upon objective written facility criteria.

(d) The inmate shall be given the opportunity to speak on his own behalf at the hearing, and shall be permitted to call witnesses and present evidence in his defense if relevant and not redundant, and when doing so would not jeopardize the safety, security, or good order of the facility. A hearing officer's determination that the presence of a particular witness or the introduction of particular evidence is irrelevant, redundant, or will jeopardize the safety, security, or good order of the facility shall be documented in the hearing record.

(e) If the hearing officer calls witnesses, the inmate may submit questions directed toward such witnesses to the hearing officer. The hearing officer shall pose such questions to the witness if relevant and not redundant, and when doing so would not jeopardize the safety, security, or good order of the facility. The hearing officer may restate such question if it is unclear or in improper form. A hearing officer's determination that a particular question is irrelevant, redundant, or will jeopardize the safety, security, or good order of the facility shall be documented in the hearing record.

(f) The inmate may be excluded from the hearing during the interview of witnesses in accordance with subdivision (e) of this section. The contents of such interview shall be provided to the inmate, except for such information that, if provided, would jeopardize the safety, security, or good order of the facility.

(g) No charges other than those contained in the misbehavior report shall be presented during the course of the hearing. Any additional charges brought against the inmate shall be treated as new charges and shall be subject to the requirements of this Part.

(h) A disposition shall be reached within five business days after conclusion of the hearing. The disposition shall be supported by substantial evidence and shall be in writing and shall contain the following:

(1) a finding of guilt or innocence on each charge of misbehavior;

(2) the evidence relied upon by the hearing officer in reaching such finding; and

(3) the sanction imposed, if any.

A copy of the disposition shall be provided to the inmate.

(i) Nothing contained in this Part shall preclude the use of plea bargaining.

History

Sec. filed Aug. 3, 1992; amds. filed: Aug. 18, 1994; April 21, 1998 eff. May 6, 1998. Amended (a), (h); emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7006.9. Disciplinary sanctions

(a) If the charges against the inmate are affirmed as a result of the hearing, one or more of the following sanctions may be imposed based upon the inmate's past record and the severity of the offense:

(1) counsel or reprimand;

(2) loss of one or more specified privileges for a period consistent with the facility rules of inmate conduct for the particular offense(s);

(3) restitution for the loss or damage of property made from existing or future funds in the inmate's account;

(4) restitution, not to exceed $100, for facility expenditures related to the medical treatment of facility staff, make from existing or future funds in the inmate's account;

(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 conduct for the particular offense(s), subject to the provisions of Parts 7075, 7076 and 7077 of this Title, provided that:

(i) no incarcerated individual of a special population may be sanctioned to segregated confinement;

(ii) except as authorized by subparagraph (iii) of this paragraph, an incarcerated individual shall only be sanctioned to segregated confinement for up to three (3) consecutive days, and no longer than six (6) days in any thirty (30) day period;

(iii) an incarcerated individual may be sanctioned to segregated confinement beyond the limitations of subparagraph (ii) of this paragraph or, in a facility with a maximum facility capacity exceeding five hundred (500), in a residential rehabilitation unit only if the disposition contains a finding that the individual committed a violent felony act, and if the chief administrative officer determines in writing, based on specific objective criteria, the act was so heinous or destructive that placement of the individual in general population housing creates a significant risk of imminent serious physical injury to staff or other incarcerated persons, and creates an unreasonable risk to the security of the facility; and

(iv) for purposes of subparagraph (iii) of this paragraph, the violent felony act of attempting to cause a serious disturbance or to escape shall only be determined to have occurred if there is a clear finding that the incarcerated individual had the intent to cause a serious disturbance or the intent to escape and had completed significant acts in the advancement of the attempt to create a serious disturbance or escape. Evidence of withdrawal or abandonment of a plan to cause a serious disturbance or to escape shall negate a finding of intent;

(6) loss of a specified period of good behavior allowance, subject to restoration pursuant to applicable laws and regulations; and/or

(7) loss of up to one hour of weekly visitation for a period consistent with the facility rules of inmate conduct for the particular offense.

(b) The hearing officer may hold the commencement of a sanction in abeyance for a period up to 30 days in order to assess the behavioral adjustment of the inmate. At the conclusion of such period, the hearing officer shall determine whether the sanction shall commence in whole or in part or shall be suspended in whole or in part.

(c) If an inmate is found guilty of a charge of misbehavior, a disciplinary surcharge not to exceed $25 may be imposed upon the inmate in addition to the sanctions authorized pursuant to subdivision (a) of this section. All moneys collected shall be deposited in the county general fund and not specifically allocated to the facility.

(d) The chief administrative officer may, at any time, suspend a sanction of confinement imposed pursuant to subdivision (a)(5) of this section, in order to assess the behavioral adjustment of the inmate. At any time during such suspension, confinement may be reinstated at the discretion of the chief administrative.

History

Sec. filed Aug. 3, 1992; amds. filed: July 28, 1998; May 18, 1999; Dec. 27, 2006 eff. Jan. 17, 2007; amd. filed May 21, 2019 eff. June 5, 2019; amd. filed Jan. 26, 2021 eff. Feb. 10, 2021; emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7006.10. Appeal procedures

(a) The inmate shall have the right to appeal the hearing officer's disposition and any sanction to the chief administrative officer. Such appeal shall be submitted in writing within two business days of the inmate's receipt of the disposition, specifying the grounds for the appeal.

(b) All appeals shall be reviewed and decided within five business days after receipt and each inmate shall be notified in writing of the results.

(c) The chief administrative officer may reduce or suspend all or part of the sanction, but not increase it.

History

Sec. filed Aug. 3, 1992 eff. Aug. 19, 1992.

Section 7006.11. Recordkeeping

(a) A disciplinary record shall be maintained by the facility which shall include the misbehavior report; the investigation report, if prepared; the formal disposition; sanctions imposed, if any; suspensions and reinstatements of such sanctions, if any; and the appeal documents.

(b) Records generated pursuant to a disciplinary hearing in which an inmate is found not guilty of charges brought against him, after either the hearing or an appeal, shall be kept confidential and shall not be considered in making decisions pertaining to the inmate's participation in programs, services, or local conditional release, or in the granting or withholding of good behavior credits.

History

Sec. filed Aug. 3, 1992; amd. filed Feb. 25, 1997 eff. March 12, 1997; amd. filed May 21, 2019 eff. June 5, 2019.

PART 7007 GOOD BEHAVIOR ALLOWANCES AGAINST DEFINITE SENTENCES AND CERTAIN CIVIL COMMITMENTS

Section 7007.1. Good behavior allowances against definite sentences and certain civil commitments

(a) Every person confined in a local correctional facility serving a definite sentence of imprisonment may receive time allowances as discretionary reductions of the term of sentence, as provided by law.

(b) Every person confined in an institution serving a civil commitment for a fixed period of time, whose release is not conditional upon any act within his power to perform, may receive time allowances as discretionary reductions of the term of his commitment, as provided by law.

(c) *Recordkeeping rules and regulations--good behavior allowances.*

(1) In conjunction with the maintenance of other records and accounts as required by law, a written record shall be kept of every person confined in a local correctional facility who may be eligible to receive a discretionary reduction of a definite sentence or sentences, or who may be eligible to receive a discretionary reduction of the term or terms of civil commitment by reason of the application of good behavior allowances.

(2) The record shall indicate the manner in which the discretionary good behavior allowances were calculated and applied to the term of the sentence, sentences, or civil commitment imposed by the court, to establish the date of discharge.

(3) Whenever such good behavior allowance or any part thereof is withheld, forfeited or cancelled in whole or in part, or whenever such good behavior allowance or any part thereof is restored, a notation to that effect shall be entered in the record with a suitable explanation for the action taken.

(4) Upon commencement of any definite sentence or civil commitment, the term of which is not conditional upon any act within the subject's power to perform, the provisions of this section shall be furnished to the inmate serving such sentence or civil commitment and the meaning of the same shall be fully explained by an officer designated for such purpose, and such inmate shall be required to acknowledge in writing that such explanation was made.

(5) The information required to be maintained by this section shall be a public record. It shall be kept on file in each local correctional facility and shall be delivered to the succeeding officer, by the officer in charge.

History

Sec. added by renum. 5100.8, Title 7, filed June 26, 1976; amds. filed: July 21, 1987 as emergency measure, expired 60 days after filing; Sept. 24, 1987 eff. Sept. 24, 1987.

PART 7008 VISITATION

Section 7008.1. Policy

(a) All prisoners confined in local correctional facilities are entitled to receive periodic visits.

(b) Consistent with the requirements of this Part, visits shall be permitted upon the request of a prisoner or a prospective visitor with the prisoner's consent.

History

Sec. added by renum. and amd. 5100.9, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7008.2. Visiting area

(a) A visiting area of sufficient size to meet the requirements of this Part shall be established and maintained in each facility.

(b) The visiting area shall be designed so as to allow physical contact between prisoners and their visitors.

History

Sec. added by renum. and amd. 5100.9, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7008.3. Availability of visits

(a) Except as provided in Part 7006 of this Title, each prisoner shall be entitled to at least two hours of visitation each week. Each visit shall be at least 30 minutes.

(b) The chief administrative officer shall establish and publish a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week.

(c) Prisoners shall be permitted to visit with more than one visitor at the same time, with the maximum number of visitors to be determined by the chief administrative officer.

History

Sec. added by renum. and amd. 5100.9, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988; amds. filed: Aug. 20, 1996; July 28, 1998 eff. Aug. 12, 1998. Amended (a).

Section 7008.4. Initial visit

Each prisoner shall be entitled to receive a noncontact visit within 24 hours after his admission to a facility and arrangements shall be made to ensure the initial visit, upon the prisoner's request.

History

Sec. added by renum. and amd. 5100.9, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988; amd. filed April 21, 1998 eff. May 6, 1998.

Section 7008.5. Visitor identification and registration

(a) Consistent with the requirements of this Part, any properly identified person shall, with the prisoner's consent, be permitted to visit that prisoner.

(b) As used in this section, the term *properly identified person* shall mean a person who presents adequate proof as to his identity.

(c) Each visitor shall be required to provide the following information to facility staff:

(1) his name;

(2) his address;

(3) the date;

(4) the time of entry;

(5) the name of the prisoner or prisoners to be visited; and

(6) the time of exit.

(d) A prospective visitor who is under 18 years of age may be restricted from visiting a prisoner if he is not accompanied by a parent or legal guardian, or the chief administrative officer may require a prospective visitor under 18 years of age not accompanied by a parent or legal guardian to provide written permission from a parent or legal guardian approving such visit. Oral permission from a parent or legal guardian may be acceptable in the discretion of the chief administrative officer. A prospective visitor under 18 years of age shall be required to provide the following information to facility staff, in addition to the information required by subdivision (c) of this section:

(1) his age; and

(2) the name, address and telephone number of his parents or legal guardian.

History

Sec. added by renum. and amd. 5100.9, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988; amd. filed Aug. 20, 1996 eff. Sept. 4, 1996. Amended (c)-(d).

Section 7008.6. Contact visits

(a) Physical contact shall be permitted between a prisoner and his visitors.

(b) Prisoners and their visitors shall be required to conduct themselves in a manner consistent with reasonable standards of public decency.

History

Sec. added by renum. and amd. 5100.9, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7008.7. Visitation security and supervision

(a) All prisoners, prior and subsequent to each visit, may be searched solely to ensure that they possess no contraband.

(b) All prospective visitors may be searched solely to ensure that they possess no contraband.

(c) Personal effects, including but not limited to handbags or packages possessed by any prospective visitor, shall be searched or checked with the visiting area supervising officer.

(d) A search of the visiting area shall be conducted prior and subsequent to each visiting period.

History

Sec. added by renum. and amd. 5100.9, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7008.8. Limitation of visitation

(a) Consistent with the requirements of this Part, the visitation of a prisoner with a particular visitor may be denied, revoked or limited only when it is determined that such visitation would cause a threat to the safety, security or good order of the facility or the facility or the safety, security or health of the prisoners.

(b) Contact visits as provided for in section 7008.6 of this Part may be denied, revoked or limited only when it is determined that such visits constitute a threat to the safety, security or good order of a facility. Should a determination be made to deny, revoke or limit a prisoner's

contact visits, alternative arrangements for affording the prisoner visits shall be made, including but not limited to noncontact visits.

(c) Any determination to deny, revoke or limit a prisoner's visitation pursuant to subdivisions (a) and (b) of this section shall be made by the chief administrative officer in writing, and shall state the specific facts and reasons underlying such determination. A copy of this determination shall be given to any person affected by the determination.

History

Sec. added by renum. and amd. 5100.9, Title 7, filed June 26, 1976; repealed, new filed May 31, 1988; amd. filed April 2, 1996 eff. April 17, 1996. Amended (c).

PART 7009 FOOD SERVICES

Section 7009.1. Policy

(a) Consistent with the requirements of this Part, each local correctional facility shall maintain a facility food service program sufficient to satisfy the daily nutritional needs of each prisoner.

(b) All food service areas, including but not limited to kitchens, dining areas and food storage areas, shall be maintained in accordance with the provisions of section 7015.2 of this Title.

(c) A food service organization which provides food services for a local correctional facility must comply with the requirements of this Part and with the requirements of the State Sanitary Code as contained in 10 NYCRR Part 14.

History

Sec. added by renum. 5100.10, Title 7, filed June 26, 1976; repealed, new filed Oct. 3, 1979; amd. filed March 24, 1998 eff. April 8, 1998. Amended (b).

Section 7009.2. Nutritional adequacy

(a) The food service program in each local correctional facility shall ensure that all prisoners are provided with an appropriate level of nutrients and calories. Such appropriate level of nutrients and calories shall be based upon current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council.

(b) The person responsible for the supervision of the facility food service program shall plan and prepare written and dated menus. Such menus shall be reviewed at least annually by a nutritionist or dietician certified by the State Education Department to ensure that they provide an appropriate level of nutrients and calories.

History

Sec. filed Oct. 3, 1979; amd. filed June 21, 1999 eff. July 7, 1999.

Section 7009.3. Medical diets

The chief administrative officer shall ensure that any medical diet prescribed for a prisoner by a physician or other authorized facility health services staff member is provided such prisoner.

History

Sec. filed Oct. 3, 1979 eff. Oct. 3, 1979.

Section 7009.4. Religious diets

Pursuant to the requirements of section 7024.6 of this Title, prisoners are entitled to observe reasonable dietary laws established by their religion. Each facility shall provide prisoners with food items sufficient to meet such reasonable religious dietary laws.

History

Sec. filed Oct. 3, 1979 eff. Oct. 3, 1979.

Section 7009.5. Food service personnel

(a) The chief administrative officer shall designate an individual who shall be responsible for the supervision of the facility food service program. Such person shall be responsible for:

(1) the preparation of menus consistent with the requirements of section 7009.2 of this Part; and

(2) the supervision, preparation and service of all meals.

(b) Only persons who have been found to be in good health and free from communicable diseases by a physician licensed to practice medicine in New York State shall be assigned to or permitted to work in the facility food service program.

(c) Consistent with the requirements of section 7015.2 of this Title, all persons employed in the food service program of a local correctional facility shall maintain high levels of cleanliness and conform to hygienic practices while performing such facility functions.

History

Sec. filed Oct. 3, 1979; amds. filed: March 24, 1998; June 21, 1999 eff. July 7, 1999. Amended (a)(1).

Section 7009.6. Meals

(a) Each prisoner in a local correctional facility shall be served at least three meals in each 24-hour period. Such meals shall be scheduled so that:

(1) the morning meal is served at a regularly scheduled time between the hours of 5 a.m. and 9 a.m.;

(2) the noon meal is served at a regularly scheduled time between the hours of 11 a.m. and 2 p.m.; and

(3) the evening meal is served at a regularly scheduled time between the hours of 4 p.m. and 7 p.m.

(b) The person responsible for the supervision of the food service program shall establish policies and procedures designed to ensure that food is served at proper temperatures. At least one of the three regularly scheduled meals in a 24-hour period shall be served hot.

(c) Notwithstanding the requirements of subdivision (b) of this section, an inmate confined in special housing, as that term is defined in section 7013.2(h) of this Title, who engages in unhygienic acts, such as spitting or throwing feces or urine, or who uses food or food service equipment in a manner that is a threat to the safety, security, or good order of the facility, or the health or safety of any person, may be provided with alternative meals subject to the following conditions:

(1) the determination to provide alternative meals shall be made by the chief administrative officer in writing and shall state the specific facts and reasons underlying such determination, a copy of which shall be given to the inmate;

(2) alternative meals shall supply an appropriate level of nutrients and calories and shall be approved by a certified nutritionist or dietician;

(3) the provision of alternative meals shall not exceed seven days, although alternative meals may be reinstated at a future time if the inmate's use of food or food service equipment again presents a threat to the safety, security, or good order of the facility, or the health or safety of any person; and

(4) an inmate placed on alternative meals shall be examined by facility health staff at least every 24 hours in accordance with section 137 of the Correction Law.

History

Sec. filed Oct. 3, 1979; amds. filed: June 21, 1999; Nov. 24, 2000 eff. Dec. 13, 2000. Added (c).

Section 7009.7. Food storage

All food stored in a local correctional facility shall be maintained in such a manner so as to protect against spoilage or contamination. Such foods shall be stored in compliance with the requirements of the State Sanitary Code as contained in the Public Health Law or any rules or regulations promulgated by the New York State Department of Health.

History

Sec. filed Oct. 3, 1979; repealed, new added by renum. 7009.8, filed June 21, 1999 eff. July 7, 1999.

PART 7010 HEALTH SERVICES

Section 7010.1. Policy

(a) In order to provide adequate medical care for incarcerated persons, the chief administrative officer of each local correctional facility shall develop and implement written policies and procedures consistent with this Part.

(b) Prompt screening is essential to identify serious or life-threatening medical conditions requiring immediate evaluation and treatment. Appropriate medical appraisal of inmates is necessary to reduce the risk that a serious physical deficiency or medical emergency will be obscured by drug or alcohol ingestion.

History

Sec. added by renum. 5100.11, Title 7, filed June 26, 1976; repealed, new filed Dec. 19, 1989 eff. Jan. 9, 1990.

Section 7010.2. Health services

(a) The county legislature, board of supervisors or similar county governing unit shall appoint a properly registered physician for the local correctional facility.

(b)

(1) Each prisoner shall be examined by a physician licensed to practice in the State of New York or by medical personnel legally authorized to perform such examination at the time of admission or as soon thereafter as possible, but no later than 14 days after admission.

(2) Documented evidence of an examination by a physician or other authorized medical personnel within the six-month period prior to admission shall satisfy the requirements of this subdivision. Such documentation shall be reviewed and follow-up treatment initiated as necessary.

(c) Every inmate who at the time of admission appears to be physically incapacitated due to drug or alcohol intoxication shall be examined immediately by a physician.

(d) Every inmate who at the time of admission appears to be intoxicated by alcohol or drugs shall be subject to increased supervision as determined pursuant to section 7003.3(h) of this Title. If, after 12 hours from admission, the inmate still appears to be intoxicated by alcohol or drugs, the inmate shall be immediately examined by a physician.

(e) No medication or medical treatment shall be dispensed to an inmate except as authorized or prescribed by the facility physician.

(f) Facility personnel shall receive training and maintain certification in approved first aid and emergency life saving techniques including the use of emergency equipment.

(g) Definite arrangements shall be made to insure the prompt transportation of an inmate to a hospital or other appropriate medical facility in emergency situations.

(h) Each facility shall provide the necessary security and supervision during the period of hospitalization and in the course of transportation to and from a medical facility.

(i) The chief administrative officer shall make maximum use of community medical and mental health facilities, services, and personnel.

(j) Adequate health service and medical records shall be maintained which shall include but shall not necessarily be limited to such data as: date, name(s) of inmate(s) concerned, diagnosis of complaint, medication and/or treatment prescribed. A record shall also be maintained of medication prescribed by the physician and dispensed to a prisoner by a staff person.

History

Sec. filed Dec. 19, 1989; amds. filed: May 30, 1990; June 23, 1997; July 29, 1997; March 24, 1998 eff. April 8, 1998. Amended (d).

Section 7010.3. Possession of medication by incarcerated individuals

(a) Under no circumstances shall a supply of a controlled substance, a psychotropic medication, or any medication requiring injection or measuring be issued to or possessed by an incarcerated individual..

(b) At the mutual discretion of the jail physician and the chief administrative officer, incarcerated individuals may be issued and possess a supply of medication, not prohibited by subdivision (a) of this section, provided that:

(1) the medication was dispensed by the jail physician or other health care staff licensed to do so;

(2) the medication was provided to the incarcerated individual in a blister pack labeled with the individual’s name, medication name, directions for use, and quantity provided;

(3) the supply of medication provided is prescribed to last a maximum of fourteen (14) days; and

(4) the incarcerated individual has been educated and provided instruction on the proper dosage and administration of the medication.

(c) Notwithstanding the requirements of this section, any incarcerated individual prescribed either nitroglycerine or an asthma or other respiratory inhalant shall be issued and allowed to keep on their person a sufficient quantity of such medicine or medication.

History

Sec. filed Dec. 19, 1989; amds. filed: June 19, 2007 as emergency measure; Aug. 28, 2007 eff. Sept. 12, 2007. Added (c); amd. filed June 29, 2026 eff. July 15, 2026.

Section 7010.4. Storage of medications

(a) All medications shall be stored in a safe and secure manner consistent with the requirements of this section to insure control only by authorized personnel designated by the facility physician.

(b) Each facility shall store all drugs and biologicals in sanitary, locked compartments under proper temperature controls.

(c) Each facility shall store controlled drugs and other drugs subject to abuse in separately locked, permanently affixed, compartments and in accordance with article 33 of the Public Health Law and 10 NYCRR Part 80. Adequate records of dispensing of such drugs, including perpetual inventory record, shall be maintained.

(d) Poisons and medications for “external use only” shall be kept in a locked cabinet and separate from other medications.

(e) Medications whose shelf life has expired or which are otherwise no longer in use shall be disposed of or destroyed in accordance with State and Federal laws and regulations.

History

Sec. filed June 23, 1997 eff. July 9, 1997.

Section 7010.5. Return of unused medications

(a) Any jurisdiction may apply to the commission for certification to return to the vendor pharmacy from which it was purchased certain unused medications or drugs.

(b) Certification to return certain unused medications or drugs to the vendor pharmacy shall be permitted only under the following conditions:

(1) the facility employs a licensed health care professional; and

(2) access to drugs and biologicals is permitted only by authorized licensed health care professionals designated by the facility physician.

(c) An authorized licensed health care professional designated by the facility physician of a facility certified by the commission shall be permitted to return unused medications to the vendor pharmacy under the following conditions:

(1) a copy of the commission's certification permitting the return of medications is filed with the vendor pharmacy:

(2) all medication to be returned must be:

(i) stored in accordance with section 7010.4 of this Part;

(ii) sealed in unopened, individually packaged units; and

(iii) within the recommended period of shelf life for the purpose of redispensing;

(3) drug products which may be returned are limited to:

(i) oral and parenteral medication in single-dose hermetically sealed containers; and

(ii) parenteral medication in multiple-dose hermetically sealed containers from which no doses have been withdrawn;

(4) the drug products returned show no obvious sign of deterioration;

(5) drug products packaged in manufacturer's unit-dose packages may be returned for redispensing provided that they are redispensed in time for use before the expiration date, if any, indicated on the package;

(6) drug products repackaged by the pharmacy into unit-dose or multiple-dose “blister packs” may be returned to the pharmacy for redispensing provided that:

(i) the date on which the drug product was repackaged, its lot number and expiration date are indicated clearly on the package;

(ii) not more than 90 days have elapsed from the date of the repackaging;

(iii) a repackaging log is maintained by the pharmacy in the case of drug products repackaged in advance of immediate needs;

(7) partially used “blister packs” may be redispensed only as returned to the pharmacy;

(8) partially used “blister packs” may not be emptied and repackaged;

(9) additional units of medication may not be added to partially used “blister packs;”

(10) no drug product dispensed in bulk in a dispensing container may be returned;

(11) no medication or drug product defined as a controlled substance in section 3306 of the Public Health Law may be returned; and

(12) no drug which is self-administered by an inmate, has been offered for delivery to an inmate, or has been in an inmate's possession may be returned.

(d) [*Reserved]*

(e) As used in this section, licensed health care professional shall mean a physician, nurse practitioner, registered nurse, physician's assistant or licensed practical nurse.

History

Sec. filed June 23, 1997; amd. filed March 24, 1998 eff. April 8, 1998. Amended (c)(5).

Section 7010.6. Report concerning the condition of inmates kept apart from the general population

The report required by section 500-k and paragraph (d) of subdivision (6) of section 137 of the Correction Law concerning the condition of inmates kept apart from the general population shall be submitted to the sheriff or, in local correctional facilities not under the custody and control of the sheriff, to the Commissioner of Correction or other person in charge of such facility.

History

Sec. filed Jan. 20, 2000 eff. Feb. 9, 2000.

PART 7011 SUBSTANCE USE DISORDER TREATMENT AND TRANSITION SERVICES

Section 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.

History

Sec. added by renum. 5100.12, Title 7, filed June 26, 1976; repealed, filed Aug. 20, 1996 eff. Sept. 4, 1996; emergency rulemaking eff. Oct. 7, 2022, expires Jan. 3, 2023 (Register dated Oct. 26, 2022); emergency rulemaking eff. Jan. 2, 2023, expires March 2, 2023 (Register dated Jan. 18, 2023); Filed Jan. 25, 2023 eff. Feb. 15, 2023 (Register dated Feb. 15, 2023).

Section 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.

History

Emergency rulemaking eff. Oct. 7, 2022, expires Jan. 3, 2023 (Register dated Oct. 26, 2022); emergency rulemaking eff. Jan. 2, 2023, expires March 2, 2023 (Register dated Jan. 18, 2023); Filed Jan. 25, 2023 eff. Feb. 15, 2023 (Register dated Feb. 15, 2023).

Section 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.

History

Emergency rulemaking eff. Oct. 7, 2022, expires Jan. 3, 2023 (Register dated Oct. 26, 2022); emergency rulemaking eff. Jan. 2, 2023, expires March 2, 2023 (Register dated Jan. 18, 2023); Filed Jan. 25, 2023 eff. Feb. 15, 2023 (Register dated Feb. 15, 2023).

Section 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.

History

Emergency rulemaking eff. Oct. 7, 2022, expires Jan. 3, 2023 (Register dated Oct. 26, 2022); emergency rulemaking eff. Jan. 2, 2023, expires March 2, 2023 (Register dated Jan. 18, 2023); Filed Jan. 25, 2023 eff. Feb. 15, 2023 (Register dated Feb. 15, 2023).

Section 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.

History

Emergency rulemaking eff. Oct. 7, 2022, expires Jan. 3, 2023 (Register dated Oct. 26, 2022); emergency rulemaking eff. Jan. 2, 2023, expires March 2, 2023 (Register dated Jan. 18, 2023); Filed Jan. 25, 2023 eff. Feb. 15, 2023 (Register dated Feb. 15, 2023).

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.

History

Emergency rulemaking eff. Oct. 7, 2022, expires Jan. 3, 2023 (Register dated Oct. 26, 2022); emergency rulemaking eff. Jan. 2, 2023, expires March 2, 2023 (Register dated Jan. 18, 2023); Filed Jan. 25, 2023 eff. Feb. 15, 2023 (Register dated Feb. 15, 2023).

Section 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.

History

Emergency rulemaking eff. Oct. 7, 2022, expires Jan. 3, 2023 (Register dated Oct. 26, 2022); emergency rulemaking eff. Jan. 2, 2023, expires March 2, 2023 (Register dated Jan. 18, 2023); Filed Jan. 25, 2023 eff. Feb. 15, 2023 (Register dated Feb. 15, 2023).

PART 7013 CLASSIFICATION

Section 7013.1. Policy

In order to provide for the effective management of inmate populations and facility housing units in a safe and secure correctional environment, the chief administrative officer of each correctional facility shall establish, implement and maintain a formal and objective system for the consistent classification of all inmates. Compliance with this Part shall ensure that each facility develops and implements a classification system that provides a mechanism for inmate screening, assessment and classification review to identify the special needs and security and supervision requirements of inmates in order to determine appropriate housing assignments.

History

Sec. added by renum. 5100.14, Title 7, filed June 26, 1976; repealed, new filed Sept. 30, 1986; amd. filed March 22, 1990 eff. April 11, 1990.

Section 7013.2. Definitions

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

(a) *Classification* shall mean the process of assigning inmates to appropriate housing by determining security and supervision requirements and inmate special needs based on screening and risk assessment and pursuant to New York State Correction Law.

(b) *Formal and objective system* shall mean a procedure for determining an inmate's appropriate housing assignment which utilizes a point scale, decision tree or other method capable of quantifiable analysis or computation.

(c) *Initial screening* shall mean a risk assessment and preliminary determination of an inmate's special needs and security and supervision requirements upon his admission to the facility.

(d) *Primary housing assignment* shall mean the housing assignment of an inmate which is made after the initial screening and classification process.

(e) *Inmate records* shall have the same meaning as set forth in section 7033.2 of this Chapter.

(f) *Inmate medical and psychiatric records* shall have the same meaning as set forth in section 7033.2 of this Chapter.

(g) *Classification review* shall mean any classification status assessment made subsequent to an inmate's primary housing assignment.

(h) *Special housing* shall mean any incarcerated individual housing area, or subdivision thereof, used principally for punitive or administrative segregation.

(i) *Required post complement shall have the same meaning as set forth in section 7041.1 of this Title.*

(j) *Security substantial noncompliance* shall mean a violation of any of the following requirements:

(1) section 7003.3(a)-(e) and (h)-(i) of this Chapter, supervision of prisoners in facility housing areas;

(2) section 7003.6(a) of this Chapter, requirements of facility staff members prior to assuming responsibilities in an assigned facility area; and

(3) section 7041.2(a)(1) of this Chapter, supervisory staff levels.

(k) *Capacity substantial noncompliance* shall mean a condition whereby the average daily in-house inmate count, averaged quarterly, exceeds the maximum facility capacity as established by the commission or judicial order.

(l) *Emergency overcrowding* shall mean an unforeseen condition which causes a facility to exceed its maximum facility capacity as established by the commission after the facility has:

(1) implemented measures of inmate classification pursuant to section 7013.4(c) of this Part; and

(2) made a reasonable attempt to find and utilize substitute jail housing pursuant to Part 7210 of Title 9 and section 504 of the Correction Law.

History

Sec. filed Sept. 30, 1986; amds. filed: March 10, 1987 as emergency measure; April 28, 1987; March 22, 1990; March 24, 1998 eff. April 8, 1998; emergency rulemaking eff. Dec. 19, 2017, expired March 18, 2018; amd. filed March 27, 2018 eff. April 11, 2018; amd. filed Jan. 26, 2021 eff. Feb. 10, 2021; amd. filed Feb. 26, 2025 eff. March 19, 2025 (Register dated March 19, 2025).

Section 7013.3. Facility policies and procedures

(a) The chief administrative officer of each correctional facility shall develop and implement written policies and procedures which provide for the assessment and classification of inmates and comply with the requirements of this Part. Such policies and procedures shall include, but are not limited to:

(1) staff responsibilities for functions relative to classification;

(2) completion of initial screening and risk assessment, including but not limited to the determination of security and supervision requirements and inmate special needs;

(3) use of formal risk assessment instruments and other appropriate admissions forms in the classification process;

(4) classification assessments made subsequent to initial screening for the assignment of inmates to appropriate facility housing areas;

(5) inmate notification of all classification determinations made subsequent to initial screening and risk assessment;

(6) procedures governing the disclosure of information contained in the detailed summaries of inmate medical and psychiatric records by the facility medical director pursuant to section 7013.10 of this Part; and

(7) review and revision of such policies and procedures.

(b) Such policies and procedures shall be made available to all facility staff members.

(c) The chief administrative officer shall review the policies and procedures on an annual basis and make revisions as necessary.

(d) The chief administrative officer shall verify in writing that such policies and procedures have been reviewed and updated. Such verification shall consist of:

(1) a list of any revisions made to the policies and procedures;

(2) the date(s) of all reviews completed; and

(3) the signature of the chief administrative officer.

History

Sec. filed Sept. 30, 1986; amd. filed March 22, 1990 eff. April 11, 1990. Amended (a), (c).

Section 7013.4. Classification categories

(a) Except as otherwise provided in this Part, there shall be 12 classification categories for the purpose of housing inmates within each correctional facility. Such classification categories are derived from three basic categories:

(1) serving sentence;

(2) civil process or contempt; and

(3) criminal process, trial or examination, material witness.

(b) Each basic category contains the following four subcategories:

(1) male adults, ages 18 and over;

(2) male minors, ages 16 to 17 inclusive;

(3) female adults, ages 18 and over; and

(4) female minors, ages 16 to 17 inclusive.

(c) The chief administrative officer may reduce the 12 classification categories specified in subdivisions (a) and (b) of this section to four categories, provided the following conditions are met:

(1) the county has a Division of Probation and Correctional Alternatives-approved Alternatives to Incarceration Service Plan pursuant to Executive Law, article 13-A; and

(2) the commission determines, pursuant to section 7013.2 of this Part, the facility is not in substantial noncompliance with:

(i) the required post complement;

(ii) security requirements; and

(iii) maximum facility capacity requirements.

(d) Correctional facilities meeting the requirements of subdivision (c) of this section may be permitted to reduce from 12 classification categories to the following four categories:

(1) male adults, ages 18 and over;

(2) male minors, ages 16 to 17 inclusive;

(3) female adults, ages 18 and over; and

(4) female minors, ages 16 to 17 inclusive.

(e) Except as otherwise provided in section 7013.6(a)(1) of this Part, inmates of one classification category as specified under subdivision (a), (b) or (d) of this section shall not be confined in the same housing areas with inmates of other categories.

History

Sec. filed Sept. 30, 1986 eff. Sept. 30, 1986; amd. filed Nov. 19, 2014 eff. Dec. 10, 2014; amd. filed Feb. 26, 2025 eff. March 19, 2025 (Register dated March 19, 2025).

Section 7013.5. Classification during an emergency overcrowding condition

(a) When, in the opinion of the chief administrative officer, an emergency overcrowding condition exists in a county correctional facility which is already classifying its inmates according to the four classification categories specified in section 7013.4(d) of this Part and is caused in part by the prohibition against commingling minors and adults, such officer may apply to the

commission to commingle minors and adults within facility housing areas for a period not to exceed 30 days as provided in this section.

(b) The chief administrative officer shall contact the commission by telephone, which shall serve as the application, and provide the commission with the following initial summary information:

(1) the nature and extent of the emergency overcrowding condition;

(2) attempts made to secure substitute jail housing space within or outside the county; and

(3) a description of any areas within the facility which could provide safe and secure inmate housing on a temporary basis.

(c) A chief administrative officer's application to commingle adults and minors shall be denied if the commission determines one or more of the following conditions exists:

(1) an emergency overcrowding condition does not exist as defined in section 7013.2(l) of this Part;

(2) the facility is in substantial noncompliance with the required post complement; or

(3) such commingling would present a danger to the health, safety or welfare of inmates within the facility.

(d) The chief administrative officer shall be permitted to commingle minors and adults within facility housing areas for an initial period not to exceed seven days. Such period shall begin when the initial telephone application is received by the officer of the day as designated by the commission unless such officer immediately denies the application.

(e) Provided the commission permits the chief administrative officer to commingle beyond the initial seven-day period, such commingling shall not exceed 30 days.

(f) The commingling of minors and adults shall cease immediately upon notification to the chief administrative officer of the commission's denial to commingle. Such denial shall be based on deficiencies and/or dangers cited by the commission.

(g) The chief administrative officer may correct such deficiencies and/or dangers delineated by the commission and reapply to the commission for permission to commingle minors and adults within facility housing areas. However, no commingling shall occur until the chief administrative officer receives certification from the commission that the facility has corrected the deficiencies cited by the commission.

(h) When such certification has been received by the chief administrative officer, the commingling may continue for 30 days, less any time during which minors and adults were commingled following the initial application to the commission.

(i) The chief administrative officer may apply to the commission a maximum of three times a year for permission to commingle adults and minors within facility housing areas. Such commingling shall be permitted for a maximum of 30 days per period in a given calendar year, pursuant to the requirements of this section.

(j) The chief administrative officer shall cease the commingling when either the overcrowding which necessitated the commingling no longer exists or the 30-day period has expired, whichever occurs first.

(k) Before any such commingling of adults and minors occurs, the chief administrative officer shall thoroughly review information related to initial screening and risk assessment and primary housing assignments pursuant to sections 7013.7(b) and 7013.8(c)-(e) of this Part concerning all inmates being considered for such commingling.

History

Sec. filed Sept. 30, 1986; amd. filed March 22, 1990 eff. April 11, 1990. Amended (c)(1), (k); amd. filed Feb. 26, 2025 eff. March 19, 2025 (Register dated March 19, 2025).

Section 7013.6. Authorized commingling

(a) Nothing contained in this Part shall prevent the chief administrative officer from commingling inmates in different classification categories in the same area for purposes including, but not limited to:

(1) special housing, admissions/orientation housing, and medical/mental health observation, provided minors and adults are separately grouped to prevent access between such classification categories;

(2) meals served in dining areas located outside facility housing areas;

(3) visitation;

(4) exercise held in areas located outside facility housing areas;

(5) educational/vocational programs;

(6) work programs;

(7) divine worship; or

(8) any other organized facility program or activity.

(b) Males and females shall not be commingled in areas designated as special housing, admissions/orientation housing, or medical/mental health observation.

History

Sec. filed Sept. 30, 1986; amds. filed: March 22, 1990; Oct. 21, 2005 eff. Nov. 9, 2005. Amended (a)(4); amd. filed Nov. 19, 2014 eff. Dec. 10, 2014; amd. filed Jan. 26, 2021 eff. Feb. 10, 2021

Section 7013.7. Initial screening and risk assessment

(a) Each inmate upon admission to a facility shall undergo an initial screening and risk assessment which shall consist of a screening interview, visual assessment and review of commitment documents. Such screening and risk assessment shall occur immediately upon an inmate's admission.

(b) A screening instrument(s) shall be utilized to elicit and record information on each inmate relating to the following:

(1) visible injury/injuries;

(2) medical conditions requiring immediate treatment;

(3) mental or physical handicap(s);

(4) history of mental illness or treatment;

(5) potential for self-injury or suicide;

(6) history of detention or incarceration, including but not limited to hostile relationships with other inmates;

(7) medication currently being taken;

(8) present appearance and behavior;

(9) evidence of intoxication by alcohol or drugs or a history of alcohol or substance abuse;

(10) criminal charge(s) and conviction(s); and

(11) any other relevant information concerning the safety or welfare of the inmate.

(c) An immediate decision concerning the disposition of each incarcerated individual 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.

History

Sec. filed Sept. 30, 1986; amd. filed March 22, 1990 eff. April 11, 1990. Amended (c); emergency rulemaking eff. Oct. 7, 2022, expires Jan. 3, 2023 (Register dated Oct. 26, 2022); emergency rulemaking eff. Jan. 2, 2023, expires March 2, 2023 (Register dated Jan. 18, 2023); amd. filed Jan. 25, 2023 eff. Feb. 15, 2023 (Register dated Feb. 15, 2023).

Section 7013.8. Assignment to facility housing areas

(a) After initial screening and risk assessment is completed and prior to determining each inmate's primary housing assignment, the inmate shall be placed in a housing unit within a housing area(s) designated for classification purposes. Such housing area(s) may be utilized on a temporary or permanent basis, given the needs and physical plant limitations of each facility.

(b) Placement in such housing areas shall be temporary pending completion of the classification process, including the determination of appropriate housing, which shall be completed within five business days of each inmate's admission to the facility. The chief administrative officer may extend the time to complete the classification process for a particular inmate up to an additional 10 business days if he concludes that additional time is necessary to make a determination of appropriate housing.

(c) In arriving at a determination of each inmate's housing assignment, the chief administrative officer shall base his/her decision on the following information, if such information is available and accessible to the chief administrative officer:

(1) criminal history;

(2) propensity for victimization;

(3) history of medical/mental illness;

(4) history of sex offenses;

(5) history of hostile relationship(s) with other inmates;

(6) prior attempts at self-injury or suicide;

(7) prior escapes and attempted escapes;

(8) attitude and behavior during present and prior incarceration(s), including any history of assaultive behavior during incarceration; and

(9) any other information which may affect the safety and welfare of the inmate or facility staff.

(d) Each facility shall utilize a formal and objective system for inmate classification in order to fulfill the requirements of subdivisions (a)-(c) of this section and section 7013.9 of this Part.

(e) In considering the information contained in subdivision (c) of this section, the chief administrative officer shall examine and verify the following:

(1) records made available to such officer from the court or the delivering jurisdiction;

(2) information obtained during an inmate's initial screening and risk assessment;

(3) records, to the extent relevant and known to the chief administrative officer and which are accessible and available to the chief administrative officer which are maintained by:

(i) the Department of Corrections and Community Supervision; or

(ii) any local correctional facility in this State, including inmate records provided to the chief administrative officer pursuant to Part 7033 of this Chapter;

(4) information obtained from mental health treatment providers pursuant to Mental Hygiene Law, section 33.13(c)(9);

(5) information contained in the detailed summaries of inmate medical and psychiatric records if disclosed by the facility medical director pursuant to section 7013.10 of this Part and sections 7064.7, 7064.8 and 7064.9 of this Chapter; and

(6) any other relevant information concerning an inmate's condition brought to the attention of the chief administrative officer or any other facility staff member by any person.

(f) Within one business day after each classification determination is made, facility staff shall notify the inmate in writing of the determination and explain its implications.

History

Sec. filed Sept. 30, 1986; repealed, new filed March 22, 1990; amds. filed: Feb. 25, 1997; Aug. 18, 1998 eff. Sept. 2, 1998; amd. filed May 21, 2013 eff. June 5, 2013.

Section 7013.9. Classification review

(a) The chief administrative officer shall review and revise as necessary, pursuant to the requirements of section 7013.8(c)-(e) of this Part, an inmate's classification status when one or more of the following conditions occur:

(1) the inmate is involved in a serious unusual incident or exhibits adjustment problems which threaten his/her safety or the safety, security or good order of the facility;

(2) a written request, including justification(s), is made by facility staff to alter or review the inmate's classification status based on new information or exhibited positive or negative behavior; and/or

(3) the facility medical director discloses relevant information about the inmate pursuant to section 7013.10 of this Part which has not already been considered in determining the inmate's classification status.

(b) If an inmate's classification status is changed pursuant to this section, facility staff shall comply with the notification requirements of section 7013.8(f) of this Part.

History

Sec. filed Sept. 30, 1986; amds. filed: March 22, 1990; March 24, 1998; repealed, new filed Aug. 18, 1998 eff. Sept. 2, 1998.

Section 7013.10. Confidentiality and disclosure of inmate medical and psychiatric records information

(a) Each facility shall adhere to the requirements of sections 7033.6, 7064.7, 7064.8 and 7064.9 of this Chapter and the Public Health Law, article 27-F and Department of Health regulations pertaining thereto concerning the confidentiality of inmate records and inmate medical and psychiatric records.

(b) The facility medical director of each facility shall maintain all detailed summaries of inmate medical and psychiatric records in a separate confidential file.

(c) Except as otherwise prohibited or restricted by law, the facility medical director of each facility shall promptly disclose to the chief administrative officer information which he/she receives concerning an inmate which is or may be relevant in determining the inmate's classification, transport or segregation status or may affect the life, safety or welfare of the inmate or any other person. Relevant inmate information subject to such disclosure shall include, but is not limited to, pregnancy, time elapsed from delivery or pregnancy outcome, mental or physical disability, or serious mental illness. The chief administrative officer shall then promptly disclose information as appropriate to facility staff responsible for making classification, transport or segregation decisions.

History

Sec. filed Sept. 30, 1986; renum. 7013.11, new filed March 22, 1990 eff. April 11, 1990; amd. filed May 21, 2019 eff. June 5, 2019.

Section 7013.11. Staff training

(a) The chief administrative officer shall ensure that appropriate facility staff receive orientation to current facility policies and procedures relating to classification.

(b) All facility staff assigned to perform duties related to the administration and implementation of classification shall be trained in facility classification policies and procedures that pertain to their area(s) of responsibility.

(c) All facility staff assigned to perform duties related to the administration and implementation of classification procedures pursuant to sections 7013.7, 7013.8 and 7013.9 of this Part shall be trained in classification theory and techniques by completing a training program approved by the commission. Only facility staff who have completed such training shall perform duties related to the administration and implementation of classification procedures.

History

Sec. filed Sept. 30, 1986; renum. 7013.12, new added by renum. and amd. 7013.10, filed March 22, 1990 eff. April 11, 1990.

Section 7013.12. Inmate screening and classification records

(a) All initial screening, risk assessment and any subsequent determinations of an inmate's classification status shall be made in writing and kept in the inmate's file.

(b) With the exception of detailed summaries of inmate medical and psychiatric records which shall be kept in a confidential file pursuant to section 7013.10 of this Part, the information to be retained in the inmate's file shall include, but is not limited to:

(1) the inmate's classification category pursuant to section 7013.4(a)-(c) of this Part;

(2) the inmate's criminal history;

(3) the inmate's security and supervision requirements;

(4) any special needs of the inmate;

(5) the inmate's specific housing unit assignments, indicating the housing unit category, i.e., general housing, punitive segregation, medical/mental health observation, etc. and the specific cell or room location, i.e., 3rd floor west - cell #9;

(6) facility staff responsible for making each classification determination;

(7) dates when initial screening and each subsequent classification determination were made, including verification that the inmate was notified of such determinations and their implications; and

(8) all screening instruments, forms or other information used to make or record initial screening, risk assessment and subsequent classification determinations.

(c) Either copy or written summary on a form developed for this purpose of the information noted in paragraphs (b)(2)-(4) and (8) of this section and all inmate records requested pursuant to Part 7033 of this Chapter shall be sent with every inmate when he/she is transferred to another correctional facility.

(d) Whenever a written summary is sent pursuant to the requirements of subdivision (c) of this section, the name(s) of the facility staff member(s) who prepared the summarized information shall be clearly identified on the form.

History

Sec. filed Sept. 30, 1986; renum. 7013.13, new added by renum. and amd. 7013.11, filed March 22, 1990 eff. April 11, 1990.

Section 7013.13. Quarterly classification report

(a) On or before the 15th day of February, May, August and November of each year, the chief administrative officer shall forward a quarterly report relative to the housing and classification of inmates to the commission which reflects information pertaining to the preceding three-month period.

(b) Such report shall be prepared and submitted on forms required by the commission.

History

Sec. filed Sept. 30, 1986; amds. filed: March 10, 1987; April 28, 1987; repealed, filed: Sept. 24, 1987 as emergency measure; Nov. 17, 1987 as emergency measure; Dec. 15, 1987; new added by renum. 7013.12, filed March 22, 1990 eff. April 11, 1990.

PART 7015 SANITATION

Section 7015.1. Policy

Consistent with the requirements of this Part, each local correctional facility shall establish and implement policies and procedures designed to ensure that such facility is maintained in a sanitary condition.

History

Sec. added by renum. sec. 5100.16, Title 7, filed June 26, 1976; repealed, new filed Oct. 3, 1979 eff. Oct. 3, 1979.

Section 7015.2. General facility sanitation

(a) The chief administrative officer shall establish written procedures designed to ensure that all areas of the facility are maintained in a sanitary condition. Facility sanitation tasks shall be completed as necessary to maintain a clean and sanitary facility.

(b) Each local correctional facility shall maintain a sufficient inventory of sanitation equipment. Such equipment shall be maintained in good condition and stored in a safe and secure manner.

(c) The chief administrative officer may require prisoners to maintain their respective cells or individual housing areas in clean and sanitary condition. In the discretion of the chief administrative officer, sentenced prisoners may be required to perform facility sanitation tasks.

(d) The food service area of each facility, and all food preparation equipment and utensils, shall be maintained in a clean and sanitary condition consistent with the State Sanitary Code. All persons employed in the food service area shall conform to hygienic practices consistent with the State Sanitary Code.

(e) Each local correctional facility shall develop and implement procedures designed to eliminate insect and rodent infestation. Consistent with such policies and procedures:

(1) the chief administrative officer may prohibit or establish limitations regarding the accumulation of food items in cells or individual housing areas; and

(2) any pesticide applied in the facility shall be used consistent with the manufacturer's recommendations and any applicable laws or regulations.

History

Sec. filed Oct. 3, 1979; repealed, new filed July 29, 1997 eff. Aug. 13, 1997.

Section 7015.3. Local health department inspections

The chief administrative officer shall request that the local health authority with jurisdiction over the facility perform annual inspections of the facility. The results of such inspection shall be recorded in writing, together with a summary of the action taken to address any deficiencies, and maintained on file at the facility.

History

Sec. filed Oct. 3, 1979; repealed, new added by renum. and amd. 7015.6, filed July 29, 1997 eff. Aug. 13, 1997.

PART 7016 COMMISSARY AND INMATE ACCOUNTS

Section 7016.1. Commissary

(a) In the discretion of the sheriff or chief administrative officer, a commissary may be established, maintained and operated for the purpose of making available, for sale to prisoners, items deemed proper by such officials and consistent with the health and welfare of the prisoners and the security and general operation of the facility concerned.

(b) The prices of any items offered for sale shall be fixed by the sheriff, or official in charge, to the extent that the commissary operation will be self-supporting and will provide a modest return above costs.

(c) Profits resulting from commissary sales shall be deposited in a separate bank account and shall be utilized only for purposes of prisoner welfare and rehabilitation.

(d) Commissary accounts shall be maintained in a manner which will fully substantiate all purchases, sales and expenditures, and definite arrangements shall be made for periodic audit of the commissary accounts by the office of county auditor, county treasurer or other county officer in a similar capacity.

(e) Nothing in this section shall be construed as exempting commissary operations in a county jail or a county penitentiary from compliance with the provisions of any applicable county or State statute, resolution, rule, regulation, etc.

History

Sec. added by renum. 5100.17, Title 7, filed June 26, 1976; amd. filed Aug. 20, 1996 eff. Sept. 4, 1996. Amended (a).

Section 7016.2. Inmate accounts

(a) As required by subdivision (7) of section 500-c of the Correction Law, an institutional fund account shall be maintained on behalf of every inmate, and deposits shall be made into such accounts of any prisoner funds received.

(b) For the purpose of receiving prisoner funds, the sheriff or chief administrative officer may utilize, or cause to be utilized, electronic kiosks, automated teller machines, or other similar devices or systems capable of allowing members of the public to deposit funds into an inmate's institutional fund account. Members of the public depositing prisoner funds in such a manner may be charged a service fee not to exceed $5 per transaction.

(c) Devices and systems utilized pursuant to subdivision (b) of this section shall comply with all applicable laws, codes, rules and regulations, including the New York State Banking Law and the rules and regulations of the New York State Banking Department.

(d) Nothing contained in this section shall otherwise relieve a facility of the requirement to receive and deposit prisoner funds, without imposition of a service fee, pursuant to sections 7002.4(f), 7004.6(b)(4) and 7025.4(c) of this Title.

(e) Notice shall be conspicuously posted by, on, or proximate to any device or system utilized pursuant to subdivision (b) of this section, advising members of the public:

(1) the amount of any service fee associated therewith;

(2) that acceptable funds mailed to an inmate in correspondence or a package will be deposited into the intended inmate's institutional fund account without the imposition of a service fee;

(3) facility policy regarding the acceptance of cash, checks, money orders, and other instruments of payment; and

(4) any other facility rule or regulation concerning inmate account deposits which, in the opinion of the chief administrative officer, should be so conveyed to the public.

History

Sec. filed Dec. 18, 2009 eff. Jan. 6, 2010.

PART 7017 PERSONNEL STANDARDS

Section 7017.1. Training

(a) Full-time and part-time correction officers shall satisfactorily complete a correctional training program approved by the division of criminal justice services. Such training shall be completed within one year following the date of appointment as a correction officer.

(b) All special housing unit and residential rehabilitation unit staff and their supervisors shall undergo specialized training prior to assignment to such unit, and regular specialized training thereafter, on substantive content developed in consultation with relevant experts, on topics including, but not limited to, the purpose and goals of the non-punitive therapeutic environment, trauma-informed care, restorative justice, and dispute resolution methods.

History

Sec. added by renum. 5100.18, Title 7, filed June 26, 1976; amd. filed June 9, 1987; repealed, new filed May 26, 1998 eff. June 10, 1998; emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7017.2. Briefing of new employees

A manual of facility policies and procedures shall be made available to each facility employee at the time of appointment. The chief administrative officer shall insure that each correction officer, prior to assignment to active duty, is instructed with respect to the responsibilities and requirements of their position.

History

Sec. filed May 26, 1998 eff. June 10, 1998.

PART 7019 GIFTS AND GRATUITIES

Section 7019.1. Gifts and gratuities

Any trading or bartering with prisoners by any person associated with the operation of a county jail or a county penitentiary is strictly prohibited. No sheriff, warden or superintendent or any officer in charge, or any staff person shall receive a gift of any nature whatsoever from any prisoner, nor shall any person in charge, or any employee, be permitted to give anything whatsoever to a prisoner, or to buy anything from or sell anything to a prisoner, or to extend to a prisoner any favor of diet, clothing or of any other nature not common to all. These same prohibitions apply to relatives or friends of prisoners or to any other person acting in behalf of a prisoner.

History

Sec. added by renum. § 5100.20, Title 7, filed June 26, 1976 eff. Oct. 1, 1976.

PART 7022 REPORTABLE INCIDENTS

Section 7022.1. Policy

In order to provide a mechanism by which facility operations, policies and procedures can be monitored, evaluated and improved, each facility shall internally review and assess all incidents of a serious or potentially problematic nature and report incidents to the commission pursuant to the requirements of this Part.

History

Sec. added by renum. 5100.23, Title 7, filed June 26, 1976; amds. filed: Sept. 27, 1979; June 9, 1987; repealed, new filed July 23, 1987 eff. July 23, 1987.

Section 7022.2. Reportable incident categories

(a) The following general categories of incidents shall be reported to the commission pursuant to the requirements of this Part:

(1) assaults;

(2) sexual assaults;

(3) contagious illnesses;

(4) contraband;

(5) deaths;

(6) major maintenance/service disruptions;

(7) major disturbances;

(8) minor disturbances;

(9) individual inmate disturbances;

(10) natural/civil emergencies;

(11) escapes;

(12) attempted escapes;

(13) abscondences;

(14) fires;

(15) firearm discharges;

(16) inmate group actions;

(17) personnel deficiencies/group actions;

(18) hostage situations;

(19) attempted suicides;

(20) self-inflicted injuries;

(21) accidental injuries;

(22) deprivation/limitation of essential services; and

(23) inmate cell confinement.

(b) Each facility shall report incidents to the commission pursuant to the requirements outlined in the commission's **Reportable Incident Guidelines for County Correctional Facilities**.

History

Sec. filed July 23, 1987 eff. July 23, 1987; amd. filed May 21, 2019 eff. June 5, 2019; amd. filed Feb. 26, 2025 eff. March 19, 2025 (Register dated March 19, 2025).

Section 7022.3. Reporting incidents other than inmate deaths

(a) Except in the case of inmate deaths, whenever a reportable incident occurs, each facility shall report such incident to the commission's Albany office, regardless of the time of day or day of the week, pursuant to the following requirements:

(1) all major disturbances, escapes, inmate group actions, personnel group actions, hostage situations, firearm discharges, natural/civil emergencies, and major maintenance/service disruptions shall be reported immediately upon occurrence or discovery, in a form and manner prescribed by the commission, as set forth in the commission's *Reportable Incident Guidelines for County Correctional Facilities*; and

(2) all other reportable incidents shall be reported in a form and manner prescribed by the commission, as set forth in the commission's *Reportable Incident Guidelines for County Correctional Facilities*, within 24 hours of occurrence or discovery.

(b) Every report required pursuant to subdivision (a) of this section shall include all information required in the commission's *Reportable Incident Guidelines for County Correctional Facilities.*

(c) When additional facts of an important or critical nature are discovered about an incident after a facility has submitted a report to the commission pursuant to subdivision (a) of this section, such information shall be forwarded in writing to the commission as soon as practicable, but no later than 14 days following discovery.

History

Sec. filed July 23, 1987; amd. filed Dec. 27, 2006 eff. Jan. 17, 2007; amd. filed Jan. 5, 2016 eff. Jan. 20, 2016.

Section 7022.4. Reporting inmate deaths

(a) Each facility shall report the death of any inmate committed thereto, whether or not such death actually occurs at the facility, to:

(1) the coroner or medical examiner of the county in which the facility is located, within one hour of pronouncement of death;

(2) the commission, within six hours of pronouncement of death, regardless of the time of day or day of the week, in a form and manner prescribed by the commission's medical review board as described in the commission's *Reportable Incident Guidelines for County Correctional Facilities.*

(b) Within three hours after the pronouncement of an inmate's death, the next of kin of the deceased shall be notified. If, due to extenuating circumstances, the next of kin cannot be located within this time period, facility staff shall document in writing all attempts to make such notification and shall complete the notification as soon as possible.

(c) Within three days after the pronouncement of an inmate's death, a copy of the deceased's entire correctional medical and mental health record shall be forwarded to the commission.

(d) Such copy shall be certified as being a true copy of such record by the authority responsible for maintaining the record.

(e) Within 10 days after the pronouncement of an inmate's death, each facility medical director/jail physician shall forward a follow-up report in writing to the commission which shall include, but not be limited to:

(1) a narrative medical history of the deceased covering the period 90 days prior to death;

(2) the deceased's primary medical and/or psychiatric diagnosis and the therapy provided, if any, as a result of such diagnosis; and

(3) a narrative description of the terminal event occurring immediately prior to the pronouncement of death.

(f) In addition, such follow-up report shall include information required by the commission's medical review board as described in the commission's *Reportable Incident Guidelines for County Correctional Facilities* and any other information specified by the commission.

(g) When additional facts of an important or critical nature are discovered about an inmate's death after the facility has submitted a report to the commission pursuant to this section, such information shall be forwarded in writing to the commission as soon as practicable, but no later than 14 days following discovery.

History

Sec. filed July 23, 1987; amd. filed Dec. 27, 2006 eff. Jan. 17, 2007; amd. filed Jan. 5, 2016 eff. Jan. 20, 2016.

Section 7022.5. Availability of reportable incident guidelines information

(a) A copy of the commission's *Reportable Incident Guidelines for County Correctional Facilities* shall be made available to all facility staff designated by the chief administrative officer to be responsible for reporting incidents to the commission.

(b) A sufficient number of such guidelines shall be maintained in locations within the facility which are accessible to all facility staff.

(c) Copies of the reportable incident guidelines manual are available, pursuant to the Freedom of Information Law, upon request from the New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, NY 12210-8001. All such requests should specify the item sought as *Reportable Incident Guidelines for County Correctional Facilities*. The guidelines manual consists of a soft-bound, indexed booklet 192 pages in length. A copy of these guidelines has been filed with the Department of State.

History

Sec. filed July 23, 1987; amds. filed: Aug. 18, 1994; Oct. 21, 2005 eff. Nov. 9, 2005; amd. filed May 21, 2013 eff. June 5, 2013.

Section 7022.6. Maintenance of reportable incident information

A copy of all completed reports and supplementary information prepared by facility staff pertaining to reportable incidents, including copies of all information forwarded to the commission pursuant to the requirements of this Part, shall be maintained on file.

History

Sec. filed July 23, 1987; amd. filed Aug. 20, 1996 eff. Sept. 4, 1996. Repealed (b).

Section 7022.7. Review and assessment of reportable incidents

(a) The chief administrative officer shall develop and implement procedures for the review, investigation and assessment of reportable incidents.

(b) The chief administrative officer and/or other designated supervisory staff shall regularly review all reports prepared by facility staff resulting from the review and/or investigation of reportable incidents, including pertinent facility log entries.

History

Sec. filed July 23, 1987; amd. filed Aug. 20, 1996 eff. Sept. 4, 1996.

PART 7023 ACCESS TO MEDIA

Section 7023.1. Policy

(a) Consistent with the requirements of this Part, prisoners are entitled to present their views to the public through the media.

(b) As used in this Part, the term *media* shall mean any printed or electronic means of conveying information to any portion of the public, and shall include, but is not limited to, newspapers, magazines, books or other publications, and licensed radio and television stations.

(c) Media/prisoner interviews in the facility shall be subject to the provisions of Part 7008 of this Title.

(d) The chief administrative officer may, in his discretion, restrict or prohibit the use of cameras and recording devices by the media.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

PART 7024 RELIGION

Section 7024.1. Policy

(a) Prisoners have an unrestricted right to hold any religious belief, and to be a member of any religious group or organization.

(b) Prisoners are entitled to exercise their religious beliefs in any manner that does not constitute a threat to the safety, security or good order of a local correctional facility, or the health of any individual.

(c) No person shall be permitted to proselytize or to seek to convert any prisoner without the consent of such prisoner, nor shall any prisoner be compelled to or dissuaded from exercising any religious belief.

(d) Equal status and protection shall be afforded all prisoners in the exercise of their religious beliefs, except when such exercise results in facility expenditures which are unreasonable or disproportionate to those extended to other prisoners for similar purposes.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7024.2. Congregate religious activities

(a) Consistent with the requirements of section 7024.1(b) of this Part, all prisoners shall be permitted to congregate for the purpose of religious worship and other religious activities.

(b) Each facility shall provide all prisoners access to an appropriate area for congregate religious worship and other religious activities. This area shall be made available to prisoners in accordance with the tenets of their religion, at times not unduly disruptive of facility routine.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7024.3. Religious advisors

(a) As used in this Part, the term *religious advisor* shall mean a person other than a prisoner whose ecclesiastical credentials have been approved by the chief administrative officer.

(b) Religious advisors shall be permitted to conduct congregate religious activities at least once per week at a time approved by the chief administrative officer. When no religious advisor is available, the chief administrative officer may permit a member of a prisoner religious group to conduct legitimate religious activities.

(c) Consistent with the requirements of section 7024.1(b) of this Part, prisoners shall be permitted confidential consultation with their religious advisors at times not unduly disruptive of facility routine.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7024.4. Celebration of religious holidays or festivals

Consistent with the requirements of section 7024.1(b) of this Part, prisoners shall be permitted to celebrate religious holidays or festivals on an individual or congregate basis.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7024.5. Supervision of prisoners exercising their religious beliefs

Each facility shall maintain supervision sufficient to ensure that the exercise of religious beliefs by prisoners does not constitute a threat to the safety, security or good order of a correctional facility, or the health of any individual.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7024.6. Religious dietary laws

Prisoners are entitled to observe reasonable dietary laws established by their religion. Each facility shall provide prisoners with food items sufficient to meet such reasonable religious dietary laws.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7024.7. Change of religion

A prisoner shall be permitted to change his religious affiliation upon application to the appropriate religious authority. The prisoner and the appropriate religious authority shall notify the chief administrative officer of such change.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7024.8. Religious articles

Consistent with the requirements of section 7024.1(b) of this Part, prisoners shall be entitled to wear and possess religious medals or other religious articles.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7024.9. Exercise of religious beliefs by prisoners in segregation

Prisoners confined in administrative or punitive segregation shall not be prohibited from exercising their religious beliefs consistent with the requirements of section 7024.1(b) of this Part.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7024.10. Recognition of a religious group or organization

(a) Prisoner requests to exercise the beliefs of religious groups or organizations not generally well known shall be made to the chief administrative officer.

(b) In determining requests made pursuant to subdivision (a) of this section, the chief administrative officer shall consider the following factors among others as indicating a religious foundation for the belief:

(1) whether there is substantial literature supporting the belief as related to religious principle;

(2) whether there is formal, organized worship by a recognizable and cohesive group sharing the belief;

(3) whether there is an informal association of persons who share common ethical, moral or intellectual views supporting the belief; and

(4) whether the belief is deeply and sincerely held by the prisoner.

(c) In determining requests made pursuant to subdivision (a) of this section, prisoners shall be permitted to present evidence to the chief administrative officer indicating a religious foundation for the belief.

(d) The procedures outlined in section 7024.11 of this Part shall apply when the chief administrative officer denies a prisoner request made pursuant to subdivision (a) of this section.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7024.11. Limitations on the exercise of religious beliefs

(a) Any determination made by the chief administrative officer to limit the exercise of the religious beliefs of any prisoner shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination shall be given to any person affected by the determination.

(b) Any determination made pursuant to subdivision (a) of this section shall be reviewed and maintained in accordance with sections 7075.5 and 7075.6 of this Title.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988; amd. filed May 21, 2019 eff. June 5, 2019.

PART 7025 PACKAGES

Section 7025.1. Policy

Consistent with the requirements of this Part, prisoners shall be permitted to receive packages from and send packages to any person.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7025.2. Incoming prisoner packages

(a) The chief administrative officer shall maintain a list of items prisoners may receive.

(b) As used in this Part, the term contraband shall mean any item in an incoming prisoner package which constitutes a threat to the safety, security or good order of a facility, or the health of any individual, or any item not permitted pursuant to subdivisions (a) and (d) of this section or any item which may constitute a criminal offense or may be the fruits or instruments of a crime.

(c) Upon admission to the facility, prisoners shall be provided with a copy of the list referenced in subdivision (a) of this section.

(d) In his or her discretion, the chief administrative officer may require that the contents of any incoming prisoner package be purchased from, and mailed to the facility by, a company whose ordinary business includes the sale and shipping of such items.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988; amd. filed Feb. 20, 2013 eff. March 13, 2013.

Section 7025.3. Outgoing prisoner packages

(a) Any items which a prisoner sends from a facility shall be packaged in the presence of the prisoner and under the supervision of facility staff.

(b) The costs incurred in sending any outgoing prisoner packages shall be borne by the prisoner.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7025.4. Inspection of incoming prisoner packages

(a) All incoming prisoner packages may be inspected solely to ensure that they contain no contraband. Any contraband found in an incoming prisoner package shall be forwarded to the chief administrative officer for the following disposition:

(1) If the contraband found may involve a criminal offense, it shall be forwarded to the appropriate law enforcement authority.

(2) If the contraband does not involve a potential criminal offense, it shall be returned to the sender or retained with the prisoner's secured property for return upon the prisoner's departure.

(3) Contraband that presents a threat to facility sanitation or health may, upon order of the chief administrative officer, be destroyed.

(4) The chief administrative officer shall give written notice of any determination made pursuant to this subdivision to any person affected by the determination. This written notice shall include:

(i) the name and address of the sender;

(ii) the nature of the contraband; and

(iii) a statement of the specific facts and reasons underlying the determination.

(5) All other items contained in an incoming prisoner package from which contraband has been removed shall be forwarded to the intended prisoner recipient.

(b) Upon receipt at the facility, prisoner personal property shall be inventoried, unless returned to the sender, and a copy of the inventory shall be provided to the prisoner.

(c) Cash, checks or money orders delivered to the local facility shall be deposited in the personal cash account of the intended prisoner recipient or delivered to the chief administrative officer for disposition in accordance with facility rules and regulations. The prisoner shall be notified of all amounts received and the disposition of such.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988; amd. filed Nov. 18, 1998 eff. Dec. 9, 1998. Amended (a).

Section 7025.5. Deprivation of packages

Any decision to deny, restrict or limit an inmate of any right, service, item or article, guaranteed an inmate by the provisions of this Part, shall be done in accordance with section 7075.5 of this Title.

History

Sec. filed June 26, 1976; repealed, filed May 31, 1988 eff. June 15, 1988; new adopted filed May 21, 2019 eff. June 5, 2019.

PART 7026 PRINTED MATERIAL AND PUBLICAIONS

Section 7026.1. Policy

Consistent with the requirements of this Part, prisoners are entitled to receive any printed material or publication that is generally available to the public. Prisoners shall be permitted to receive such material:

(a) from any source, including but not limited to family, friends or publishers;

(b) as a gift, or pursuant to order or subscription.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7026.2. Facility review of incoming printed material and publications

(a) Incoming printed material and publications may be read and reviewed.

(b) Incoming printed material and publications may be censored only when it is determined that an item of printed material or a publication constitutes a threat to the safety, security or good order of a local correctional facility.

(c) As used in this Part, the term censor shall mean the exclusion of any printed material or publication, or any portion thereof.

(d) Consistent with the requirements of this Part, printed material and publications may not be censored solely because they:

(1) criticize a correctional facility, its staff, or the correctional system;

(2) espouse unpopular ideas, including ideas that facility staff deem not conducive to rehabilitation or correctional treatment; or

(3) contain ideas supporting ethnic or racial militancy.

(e) When the introduction into a facility of any printed material or publication is thought to constitute a threat to the safety, security or good order of the facility, such printed material or publication shall be forwarded to the chief administrative officer. The chief administrative officer shall read and review such printed material and shall make a determination as to whether it shall be censored.

(f) Any determination made by the chief administrative officer pursuant to this Part to censor an item of printed material or a publication shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of such determination shall be given to the sender and the intended prisoner recipient.

(g) Any reading, review or determination made pursuant to this section shall be completed within seven days after the receipt of the printed material or publication at the facility. When the printed material or publication is a periodical, any reading, review or determination made pursuant to this section shall be completed within 48 hours after the receipt of the printed material or publication at the facility.

(h) When any incoming printed material or publication may involve a criminal offense, it shall be forwarded by the chief administrative officer to the appropriate authority for criminal prosecution.

(i) Except as provided in subdivision (h) of this section, the deletion of any portion of any printed material or publication that has been censored pursuant to subdivision (e) of this section shall be permitted only when the intended prisoner recipient consents to such deletion, in which case the censored portion of the printed material or publication shall be deleted and the remainder forwarded to the intended prisoner recipient. When the intended prisoner recipient does not consent to such deletion, the entire printed material or publication at issue shall be returned to the sender.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988.

Section 7026.3. Limitation and deprivation of incoming printed material and publications

(a) The chief administrative officer shall adopt rules and regulations which may limit the amount of printed material and other paper materials retained within a prisoner's living area, in furtherance of the safety, security and good order of the facility, especially safety from the risk of fire.

(b) Besides the limitations allowed by subdivision (a) of this section, any decision to deny, restrict or limit an inmate of any right, service, item or article, guaranteed an inmate by the provisions of this Part, shall be done in accordance with section 7075.5 of this Title.

History

Sec. filed June 26, 1976; repealed, new filed May 31, 1988 eff. June 15, 1988; amd. filed May 21, 2019 eff. June 5, 2019.

PART 7028 EXERCISE

Section 7028.1. Policy

Exercise is essential to good health and contributes to reducing tensions within a facility. Pursuant to the requirements of this Part, the chief administrative officer of each correctional facility shall maximize the provision of exercise activities for inmates.

History

Sec. filed Dec. 29, 1977; repealed, new filed Nov. 17, 1987; amd. filed April 16, 1997 eff. May 7, 1997.

Section 7028.2. Exercise periods

(a) All exercise periods shall be held in the outdoor exercise area, except during inclement weather when exercise must be held in the indoor exercise area and may, at the discretion of the chief administrative officer, also be held in the outdoor exercise area. The determination to cancel outdoor exercise due to inclement weather shall be based upon factors related to the safety, security, or good order of the facility including, but not limited to, weather conditions that impair visibility, precipitation, and accumulation of snow or ice. Such determination shall be made by the chief administrative officer in writing and shall state the specific facts and reasons underlying the determination.

(b) All inmates who have completed the classification process pursuant to sections 7013.7 and 7013.8 of this Title, except as otherwise provided in subdivision (c) of this section or section 7028.6 of this Part, shall be entitled to exercise periods which, at the discretion of the chief administrative officer, shall consist of:

(1) at least 1 1/2 hours during each of five days per week; or

(2) at least one hour seven days a week.

(c) For reasons of facility safety and security, inmates who have not yet completed the facility's classification process pursuant to sections 7013.7 and 7013.8 of this Title may be denied exercise. Any denial of exercise pursuant to this subdivision shall be limited to the time required to complete the facility classification process, but in no case shall such denial be for more than five days, excluding weekends and legal holidays.

(d) Incarcerated individuals who do not have access to cell corridors or day rooms because of physical plant limitations or disciplinary actions shall be entitled to an exercise period of at least one hour seven days a week.

(e) For the purposes of compliance with subdivisions (b) and (d) of this section, exercise periods shall commence when all inmates have entered the exercise area and shall conclude when all inmates are instructed to cease exercise activities.

(f) Each facility shall maintain a record of the dates and times when exercise periods are held pursuant to the requirements of this section.

History

Sec. filed Dec. 29, 1977; repealed, new filed Nov. 17, 1987; amds. filed: April 16, 1997; March 22, 2001 eff. April 11, 2001; amd. filed May 21, 2019 eff. June 5, 2019; emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7028.3. Exercise within inmate housing units, cell corridors and day rooms

Any exercise periods taking place within housing units and available cell corridors and day rooms shall not fulfill the requirements of providing exercise periods pursuant to this Part. However, exercise periods taking place in direct supervision housing units shall fulfill the requirements of this Part.

History

Sec. filed Dec. 29, 1977; repealed, new filed Nov. 17, 1987; amds. filed: April 16, 1997; March 24, 1998 eff. April 8, 1998.

Section 7028.4. Exercise areas and equipment

(a) Each facility shall establish and maintain one or more outdoor exercise areas of sufficient size and design to enable inmates to engage in exercise.

(b) Each facility shall provide a minimum total of 1,500 square feet of area for outdoor exercise.

(c) Each facility shall provide inmates upon request with appropriate outer garments when they participate in outdoor exercise from November through March and, if applicable, during inclement weather.

(d) Each facility shall establish and maintain one or more areas of sufficient size and design to enable inmates to engage in indoor exercise.

History

Sec. filed Dec. 29, 1977; repealed, new filed Nov. 17, 1987; amds. filed: April 16, 1997; March 22, 2001 eff. April 11, 2001. Amended (c).

Section 7028.5. Exercise area searches

Searches of exercise areas shall be conducted prior and subsequent to each exercise period.

History

Sec. filed Dec. 29, 1977; repealed, new filed Nov. 17, 1987; amd. filed April 16, 1997 eff. May 7, 1997.

Section 7028.6. Limitation of exercise

(a) The exercise period of a prisoner may be denied, revoked, or limited when it is determined that such exercise period would cause a threat to the safety, security, or good order of the facility, or the safety, security, or health of the prisoner or other prisoners.

(b) Any determination to deny, revoke, or limit a prisoner's exercise period pursuant to this section shall be made by the chief administrative officer in writing, and shall state the specific facts and reasons underlying such determination. A copy of this determination shall be given to the prisoner.

(c) Each inmate shall be free from mechanical restraints during his or her exercise period, unless doing so would cause a threat to the safety, security, or good order of the facility, or the safety, security, or health of the inmate, staff, or other inmates. Any determination to mechanically restrain an inmate during his or her exercise period shall be made by the chief administrative officer in writing, shall state the restraints employed and the specific facts and reasons underlying such determination, and shall be maintained as part of the centralized record required by section 7075.6 of this Part.

History

Sec. filed Dec. 29, 1977; repealed, filed Nov. 17, 1987; new filed April 16, 1997 eff. May 7, 1997; amd. filed May 21, 2019 eff. June 5, 2019.

PART 7030 NONDISCRIMINATORY TREATMENT

Section 7030.1. Policy

Each local correctional facility shall employ policies and procedures designed to ensure that prisoners are not subject to unlawful discriminatory treatment in any facility decisionmaking process, including but not limited to work assignment, classification, disciplinary or grievance decisions or when being considered for any available facility program, including but not limited to educational, religious, vocational or temporary release programs, based upon the race, religion, nationality, sex, sexual orientation including homosexuality, age or political beliefs of such prisoners.

History

Sec. filed Dec. 29, 1977 eff. March 1, 1978.

Section 7030.2. Non-English speaking prisoners

Each local correctional facility shall employ procedures designed to reasonably ensure that non-English speaking prisoners understand all written and oral communications from facility staff members, including but not limited to orientation procedures, health services procedures, facility rules and disciplinary procedures, and the provisions of this Subtitle.

History

Sec. filed Dec. 29, 1977 eff. March 1, 1978.

PART 7031 LEGAL SERVICES

Section 7031.1. Policy

(a) Each prisoner confined in a local correctional facility is entitled to legal services for purposes of:

(1) legal preparation with respect to any civil or criminal action or proceeding; and

(2) except as otherwise provided in subdivision (d) of this section, legal preparation with respect to any other matter, including but not limited to:

(i) disciplinary charges; and

(ii) complaints or grievances.

(b) As used in this Subtitle, legal services shall include access to:

(1) legal counsel;

(2) legal reference materials and supplies;

(3) a notary public; and

(4) other legal assistance.

(c) As used in this Subtitle, the term **legal counsel** shall mean:

(1) any attorney authorized to practice law in New York State or in any jurisdiction where a prisoner has a legal action, proceeding or other legal matter pending; and

(2) a law student, law clerk, or paralegal acting under the supervision of and with the written authorization of an attorney who meets the requirements of paragraph (1) of this subdivision.

(d) Except as otherwise provided in Part 7006 of this Subtitle, in the discretion of the chief administrative officer, prisoners may be entitled to representation by legal counsel at disciplinary proceedings, or other facility decision-making processes.

(e) Legal counsel to which prisoners are entitled or permitted pursuant to the provisions of this Part need not be provided at facility expense.

History

Sec. filed Dec. 15, 1977 eff. Dec. 15, 1977.

Section 7031.2. Access to legal counsel

(a) Consistent with the requirements of this Part, all prisoners shall have access to legal counsel. Such access shall include telephone communications and visits between prisoners and their legal counsel at times not unduly disruptive of facility routine.

(b) Visits or telephone communications between prisoners and their legal counsel shall not be monitored except visually.

(c) Visits or telephone communications between prisoners and their legal counsel shall not be considered compliance with or satisfaction of any:

(1) visitation a prisoner is entitled to pursuant to Part 7008 of this Subtitle or other applicable provisions of law; or

(2) telephone calls a prisoner may be entitled to pursuant to the provisions of any other part of this Subtitle or other applicable provisions of law.

(d) All prisoners shall be entitled to make that number of completed telephone calls necessary to contact and retain legal counsel. Indigent prisoners shall be entitled to make such calls at facility expense.

(e) Except as otherwise provided by law, long distance telephone calls for the purpose of retaining or consulting with legal counsel shall be made collect, except that, in the discretion of the chief administrative officer, arrangements may be made to permit prisoners to bear the cost of such calls or to allow such calls to be made at facility expense.

History

Sec. filed Dec. 15, 1977 eff. Dec. 15, 1977.

Section 7031.3. Mutual prisoner legal assistance

(a) Prisoners shall be permitted to meet for the purpose of discussing and preparing legal matters at times not unduly disruptive of facility routine. The chief administrative officer may establish reasonable guidelines for such mutual prisoner legal assistance.

(b) No prisoner shall receive payment, benefit or consideration in any form from a prisoner for providing such prisoner legal assistance. Any prisoner found to be in violation of the provisions of this subdivision may be subject to disciplinary action.

(c) Consenting prisoners shall be allowed to exchange personal legal materials. Prior to such exchange, the chief administrative officer may require prisoners to consent in writing to the exchange of such legal materials.

History

Sec. filed Dec. 15, 1977 eff. Dec. 15, 1977.

Section 7031.4. Access to legal reference material

(a) Consistent with the requirements of this Part, each local correctional facility shall provide prisoners access to current legal reference materials.

(b) Each local correctional facility shall provide prisoners access to:

(1) New York State Correction Law Annotated;

(2) New York State Penal Law Annotated;

(3) New York State Criminal Procedure Law Annotated;

(4) Title 9 of the Official Compilation of Codes Rules and Regulations of the State of New York Subtitle AA;

(5) a legal dictionary;

(6) form books for use in conjunction with:

(i) New York State Criminal Procedure Law;

(ii) New York State Civil Practice Law and Rules; and

(iii) title 42, sections 1981-1988, and title 18, sections 4001 - 4321, of the United States Code Annotated;

(7) a treatise with respect to:

(i) New York State Civil Practice Law and Rules;

(ii) New York State Penal Law;

(iii) New York State Criminal Procedure Law; and

(iv) actions commenced pursuant to title 42 of the United States Code, section 1983;

(8) a New York State case law digest, or comparable search function of an electronic legal research service, capable of retrieving relevant case law on the topic of:

(i) criminal law; and

(ii) prisoners and prisons;

(9) the United States and New York State Constitutions;

(10) a treatise on prisoner's legal rights and remedies;

(11) New York State Civil Practice Law and Rules Annotated;

(12) title 42 of the United States Code Annotated, sections 1981 -- 1988;

(13) title 18 of the United States Code Annotated, sections 4001 -- 4321; and

(14) a treatise on legal research.

(c) Where one or more legal reference materials set forth in subdivision (b) are not maintained within the facility, or are maintained in a manner that does not permit direct access by a prisoner, the prisoner shall be provided access to a list of such available materials, sufficiently indexed to allow for a competent request by chapter, article, section, etc. Any such resulting request shall be made in writing and shall include the:

(1) name of the requesting prisoner;

(2) date of the request;

(3) name of the facility staff member receiving the request; and

(4) material requested.

(d) Legal reference materials requested pursuant to subdivision (c) of this section shall be made available within three business days of the request. Costs attendant to printing or photocopying such materials shall not be charged to the requesting prisoner.

(e) Each local correctional facility shall additionally provide prisoners access to:

(1) United States Code Annotated;

(2) New York State Consolidated Laws;

(3) reported decisions of the Courts of New York from 1960 to date;

(4) reported decisions of Federal District Courts, Federal Circuit Courts of Appeals, and the United States Supreme Court from 1960 to date;

(5) a Federal case law digest, or comparable search function of an electronic legal research service, capable of retrieving relevant case law;

(6) a New York State case law digest, or comparable search function of an electronic legal research service, capable of retrieving relevant case law;

(7) Shepard's; and

(8) Federal and New York State legal forms.

(f) Prisoner requests for legal reference materials set forth in subdivision (e) shall be made in writing and shall include the:

(1) name of the requesting prisoner;

(2) date of the request;

(3) name of the facility staff member receiving the request; and

(4) material requested.

(g) Legal reference materials requested pursuant to subdivision (f) of this section shall be made available within three business days of the request.

(h) The chief administrative officer may require that requests made pursuant to subdivision (f) of this section include with respect to the material requested:

(1) citations;

(2) section references; or

(3) any other specific delineation of the requested portion of a legal reference volume.

(i) The chief administrative officer may comply with prisoner requests for legal reference material listed in subdivision (e) of this section by:

(1) providing specific volumes of requested legal reference material from a community library or any other source; or

(2) providing photocopies of requested portions of a legal reference volume.

(j) Legal reference material photocopied pursuant to paragraph (i)(2) of this section shall for indigent prisoners be photocopied at facility expense. The costs attendant to photocopying such material for prisoners other than indigent prisoners may, in the discretion of the chief administrative officer, be charged to such prisoners. Legal reference material photocopied at facility expense may be retained by the facility for prisoner use.

(k) With respect to legal reference material requested pursuant to subdivision (f) of this section, the chief administrative officer may establish reasonable limitations on:

(1) the amount of legal reference material prisoners may request at any one time; and

(2) the number of requests for legal reference material a prisoner may make each week.

(l) All prisoners shall be provided access to, and indigent prisoners shall be provided at facility expense, with supplies necessary for the preparation of legal matters, including:

(1) pens or pencils; and

(2) paper.

(m) All prisoners shall be permitted to have access to either black ink pens or typewriters for the purpose of preparing legal documents.

(n) Prisoners shall be permitted to use legal reference materials in any area specifically designated for legal work. If such an area is not available, prisoners shall be permitted to use legal reference material in facility housing areas. In the discretion of the chief administrative officer, prisoners may be permitted to use legal reference materials in both a specifically designated area and in facility housing areas.

(o) The chief administrative officer shall establish written guidelines for the use of all legal reference materials and supplies. Such guidelines shall be designed to ensure that prisoners have sufficient access to such materials and supplies, providing further consideration to prisoners acting pro se with regard to a criminal proceeding or a matter related to the conditions of his or her confinement.

(p) Any prisoner who is found, in accordance with the provisions of Part 7006 of this Subtitle, to have intentionally damaged any legal reference materials or supplies available pursuant to this Part may be subject to disciplinary action including restitution.

History

Sec. filed Dec. 15, 1977 eff. Dec. 15, 1977; amd. filed May 21, 2013 eff. June 5, 2013.

Section 7031.5. Notary public

The services of a notary public or commissioner of deeds shall be made available to prisoners within one business day after a prisoner's request for the notarization or attestation of his signature.

History

Sec. filed Dec. 15, 1977; amds. filed: May 30, 1990; Aug. 18, 1994 eff. Sept. 7, 1994.

Section 7031.6. Limitation on legal services

(a) Except as provided in subdivision (b) of this section, a prisoner's access to legal services shall not be denied, revoked or limited solely as a result of disciplinary action, including a prisoner's:

(1) confinement in an individual housing unit for disciplinary reasons; or

(2) confinement in administrative or punitive segregation.

(b) The chief administrative officer may limit a prisoner's access to facility legal reference materials or supplies when such prisoner has been found to have intentionally damaged any such item.

History

Sec. filed Dec. 15, 1977 eff. Dec. 15, 1977.

PART 7032 GRIEVANCE PROGRAM

Section 7032.1. Policy

In order to provide an effective and impartial procedure for the timely resolution of inmate complaints, the chief administrative officer of each local correctional facility shall establish, implement and maintain a formal inmate grievance program. Every effort shall be made to resolve inmate complaints in an informal manner.

History

Sec. filed Dec. 19, 1989 eff. Jan. 3, 1990.

Section 7032.2. Definitions

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

(a) *Grievanc**e*** shall mean a written inmate complaint concerning either written or unwritten facility policies, procedures, rules, practices, programs or the action or inaction of any person within the facility. Dispositions, surcharges, and sanctions resulting from disciplinary hearings and administrative segregation housing decisions shall not be the subject of a grievance.

(b) *Grievan**t*** shall mean an inmate who has filed a grievance pursuant to this Part.

History

Sec. filed Dec. 19, 1989; amd. filed May 18, 1999 eff. June 2, 1999. Amended (a).

Section 7032.3. Facility policies and procedures

(a) The chief administrative officer of each local correctional facility shall ensure the development and implementation of written policies and procedures consistent with this Part.

(b) Such policies and procedures shall include, but are not limited to:

(1) a detailed description of grievance program operations including steps, timeliness, investigative processes and available internal and external appeal procedures;

(2) staff responsibilities for functions relative to the grievance program;

(3) procedures to ensure grievance program accessibility to inmates;

(4) steps to be taken to encourage staff to informally resolve inmate complaints;

(5) a statement regarding safeguards for inmates against reprisals for having filed a grievance;

(6) procedures for orientation to the grievance program for all facility staff;

(7) procedures for corrective action to be taken when a grievance is found to have merit; and

(8) an annual review of such policies and procedures and revision, if necessary.

History

Sec. filed Dec. 19, 1989 eff. Jan. 3, 1990.

Section 7032.4. Facility program requirements

(a) Any inmate incarcerated in a local correctional facility shall be provided access to the facility's grievance program.

(b) Instructions for filing a grievance shall be included in the facility rules and information as required by section 7002.9(a) (15) of this Chapter.

(c) Each inmate at any facility shall be advised in writing as to the availability of grievance forms upon admission.

(d) Facility staff shall make forms readily available so that an inmate may file a grievance. An inmate must file a grievance within five days of the date of the act or occurrence giving rise to the grievance.

(e) The chief administrative officer of each local correctional facility shall designate a staff member(s) to act as grievance coordinator(s).

(f) The chief administrative officer or his designee shall ensure that each grievance is investigated to the fullest extent necessary by an impartial person who was not personally involved in the circumstances giving rise to the grievance; provided, however, that a grievance that is too vague to understand or fails to set forth supporting evidence or information may be returned to the inmate. Failure to supply sufficient information or evidence within two days shall be cause to deny the grievance.

(g) At a minimum, each investigation of an inmate grievance shall include gathering and assessing the following information:

(1) a description of the facts and issues underlying the circumstances of the grievance;

(2) summaries of all interviews held with the grievant and with all parties involved in the grievance;

(3) copies of pertinent documents; and

(4) any additional relevant information.

(h) Grievances regarding dispositions or sanctions from disciplinary hearings, administrative segregation housing decisions, issues that are outside the authority of the chief administrative officer to control, or complaints pertaining to an inmate other than the inmate actually filing the grievance are not grievable and may be returned to the inmate by the grievance coordinator. Such grievances may not be appealed to the chief administrative officer or the Citizens' Policy and Complaint Review Council.

(i) Within five business days of the receipt of a grievance, the grievance coordinator shall issue a written determination. Such determination shall specify the facts and reasons underlying the coordinator's determination. A copy of such determination shall be provided to the grievant.

(j) Within two business days after receipt of the grievance coordinator's written determination, the grievant may appeal to the chief administrative officer or his designee.

(k) Within five business days after receipt of a grievance appeal, the chief administrative officer shall issue a determination on the grievance appeal and provide a copy of such determination to the grievant.

(l) If the chief administrative officer finds merit in a grievance, he/she shall direct in writing that appropriate remedies or meaningful relief be provided to the grievant and for all others similarly situated.

History

Sec. filed Dec. 19, 1989; amds. filed: June 5, 1995; Sept. 16, 1997 eff. Oct. 1, 1997.

Section 7032.5. Appeal to the Commission of Correction

(a) Within three business days of the receipt of the chief administrative officer's determination, any grievant may appeal any grievance denied by the facility administrator, in whole or in part, to the State Commission of Correction by indicating his/her desire to appeal on the inmate grievance form in the space provided for such purpose.

(b) Within three business days after receipt of the grievant's notice of appeal, the grievance coordinator shall mail, or electronically submit in a manner and form prescribed by the Commission of Correction, the appeal, the accompanying investigation report and all other pertinent documents to the Commission's Citizens' Policy and Complaint Review Council.

(c) The grievance coordinator shall provide the grievant with a receipt indicating the date the appeal was submitted to the Citizens' Policy and Complaint Review Council.

(d)

(1) Except as provided in paragraph (2) of this subdivision, the Citizens' Policy and Complaint Review Council shall issue a written determination to the appeal within 45

business days of receipt, copies of which shall be provided to the grievant, the chief administrative officer and the grievance coordinator. If such determination is in favor of the grievant as a matter of law, the chairperson of the Citizens' Policy and Complaint Review Council shall direct the chief administrative officer to comply with the grievance and provide an appropriate remedy.

(2) The chairperson of the council may issue written determinations to appeals of classes of grievances as determined by the council. Such determinations shall be issued within 10 business days of receipt and copies shall be provided to the grievant, the chief administrative officer, and the grievance coordinator. A copy shall also be given to the members of the council for their review. If such determination is in favor of the grievant as a matter of law, the chairperson of the Citizens' Policy and Complaint Review Council shall direct the chief administrative officer to comply with the grievance and provide an appropriate remedy.

(e) The chief administrative officer shall submit verification of compliance with the Citizens' Policy and Complaint Review Council's determination as directed by such Council. Such verification shall be filed with the grievance.

History

Sec. filed Dec. 19, 1989; amds. filed: June 5, 1995; May 26, 1998 eff. June 10, 1998; amd. filed Oct. 16, 2013 eff. Nov. 6, 2013.

Section 7032.6. Grievance program forms

Each facility shall utilize both an inmate grievance form and an investigation report form as provided by the Commission of Correction.

History

Sec. filed Dec. 19, 1989 eff. Jan. 3, 1990.

Section 7032.7. Continuation and termination of grievances

(a) If a grievant is released or transferred from a facility prior to the resolution of a grievance, the chief administrative officer shall cause a determination to be made on such grievance pursuant to the requirements of this Part.

(b) If the chief administrative officer denies such grievance, he or she shall submit the grievance to the Citizens' Policy and Complaint Review Council as set forth in section 7032.5 of this Part.

History

Sec. filed Dec. 19, 1989 eff. Jan. 3, 1990.

Section 7032.8. Grievance coordinator responsibilities

(a) The grievance coordinator shall act as a liaison between the grievant, the chief administrative officer and the Commission of Correction in all matters that pertain to the inmate grievance program.

(b) For any grievance initially submitted electronically pursuant to section 7032.5(b) of this Part, the Citizen's Policy and Complaint Review Council may issue its determination to the chief administrative officer and grievance coordinator, as required by section 7032.5(b) of this Part, in a similar electronic manner. In such an instance, the grievance coordinator shall print and provide a paper copy of the written determination to the grievant, if still incarcerated in the facility, within one business day.

History

Sec. filed Dec. 19, 1989 eff. Jan. 3, 1990; amd. filed Oct. 16, 2013 eff. Nov. 6, 2013.

Section 7032.9. Assistance to inmates

If a grievant is non-English speaking, illiterate or if the complexity of the issue(s) makes it unlikely that the inmate will be able to adequately present the substance of the grievance, upon the grievant's request the grievance coordinator shall ensure that the grievant is assisted in the preparation of the written grievance and at other stages of the grievance process in which assistance is needed. A grievant may seek the assistance of other inmates with the approval of the chief administrative officer.

History

Sec. filed Dec. 19, 1989 eff. Jan. 3, 1990.

Section 7032.10. Recordkeeping

Each chief administrative officer shall develop a centralized record of all grievances.

History

Sec. filed Dec. 19, 1989; amd. filed Sept. 16, 1997 eff. Oct. 1, 1997.

Section 7032.11. Staff orientation

All facility staff shall receive an orientation to the grievance program.

History

Sec. filed Dec. 19, 1989 eff. Jan. 3, 1990.

Section 7032.12. Applicability

The requirements of this Part shall not apply to local correctional facilities operated in cities with a population of one million or more.

History

Sec. filed Dec. 19, 1989 eff. Jan. 3, 1990.

PART 7033 TRANSFER OF RECORDS

Section 7033.1. Policy

To comply with Correction Law, section 500-b, to afford appropriate precautions for the personal safety and welfare of persons in custody, and to foster the safety, security and good order of the local correctional facility, it is essential that accurate information be available to corrections administrators.

History

Sec. filed: Dec. 28, 1988 as emergency measure, expired 90 days after filing; April 17, 1989 as emergency measure; May 16, 1989 eff. June 6, 1989.

Section 7033.2. Facility policies and procedures

Each correctional facility shall develop and implement policies and procedures consistent with this Part for the exchange of information with other correctional facilities.

History

Sec. filed: Dec. 28, 1988 as emergency measure, expired 90 days after filing; April 17, 1989 as emergency measure; May 16, 1989 eff. June 6, 1989.

Section 7033.3. Definitions

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

(a) *Information source facility* shall mean any correctional facility or health care provider to which a request for inmate records or detailed summaries of inmate medical or psychiatric records is made pursuant to this Part.

(1) Whenever a facility transfers an inmate to another facility, the receiving facility shall be deemed to have made such a request at the time of the transfer.

(2) Material to be provided pursuant to this Part shall be provided at the time of the transfer.

(b) *Receiving facility* shall mean any correctional facility to which an inmate is committed.

(c) *Inmate records* shall mean:

(1) records or information or summaries thereof, except inmate medical and psychiatric records, relevant to fulfilling the requirements of Part 7013 of this Title and section 500-b of the Correction Law. Such information shall include, but is not limited to:

(2) information and records, except inmate medical and psychiatric records, required pursuant to section 601(a) of the Correction Law. Such information shall include, but is not limited to:

(i) a certified copy of the sentence;

(ii) a copy of the probation officer's investigation and report or a detailed statement covering the facts relative to the crime and previous history;

(iii) a copy of the inmate's fingerprint records; and

(iv) reports relating to assaults, or other violent acts, attempts at suicide or escape by the inmate while in the custody of the sending facility.

(d) *Inmate medical and psychiatric records* shall mean any information or record of a medical or psychiatric nature pertaining to an inmate in the possession of a health care provider.

History

Sec. filed: Dec. 28, 1988 as emergency measure, expired 90 days after filing; April 17, 1989 as emergency measure; amd. filed May 16, 1989 eff. June 6, 1989. Added (b)(1)-(2); amended (c)(1).

Section 7033.4. Transfer of inmate records

(a) The chief administrative officer of a receiving facility shall request inmate records necessary and relevant for compliance with Part 7013 of this Title and sections 500-b and 601 of the Correction Law from the chief administrative officer of an information source facility to the extent such sources are relevant and known to the requesting facility.

History

Sec. filed: Dec. 28, 1988 as emergency measure, expired 90 days after filing; April 17, 1989 as emergency measure; May 16, 1989 eff. June 6, 1989.

Section 7033.5. Transfer of detailed summaries of inmate medical and psychiatric records

(a) A receiving facility shall request detailed summaries of inmate medical and psychiatric records necessary and relevant for compliance with this Part or for the timely and effective medical evaluation or treatment of an inmate, from health care providers to the extent such sources are relevant and known of the receiving facility.

(b) Upon such request, the health care provider shall make a detailed summary of all inmate medical and psychiatric records and information in its possession.

(c) Whenever detailed summaries of inmate medical and psychiatric records are requested pursuant to this Part, the information source facility shall send such detailed summaries only to the attention of the facility medical director.

History

Sec. filed: Dec. 28, 1988 as emergency measure, expired 90 days after filing; April 17, 1989 as emergency measure; amd. filed May 16, 1989 eff. June 6, 1989. Amended (a).

Section 7033.6. Confidentiality

(a) Information, however received, pursuant to this Part which is confidential as required by law shall be kept confidential by the party receiving such information and any limitation on the release of such information imposed by law upon any party furnishing the information shall also apply to the party receiving such information.

(b) Any disclosure of confidential material made pursuant to this Part shall be limited to that information which is necessary in light of the reason for disclosure.

(c) The chief administrative officer and the medical director of each local correctional facility shall develop and implement policies and procedures to ensure the safekeeping of all confidential records.

History

Sec. filed: Dec. 28, 1988 as emergency measure, expired 90 days after filing; April 17, 1989 as emergency measure; May 16, 1989 eff. June 6, 1989.

PART 7039 FIRE PREVENTION AND SAFETY

Section 7039.1. Policy

In order to safeguard the lives and property of all occupants within each local correctional facility and to minimize the possibility of fire emergencies or other similar hazards, each facility shall practice proper fire prevention and safety measures.

History

Sec. filed Dec. 15, 1977; repealed, new filed Jan. 22, 1990 eff. Feb. 7, 1990.

Section 7039.2. Policies and procedures

The chief administrative officer of each facility shall develop and implement written policies and procedures to ensure compliance with this Part.

History

Sec. filed Dec. 15, 1977; repealed, new filed Jan. 22, 1990 eff. Feb. 7, 1990.

Section 7039.3. Fire prevention code requirements

Each facility shall comply with all applicable Federal, State and local laws, codes, rules and regulations relating to fire safety and prevention.

History

Sec. filed Dec. 15, 1977; repealed, new filed Jan. 22, 1990; amds. filed: Nov. 19, 1996; Oct. 21, 2005 eff. Nov. 9, 2005.

Section 7039.4. Fire and safety inspections

The chief administrative officer of each facility shall request the appropriate authority having code enforcement jurisdiction to conduct an annual fire and safety inspection. A copy of the report based on such inspection together with a detailed statement of steps taken or to be taken to correct any deficiencies set forth in such report shall be maintained on file.

History

Sec. filed Dec. 15, 1977; repealed, new filed Jan. 22, 1990; amd. filed Nov. 19, 1996 eff. Dec. 4, 1996.

Section 7039.5. Fire prevention and safety practices and training

(a) The chief administrative officer of each local correctional facility shall appoint one or more staff members to conduct regular inspections of all areas of the facility to determine whether a fire hazard exists and shall take the necessary action to remove such hazard.

(b) Such inspections shall be conducted at weekly intervals or more frequently in the discretion of the chief administrative officer, and the results of such inspections shall be entered in a facility log maintained for this purpose.

(c) Prior to assuming such duties, such appointed staff members(s) shall have successfully completed a fire protection seminar approved by the Office of Fire Prevention and Control.

History

Sec. filed Dec. 15, 1977; repealed, new filed Jan. 22, 1990; amd. filed Nov. 19, 1996 eff. Dec. 4, 1996. Amended (a) and (c).

PART 7040 MAXIMUM FACILITY CAPACITY

Section 7040.1. Policy

In order to promote a safe, secure, and healthy correctional environment, there shall be a limit on the total number of inmates confined at any given time within each local correctional facility.

History

Sec. filed Dec. 29, 1977; repealed, new filed: June 20, 1989 as emergency measure; Aug. 29, 1989 eff. Sept. 13, 1989.

Section 7040.2. Definition

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

(a) *Maximum facility capacity* shall mean the greatest number of 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.

History

Sec., filed Dec. 29, 1977; repealed, new filed: June 20, 1989 as emergency measure; Aug. 29, 1989 eff. Sept. 13, 1989; amd. filed Jan. 26, 2021 eff. Feb. 10, 2021.

Section 7040.3. Facility population limitation

The total number of inmates confined within each correctional facility shall not exceed the maximum facility capacity of such facility.

History

Sec. filed Dec. 29, 1977; repealed, new filed: June 20, 1989 as emergency measure; Aug. 29, 1989 eff. Sept. 13, 1989.

Section 7040.4. Individual occupancy housing units

(a) Except as otherwise provided in section 7040.6(a) of this Part, each individual occupancy housing unit shall contain at least 60 square feet of floor space; however, an individual occupancy housing unit may contain less than 60 square feet of floor space if such unit was originally constructed for single occupancy prior to the effective date of this Part.

(b) Each individual occupancy housing unit shall contain:

(1) one bed and mattress;

(2) one functioning toilet; and

(3) one functioning sink.

(c) Sufficient showers shall be available to permit each inmate to shower daily, pursuant to the requirements of section 7005.2 of this Title.

(d) Each individual occupancy housing unit shall house only one inmate.

(e) Each tier or section of individual occupancy housing units constructed after the effective date of this Part shall provide dayroom space adjacent and accessible to such tier or section.

(f) Despite the requirement of subdivision (b) of this section that each individual occupancy housing unit contain one functioning toilet and sink, a toilet and sink may be deliberately rendered nonfunctioning when the chief administrative officer determines that doing so is necessary to preserve the safety, security, or good order of the facility, or the safety, security, or health of the inmate, staff or other inmates. Any such determination shall be made by the chief administrative officer in writing, shall state the specific facts and reasons underlying the determination, shall provide that dates and times the determination was in effect, and shall be maintained as part of the centralized record required by section 7075.6 of this Part. In any such instance, the toilet shall be flushed, and the inmate shall have brief access to a functioning sink, at intervals not to exceed two hours.

(g) Any determination made pursuant to subdivision (f) of this section shall be reviewed by the chief administrative officer at intervals not to exceed 24 hours. Following each such review, the chief administrative officer shall document, in writing, whether such determination shall continue or cease, and state the specific facts and reasons underlying the continuance or termination.

History

Sec. filed Dec. 29, 1977; repealed, new filed: June 20, 1989 as emergency measure; Aug. 29, 1989; amd. filed March 24, 1998 eff. April 8, 1998; amd. filed May 21, 2019 eff. June 5, 2019.

Section 7040.5. Multiple occupancy housing units

(a) Each multiple occupancy housing unit shall provide a minimum of 50 square feet of floor space per inmate in the sleeping area, except as otherwise provided in section 7040.6(b) of this Part.

(b) Each multiple occupancy housing unit shall house no more than 60 inmates.

(c) Each multiple occupancy housing unit shall have a bed and mattress for each inmate and have available:

(1) at least one functioning toilet for every 12 inmates;

(2) at least one functioning shower for every 15 inmates; and

(3) at least one functioning sink for every 12 inmates.

(d) Each multiple occupancy housing unit shall provide dayroom space immediately adjacent and accessible to the sleeping area.

(e) Despite the requirement of subdivision (c) of this section that each multiple occupancy housing unit contain one functioning toilet and sink for every 12 inmates, a toilet and sink may be deliberately rendered nonfunctioning when the chief administrative officer determines that doing so is necessary to preserve the safety, security, or good order of the facility, or the safety, security, or health of the inmate, staff or other inmates. Any such determination shall be made by the chief administrative officer in writing, shall state the specific facts and reasons underlying the determination, shall provide that dates and times the determination was in effect, and shall be maintained as part of the centralized record required by section 7075.6 of this Part. In any such instance, the toilet shall be flushed, and the inmate shall have brief access to a functioning sink, at intervals not to exceed two hours.

(f) Any determination made pursuant to subdivision (e) of this section shall be reviewed by the chief administrative officer at intervals not to exceed 24 hours. Following each such review, the chief administrative officer shall document, in writing, whether such determination shall continue or cease, and state the specific facts and reasons underlying the continuance or termination.

History

Sec. filed Dec. 29, 1977; repealed, new filed: Sept. 13, 1983; June 20, 1989 as emergency measure; Aug. 29, 1989; amds. filed: March 22, 1994; Feb. 24, 1998; Oct. 5, 1998 eff. Oct. 21, 1998; amd. filed May 21, 2019 eff. June 5, 2019.

Section 7040.6. Medical housing units and treatment areas

(a) Each individual occupancy housing unit used to house inmates apart from the general population for purposes of medical observation or treatment shall have a minimum of 80 square feet of floor space.

(b) Each multiple occupancy housing unit used to house inmates apart from general population for purposes of medical observation or treatment shall have a minimum of 80 square feet of floor space per inmate in the sleeping area.

History

Sec. filed: June 20, 1989 as emergency measure; Aug. 29, 1989 eff. Sept. 13, 1989.

Section 7040.7. Formulating maximum facility capacity

(a) Consistent with the requirements of this Part, the commission shall formulate in writing the maximum facility capacity of each correctional facility.

(b) In formulating the maximum facility capacity of a facility, the commission shall determine the maximum number of 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 special housing;

(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 special housing; 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 Title which are related to facility capacity.

(c) Upon determination of the maximum facility capacity of each correctional facility, the commission shall forward a written copy of such determination to the chief administrative officer of such facility.

(d) Within 60 days after receipt of such determination, the chief administrative officer of such facility may appeal for a revision to the maximum facility capacity formulation.

(e) Any such appeal shall be made in writing and include the specific facts, reasons, or special circumstances underlying the appeal.

(f) The commission shall respond to such appeal within 60 days after its receipt and shall either sustain or amend its original formulation.

(g) The commission's determination shall be made in writing and shall state the specific facts and reasons underlying its decision. A copy of such determination shall be forwarded to the chief administrative officer.

History

Sec. filed: June 20, 1989 as emergency measure; Aug. 29, 1989 eff. Sept. 13, 1989; amd. filed Jan. 26, 2021 eff. Feb. 10, 2021; amd. filed Feb. 26, 2025 eff. March 19, 2025 (Register dated March 19, 2025).

Section 7040.8. Applying for a change in maximum facility capacity

(a) Upon a change in any of the factors delineated in subdivision (b) of section 7040.7 of this Part, the chief administrative officer may apply to the commission for a revision of the maximum facility capacity.

(b) Such application shall be made in writing and include the specific facts, reasons, or special circumstances underlying the request.

(c) Within 60 days after receipt, the commission shall review such application and forward its determination in writing to the chief administrative officer.

History

Sec. filed: June 20, 1989 as emergency measure; Aug. 29, 1989 eff. Sept. 13, 1989.

PART 7041 STAFFING REQUIREMENTS

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 incarcerated individuals and to perform all other necessary facility functions. In no case shall the number of such persons able and present during a regularly scheduled shift be less than the required post complement as determined by the State Commission of Correction in accordance with the provisions of this Part.

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

History

Sec. filed Dec. 29, 1977 eff. March 1, 1978; amd. filed Feb. 26, 2025 eff. March 19, 2025 (Register dated March 19, 2025).

Section 7041.2. Facility functions and formulation of required post complement

(a) The State Commission of Correction shall, in determining the 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, admissions/orientation housing, and medical/mental health observation supervision;

(5) medical services;

(6) visitation;

(7) correspondence;

(8) exercise;

(9) facility maintenance;

(10) library;

(11) commissary;

(12) religious services;

(13) incarcerated individual transportation; and

(14) any other facility program or service.

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

(1) the physical plant of the facility;

(2) the maximum facility capacity established pursuant to Part 7040 of this Title; 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 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. The determination shall additionally identify any posts or functions that may be left unstaffed due to unpopulated housing areas or other specified criteria.

History

Sec. filed Dec. 29, 1977; amd. filed Oct. 21, 2005 eff. Nov. 9, 2005. Amended (a)(8); amd. filed Jan. 26, 2021 eff. Feb. 10, 2021; amd. filed Feb. 26, 2025 eff. March 19, 2025 (Register dated March 19, 2025).

Section 7041.3. 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 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 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.

History

Sec. filed Dec. 29, 1977 eff. March 1, 1978; rep. and new added filed Feb. 26, 2025 eff. March 19, 2025 (Register dated March 19, 2025).

Section 7041.4

History

Sec. filed Dec. 29, 1977 eff. March 1, 1978; rep. filed Feb. 26, 2025 eff. March 19, 2025 (Register dated March 19, 2025).

PART 7050 VARIANCES

Section 7050.1. Policy

(a) The chief administrative officer of a local correctional facility may apply to the State Commission of Correction for a variance when:

(1) full compliance with a specific rule or regulation of this Subtitle or any provision thereof cannot be achieved or maintained by or subsequent to the effective date of such rule or regulation; or

(2) compliance is to be achieved in a manner other than that which is specified in such rules and regulations.

(b) The State Commission of Correction may grant a variance only upon a determination that:

(1) full compliance with a specific rule or regulation of this Subtitle or a provision thereof would create extreme practical difficulties or excessive hardships as a result of circumstances which are unique to a particular local correctional facility; or

(2) compliance is to be achieved in an alternative manner sufficient to meet the intent of such rule or regulation.

History

Sec. filed July 27, 1977 eff. Aug. 1, 1977.

Section 7050.2. Application for a variance

(a) Any application for a variance shall be made in writing by the chief administrative officer and shall state:

(1) the specific rule, regulation or provision thereof at issue;

(2) when the application is made pursuant to section 7050.1(a)(1) of this Part for a variance from full compliance with a specific rule or regulation, the specific plans, provisions and timetables for achieving full compliance with the rule or regulation at issue and any other appropriate supportive material; or

(3) when the application is made pursuant to section 7050.1(a)(2) of this Part for a variance, in that compliance is to be achieved in a manner other than that which is specified in the provisions of this Subtitle, specific plans fully explaining and supporting such alternative manner of compliance; and

(4) where applicable, the time period for which the variance is requested.

History

Sec. filed July 27, 1977 eff. Aug. 1, 1977.

Section 7050.3. Review of application for a variance

(a) The State Commission of Correction shall issue a written determination upon any application made pursuant to this Part. Such written determination shall include the specific facts and reasons underlying the determination. If the variance is granted, the New York State Commission of Correction shall stipulate:

(1) where applicable, the time period for which the variance is granted; and

(2) any requirements imposed by the State Commission of Correction as conditions upon the variance.

(b) The State Commission of Correction shall issue the written determination required pursuant to subdivision (a) of this section within 30 days after receipt of an application for a variance made pursuant to this Part.

History

Sec. filed July 27, 1977 eff. Aug. 1, 1977.

PART 7051 FUNERAL AND DEATHBED VISITS

Section 7051.1. Policy

Pursuant to Correction Law, section 509, in order to provide inmates incarcerated in local correctional facilities the opportunity to visit family members when death is imminent and/or after death has occurred, at the discretion of the chief administrative officer, inmates shall be permitted to visit the deathbed of and/or attend the funeral of designated family members pursuant to the requirements of this Part.

History

Sec. filed: Nov. 2, 1987 as emergency measure; Dec. 15, 1987 as emergency measure; Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7051.2. Definitions

As used in this Part, the term *funeral visit* shall mean attendance at one or more of the following at the discretion of the chief administrative officer:

(a) the wake;

(b) the church or other appropriate memorial service held at the gravesite or any other location; and/or

(c) the interment.

History

Sec. filed: Nov. 2, 1987 as emergency measure; Dec. 15, 1987 as emergency measure; Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7051.3. Facility policies and procedures

Each local correctional facility shall develop written policies and procedures concerning funeral and deathbed visits consistent with Correction Law, section 509, and the requirements of this Part.

History

Sec. filed: Nov. 2, 1987 as emergency measure; Dec. 15, 1987 as emergency measure; Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7051.4. Legal requirements and eligibility

(a) At the discretion of the chief administrative officer, an inmate shall be permitted to attend the funeral of his/her father, mother, guardian or former guardian, child, brother, sister, husband, wife, grandparent, grandchild, ancestral uncle or ancestral aunt, or to visit such individual during his/her illness if death be imminent.

(b) Such visits shall be permitted only within New York State.

History

Sec. filed: Nov. 2, 1987 as emergency measure; Dec. 15, 1987 as emergency measure; Jan. 19, 1988; amds filed: July 27, 1989 as emergency measure; Oct. 17, 1989 eff. Nov. 1, 1989.

Section 7051.5. Assessment and processing of visit requests

(a) The chief administrative officer of each local correctional facility shall develop and implement a procedure for the expeditious review, assessment and approval of requests made by an inmate or other person asking that an inmate be permitted to visit the deathbed of and/or attend the funeral of a designated family member.

(b) Prior to approving any such request, the chief administrative officer shall verify:

(1) that the person to be visited is one of the persons specified in section 7051.4(b) of this Part;

(2) that the funeral arrangements or claim of imminent death are legitimate; and

(3) that the inmate wishes to have such a visit, if the request was initiated by another person.

(c) Prior to approving such visit, the chief administrative officer shall assess the potential security risk associated with the visit by considering, at a minimum, the following factors:

(1) offense for which the inmate is incarcerated and circumstances surrounding the offense;

(2) criminal history of the inmate, including a history of escape or attempted escape;

(3) whether the inmate's presence at the visit may constitute a threat to the inmate or any other person present because of:

(i) the involvement of a member of the inmate's family in the offense committed by the inmate; and/or

(ii) other persons who may be present at the funeral or deathbed visit;

(4) mental stability of the inmate, including the inmate's mental health history and the potential effect of the visit on the inmate;

(5) medical condition of the inmate;

(6) method of transport or escort required; and

(7) any other relevant circumstances specific to the inmate or situation.

(d) After considering the factors specified in subdivision (c) of this section, the chief administrative officer shall approve or deny the visit. Such determination shall be made as soon as possible given the circumstances surrounding the funeral or deathbed visit.

(e) After such determination has been made, the inmate and/or other person requesting the visit shall be immediately informed of the decision.

(f) If the visit is denied, the inmate and/or other person requesting the visit shall be:

(1) informed in writing of the facts and circumstances surrounding the denial; and

(2) given an opportunity to respond to the chief administrative officer concerning the determination within 24 hours.

(g) At the discretion of the chief administrative officer, an inmate may be permitted both to visit the deathbed of and to attend the funeral of those persons with whom inmates are authorized to visit pursuant to section 7051.4(b) of this Part.

History

Sec. filed: Nov. 2, 1987 as emergency measure; Dec. 15, 1987 as emergency measure; Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7051.6. Security and supervision requirements

(a) Consistent with the requirements of section 7003.7(a) of this Title, an inmate shall be under constant supervision at all times during his/her absence from the facility due to a funeral or deathbed visit, unless such inmate is participating in a release program pursuant to Correction Law, articles 22-A and 27.

(b) Based on the factors to be considered pursuant to section 7051.5(c) of this Part, prior to any such visit the chief administrative officer shall determine and specify in writing the specific security measures and/or other special instructions to be followed during the visit.

(c) Such written determination shall include, but need not be limited to, the following information:

(1) the appropriate number of facility staff who will be assigned to accompany the inmate on the visit;

(2) the vehicle to be used and method of transportation;

(3) if restraint equipment is to be used, the type of equipment to be employed and procedures, if any, for removing restraints while the visit is taking place;

(4) special procedures which are necessary due to the medical condition or mental health of the inmate and the specific steps to be followed;

(5) the route to be followed and itinerary for the trip; and

(6) any other special instructions concerning the visit.

(d) Prior to the funeral or deathbed visit, facility staff assigned to supervise such visit shall be thoroughly briefed concerning such security measures and special instructions and shall be given all pertinent information regarding the family and circumstances surrounding the visit.

(e) Prior to the funeral or deathbed visit, the inmate shall be thoroughly instructed regarding forbidden conduct during the visit and, if appropriate, advised concerning the use of restraints.

(f) At least one facility staff member accompanying the inmate on a funeral or deathbed visit shall be the same sex as the inmate.

(g) Facility staff assigned to accompany an inmate on a funeral or deathbed visit shall adhere to security and supervision requirements regarding transportation of inmates as specified in Part 7003 of this Title.

(h) Facility staff shall only escort an inmate to destinations approved by the chief administrative officer for the trip.

(i) During a funeral or deathbed visit, no inmate shall be permitted to obtain food, beverages or any gifts, including money, from his/her family or any member of the public.

History

Sec. filed: Nov. 2, 1987 as emergency measure; Dec. 15, 1987 as emergency measure; Jan. 19, 1988 eff. Feb. 3, 1988. Amended (d).

Section 7051.7. Food, lavatory and lodging stops

(a) Inmates participating in funeral or deathbed visits shall be given the opportunity to eat during regularly scheduled meal times.

(b) Lavatory stops shall be made only as the need arises and as security permits. Whenever possible, such stops shall be made at law enforcement facilities.

(c) If it is not possible to utilize a law enforcement facility for lavatory stops, every attempt shall be made to utilize facilities with as little public presence and/or access as possible.

(d) If a funeral or deathbed visit requires an inmate's absence from a facility overnight, the inmate shall be housed in a local correctional facility or other suitable place designated pursuant to Correction Law, section 504.

History

Sec. filed: Nov. 2, 1987 as emergency measure; Dec. 15, 1987 as emergency measure; Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7051.8. Facility staff conduct and inmate attire

(a) While accompanying an inmate on a funeral or deathbed visit, facility staff shall conduct themselves in a professional and courteous manner toward the public and the inmate in their custody, causing as little public display as possible.

(b) When security considerations permit, searches of the inmate and/or the use of restraint by facility staff during funeral or deathbed visits shall be carried out in a manner which minimizes any public attention.

(c) At no time shall facility staff accept food, beverages or any gifts, including money, from the inmate's family or any member of the public pursuant to Part 7019 of this Title.

(d) Inmates shall be permitted to wear their own personal clothing during funeral or deathbed visits. If the inmate has no suitable clothing at the facility, the inmate shall be permitted to make arrangements to receive such clothing prior to the visit.

History

Sec. filed: Nov. 2, 1987 as emergency measure; Dec. 15, 1987 as emergency measure; Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7051.9. Duration of visits

(a) Except as otherwise provided in subdivisions (b) and (c) of this section, inmates attending a deathbed or funeral visit shall be permitted to visit family members for a minimum of 30 minutes per visit, excluding time taken to transport the inmate to and from the visit. However, at the discretion of the chief administrative officer or facility staff supervising an inmate on such a visit, a longer visit may be permitted.

(b) If a determination is made by the attending physician or other health services staff that a deathbed visit would jeopardize the health of the ill family member or the inmate and/or if

hospital regulations restrict the length of the visit, such visit may be denied or modified as so recommended or required.

(c) The chief administrative officer or designated facility staff shall have the authority to limit such visit to less than 30 minutes or terminate such visit before the prescribed period if, in their opinion, a 30-minute visit will threaten the safety or welfare of the inmate, facility staff or any member of the public.

History

Sec. filed: Nov. 2, 1987 as emergency measure; Dec. 15, 1987 as emergency measure; Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7051.10. Reportable incidents

If a reportable incident occurs while an inmate is absent from the facility to attend a funeral or deathbed visit, facility staff shall report such incident to the Commission of Correction pursuant to the requirements of Part 7022 of this Title.

History

Sec. filed: Nov. 2, 1987 as emergency measure; Dec. 15, 1987 as emergency measure; Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7051.11. Records

A written record of all requested funeral and deathbed visits shall be maintained by each local correctional facility.

History

Sec. filed: Nov. 2, 1987 as emergency measure; Dec. 15, 1987 as emergency measure; Jan. 19, 1988; amd. filed Aug. 20, 1996 eff. Sept. 4, 1996. Repealed (b).

PART 7063 CHEMICAL AGENTS

Section 7063.1. Policy

The use of chemical agents in a correctional facility shall be controlled and reasonably applied only when necessary to protect the safety, security and good order of the facility. Chemical agents used appropriately by trained facility staff under certain conditions have proven to be an effective method in preventing the loss of authority without resorting to physical contact or deadly physical force.

History

Sec. filed Dec. 29, 1977; repealed, new filed Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7063.2. Authorized chemical agents

(a) The only chemical agents which shall be stored or used in a correctional facility shall be oleoresin capsicum (OC), chloroacetophenone (CN) and orthochlorobenzalmalonitrile (CS).

(b) Chemical agents shall be administered only by the use of grenades, projectiles, aerosols and fogging devices approved by the chief administrative officer.

(c) Devices such as tear gas billies, pens or other small caliber devices of similar design shall be strictly prohibited.

History

Sec. filed Dec. 29, 1977; repealed, new filed Jan. 19, 1988; amd. filed Aug. 3, 1992 eff. Aug. 19, 1992. Amended (a).

Section 7063.3. Authorization for the use of chemical agents

(a) No chemical agents shall be used by facility staff without proper authorization pursuant to the requirements of this section.

(b) Authorization for the use of chemical agents shall emanate from the highest authority available within the facility. Except as otherwise provided in subdivision (c) of this section, only facility staff in a supervisory position who have been designated in writing by the chief administrative officer and have been trained in the use of chemical agents shall have the authority to order the use of such agents.

(c) In emergency cases, when a delay in the use of chemical agents presents an immediate threat of death or serious injury or severely threatens the safety or security of the correctional facility, facility staff trained in the use of chemical agents shall have the authority to use chemical agents without authorization.

History

Sec. filed Dec. 29, 1977; repealed, new filed Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7063.4. Use of chemical agents

(a) Chemical agents shall not be used as a means of punishment.

(b) The use of any chemical agent shall be supervised by a supervisory staff member who has been trained in the use of chemical agents, except in emergency cases when a delay in the use of such agents presents an immediate threat of death or serious injury or severely threatens the safety or security of the facility.

(c) Prior to the use of chemical agents, the person authorizing such use shall notify facility health services staff, except in emergency cases when a delay in the use of such agents presents and immediate threat of death or serious injury or severely threatens the safety or security of the facility.

(d) Prior to the use of chemical agents, facility health services staff who are trained in the medical consequences of the use of such agents shall make reasonable efforts to inform the authorizing officer whether such administration may aggravate any existing injuries, illnesses or other physical conditions of any person who may be exposed.

(e) Prior to the use of chemical agents, facility staff shall consider:

(1) the safety hazards such agents can produce when used under certain conditions for certain periods of time in enclosed areas;

(2) the safety hazards presented by the use of burning-type grenades and projectiles in the vicinity of combustible materials; and

(3) the distinctive characteristics of each type of agent and how these characteristics will affect the situation for which they are being considered for use.

(f) Information pertaining to the requirements of this section shall be included in the training program required pursuant to section 7063.5 of this Part.

(g) No chemical agent shall be used on any person if a determination has been made pursuant to subdivision (d) of this section that the use of such agent may aggravate any existing injuries, illnesses or other physical conditions of any recipient, unless such use is reasonable to prevent death, serious injury or a serious threat to the safety or security of the facility.

(h) Whenever possible, prior to the use of any chemical agent, all reasonable efforts shall be made to evacuate all persons for whom the administration of such agent is not intended.

(i) Whenever possible, prior to the use of any chemical agent, such use shall be announced to the inmates for whom the administration of such agent is intended.

(j) In all cases of exposure to any chemical agent, facility health services staff shall examine and treat all persons exposed to such chemical agent as soon as possible. Treatment for exposure shall begin with those persons most seriously affected.

(k) All facility health services staff shall be properly trained in the treatment of persons exposed to chemical agents.

(l) Appropriate decontamination of persons and area cleanup procedures shall be completed as soon as possible after the use of any chemical agent.

(m) No chemical agent munitions or devices shall be used after they have passed the predetermined expiration date established by the manufacturer.

History

Sec. filed Dec. 29, 1977; repealed, new filed Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7063.5. Training in the use of chemical agents

(a) All facility staff who have the authority to order the use of chemical agents pursuant to section 7063.3 of this Part, supervise such use pursuant to section 7063.4 of this Part or use such agents shall have successfully completed a chemical agents training program approved by the commission.

(b) Such training program shall incorporate accepted practices in the use of chemical agents and shall be submitted to the commission for approval before delivery to facility staff.

(c) All facility staff who have the authority to order the use of chemical agents pursuant to section 7063.3 of this Part, supervise such use pursuant to section 7063.4 of this Part or use such agents shall also receive additional commission-approved training on an annual basis to ensure continued proficiency in chemical agent issues.

History

Sec. filed Dec. 29, 1977; repealed, new filed Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7063.6. Storage and maintenance of chemical agents

(a) All chemical agent equipment, munitions or devices stored within a facility shall be maintained in a safe and secure manner. Such storage shall ensure that only persons trained in the use of such articles have access to them.

(b) Equipment, munitions and devices which exclusively contain or administer oleoresin capsicum (OC) shall be inspected at intervals not to exceed six months. Inspections of all other

such equipment, munitions or devices shall be conducted at intervals not to exceed three months.

(c) A written record of all such inspections shall be maintained which shall include, but need not be limited to:

(1) the name of the person(s) inspecting the articles;

(2) the date of inspection;

(3) the type and quantity of articles stored and inspected; and

(4) a description of their condition.

(d) Munitions and devices which have passed their predetermined expiration date shall be stored separately from the useful stock.

(e) Such munitions and devices shall be disposed of in compliance with accepted practices or used for training purposes only.

History

Sec. filed Dec. 29, 1977; repealed, new filed Jan. 19, 1988 eff. Feb. 3, 1988; amd. filed April 19, 2011 eff. May 4, 2011.

Section 7063.7. Recording the use of chemical agents

(a) A written record of all incidents of chemical agent use, except when such agents are used for training purposes, shall be maintained.

(b) Such record shall include, but need not be limited to:

(1) the date and time of use;

(2) the location of the incident within the facility;

(3) the facts and circumstances surrounding the use of the agent;

(4) the name of the person authorizing the use of the agent;

(5) the name(s) of any person(s) on whom the agent was used;

(6) the name(s) of any facility staff involved in the use of the agent;

(7) the brand name of the agent used;

(8) the approximate amount of agent used;

(9) the approximate length of time each person was exposed to the agent from the use of the agent to initiation of decontamination procedures;

(10) the name and professional title of facility health services staff providing medical advice and assistance pursuant to the requirements of section 7063.4(d) of this Part and any treatment provided; and

(11) any adverse physical reactions of any person(s) to the use of the agent.

History

Sec. filed Jan. 19, 1988 eff. Feb. 3, 1988.

PART 7064 HUMAN IMMUNODEFICIENCY VIRUS AND AIDS-RELATED INFORMATION CONFIDENTIALIY

Section 7064.1. Policy

Recognizing that maximum confidentiality protection for information related to human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome (AIDS) is an essential public health measure and that HIV infection and AIDS issues are of particular concern to correctional professionals, and in order to retain the full trust and confidence of persons at risk, each correctional facility shall ensure that HIV-related information is not improperly disclosed, shall establish clear and certain rules for the disclosure of such information, and provide safeguards to prevent discrimination, abuse, or other adverse actions directed toward protected individuals.

History

Sec. filed: April 24, 1989 as emergency measure; July 18, 1989 as emergency measure; Aug. 29, 1989 as emergency measure; Sept. 26, 1989 as emergency measure; Oct. 3, 1989 eff. Oct. 24, 1989.

Section 7064.2. Definitions

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

(a) *HIV infection* means infection with the human immoundeficiency virus or any other related virus identified as a probable causative agent of AIDS.

(b) *HIV-related illness* means any clinical illness that may result from or be associated with HIV infection.

(c) *HIV-related test* means any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent whatsoever thought to cause or to indicate the presence of HIV infection.

(d) *Capacity to consent* means an individual's ability, determined without regard to such individual's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure, and to make an informed decision concerning such service, treatment or procedure.

(e) *Protected individual* means a person who is the subject of an HIV-related test or who has been diagnosed as having HIV infection, AIDS- or HIV-related illness.

(f) *Confidential HIV-related information* means any information, in the possession of a person who provides health or social services or who obtains the information pursuant to a release of confidential HIV-related information, concerning whether an individual has been the subject of an HIV-related test, or has HIV infection, HIV-related illness or AIDS, or information which

identifies or reasonably could identify an individual as having one or more of such conditions, including information pertaining to such individual's contacts.

(g) *Health* or *social service* means any public or private care, treatment, clinical laboratory test, counseling or educational service for adults or children, and acute, chronic, custodial, residential, outpatient, home or other health care; public assistance, employment-related services, housing services, foster care, shelter, protective services, day care, or preventive services; services for the mentally disabled, probation services, parole services, correctional services; and detention and rehabilitative services, all as defined in section 2780(8) of the Public Health Law, and including local correctional facilities.

(h) *Health facility* means a hospital as defined in section 2801 of the Public Health Law, blood bank, blood center, sperm bank, organ or tissue bank, clinical laboratory, or facility providing care or treatment to persons with a mental disability.

(i) *Health care provider* means any physician, nurse, provider of services for the mentally disabled or other person involved in providing medical, nursing, counseling, or other health care or mental health service including those associated with, or under contract to, a health maintenance organization or medical services plan; including local correctional facility medical service providers.

(j) *Contact* means an identified spouse or sex partner of the protected individual or a person identified as having been exposed to infected blood or semen from the protected individual.

(k) *Person* includes any natural persons, partnership, association, joint venture, trust, public or private corporation or State or local government agency.

History

Sec. filed: April 24, 1989 as emergency measure; July 18, 1989 as emergency measure; Aug. 29, 1989 as emergency measure; Sept. 26, 1989 as emergency measure; Oct. 3, 1989 eff. Oct. 24, 1989.

Section 7064.3. Facility policies and procedures

(a) The medical director of each local correctional facility in conjunction with the chief administrative officer shall develop and implement written policies and procedures consistent with the requirements of this Part and article 27-of the Public Health Law.

(b) Such policies and procedures shall include, but are not limited to, the following:

(1) safeguards to prevent discrimination, abuse, or other adverse actions against protected individuals;

(2) provisions establishing a schedule for training all facility staff regarding the requirements of Public Health Law, article 27-F and this Part;

(3) provisions for safeguarding the confidentiality of all medical records and information concerning HIV testing or HIV-related information as required by Public Health Law, article 27-F and this Part;

(4) provisions specifically setting forth those persons having access to HIV testing and HIV-related information when such access is necessary for appropriate medical or psychiatric diagnosis or treatment;

(5) provisions for handling requests by other parties for confidential HIV-related information; and

(6) provisions to protect individuals in contact with protected individuals when such contact creates a significant risk of contracting or transmitting HIV infection through the exchange of body fluids, as provided for in section 7064.4 of this Part.

History

Sec. filed: April 24, 1989 as emergency measure; July 18, 1989 as emergency measure; Aug. 29, 1989; Sept. 26, 1989 as emergency measure; Oct. 3, 1989 eff. Oct. 24, 1989.

Section 7064.4. Significant risk of contracting or transmitting HIV infection

(a) The three factors necessary to create a significant risk of contracting or transmitting HIV infection are:

(1) the presence of a significant risk body substance;

(2) a circumstance which constitutes significant risk for transmitting or contracting HIV infection; and

(3) the presence of an infectious source and a noninfected person.

(b) *Significant risk body substances* are blood, semen, vaginal secretions, breast milk, tissue and the following body fluids: cerebrospinal, amniotic, peritoneal, synovial, pericardial, and pleural.

(c) Circumstances which constitute “significant risk of transmitting or contracting HIV infection” are:

(1) sexual intercourse (vaginal, anal, oral) which exposes a noninfected individual to blood, semen or vaginal secretions of an infected individual;

(2) sharing of needles and other paraphernalia used for preparing and injecting drugs between infected and noninfected individuals;

(3) the gestation, birthing or breast feeding of an infant when the mother is infected with HIV;

(4) transfusion or transplantation of blood, organs, or other tissues from an infected individual to an uninfected individual, providing such blood, organs or other tissues have not tested negatively for antibody or antigen and have not been rendered noninfective by heat or chemical treatment; and

(5) other circumstances not identified in paragraphs (1)-(4) of this subdivision during which a significant risk body substance (other than breast milk) of an infected individual contacts mucous membranes (e.g., eyes, nose, mouth), nonintact skin (e.g., open wound, skin with a dermatitis condition, abraded areas) or the vascular system of a noninfected person. Such circumstances include, but are not limited to needlestick or puncture wound injuries and direct saturation or permeation of these body surfaces by the infectious body substance.

(d) Circumstances that involve “significant risk” shall not include:

(1) exposure to urine, feces, sputum, nasal secretions, saliva, sweat, tears or vomitus that does not contain blood that is visible to the naked eye;

(2) human bites where there is no direct blood-to-blood, or blood-to-mucous membrane contact;

(3) exposure of intact skin-to-blood or any other body substance; or

(4) occupational settings where individuals use scientifically accepted barrier techniques and preventive practices in circumstances which would otherwise pose a significant risk.

History

Sec. filed: April 24, 1989 as emergency measure; July 18, 1989 as emergency measure; Aug. 29, 1989 as emergency measure; Sept. 26, 1989 as emergency measure; Oct. 3, 1989; amd. filed March 24, 1998 eff. April 8, 1998. Amended (c)(5).

Section 7064.5. Applicability

These regulations apply to all administrators, personnel, employees, consultants, independent contractors, and service providers whether paid or volunteer, of local correctional facilities; to persons who order an HIV-related test; to persons who receive confidential HIV-related information in the course of providing any health or social service or who receive confidential HIV-related information pursuant to a release; and to providers and facilities providing health care. These regulations do not apply to information which is received by the Commissioner of Health under Title 10 NYCRR Subpart 24-1 and protected from disclosure pursuant to Public Health Law, section 206(1)(j).

History

Sec. filed: April 24, 1989 as emergency measure; July 18, 1989 as emergency measure; Aug. 29, 1989 as emergency measure; Sept. 26, 1989 as emergency measure; Oct. 3, 1989 eff. Oct. 24, 1989.

Section 7064.6. HIV-related testing

(a) Except as noted in paragraph (3) of this subdivision, no physician or other person authorized pursuant to law may order an HIV-related test without obtaining written informed consent.

(1) Informed consent shall consist of providing to the person to be tested or, if such person lacks capacity to consent, to the person lawfully authorized to consent to health care for such person. In situations in which a person other than the test subject consents to the test, pretest counseling shall also be provided to the subject to the extent that the person ordering the test deems that the test subject will benefit from counseling. Pretest counseling shall include:

(i) explanations regarding the nature of HIV infection and HIV-related illness, an explanation of the HIV-related test including a description of the procedure to be followed, meaning of the test results, and the benefits of taking the test, including early diagnosis and medical intervention;

(ii) information regarding discrimination problems which might occur as a result of unauthorized disclosure of HIV-related information and legal protections prohibiting such disclosures;

(iii) information on preventing exposure or transmission of HIV infection, including behavior which poses a risk of HIV transmission; and

(iv) an explanation that the test is voluntary, that consent may be withdrawn at any time, and that anonymous testing is available, including the location and telephone numbers of anonymous test sites, and that anonymous testing is not available to persons proposed for insurance coverage.

(2) Written informed consent must be executed on a form developed by the Department of Health or on another form approved specifically by the Department of Health.

(3) Informed consent is not required in the following situations:

(i) for court-ordered testing pursuant to Civil Practice Law and Rules, section 3121;

(ii) if otherwise authorized or required by State of Federal law;

(iii) for testing related to procuring, processing, distributing or use of a human body or human body part, including organs, tissues, eyes, bones, arteries, blood, semen or other body fluids for use in medical research or therapy, or for transplantation to persons, provided that if the test results are communicated to the tested persons, post-test counseling is required;

(iv) for research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher; or

(v) for testing of a deceased to determine cause of death or for epidemiological purposes.

(b) In addition to an explanation of the test result, the person who orders the test shall be responsible for ensuring that post-test counseling or referrals as appropriate with respect to a positive or negative test result shall be provided to the person who consented to the test. In situations in which a person other than the test subject consents for the test, post-test counseling and referrals should also be provided to the test subject, to the extent the person ordering the test deems that the test subject will benefit from counseling. Such post-test counseling and referrals must include specific referral information and must address:

(1) coping emotionally with the test results;

(2) discrimination issues;

(3) information on the ability to release or revoke the release of confidential HIV-related information;

(4) information on preventing exposure to or transmission of HIV infection and the availability of medical treatment; and

(5) the need to notify contacts to prevent transmission, including information on State or county assistance in voluntary contact notification, if appropriate.

(c) A physician or other person authorized pursuant to law to order an HIV-related test shall certify on a laboratory requisition form that informed consent has been obtained. Authorized employees or agents of the New York State Department of Health or of the New York City Department of Health may order HIV-related tests and certify, as appropriate, with respect to obtaining informed consent in approved anonymous testing sites.

History

Sec. filed: April 24, 1989 as emergency measure; July 18, 1989 as emergency measure; Aug. 29, 1989 as emergency measure; Sept. 26, 1989 as emergency measure; Oct. 3, 1989 eff. Oct. 24, 1989.

Section 7064.7. Disclosure pursuant to a release

(a) No confidential HIV-related information shall be disclosed pursuant to a general release. Disclosure is permitted for HIV-related information pursuant to a specific release form which has been developed or approved by the New York State Department of Health. The release must be signed by the protected individual, or if the protected individual lacks capacity to consent, by a person authorized pursuant to law to consent to health care for the individual.

(b) All written disclosures of confidential HIV-related information shall be securely packaged and be accompanied by a statement prohibiting redisclosure. The statement shall include the following language or substantially similar language: “This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure. Disclosure of confidential HIV information that occurs as the result of a general authorization for the release of medical or other information will be a violation of the State law and may result in a fine or a jail sentence or both.”

(c) If oral disclosures are necessary, they must be accompanied or followed as soon as possible, but no later than 10 days, by the statement required by subdivision (b) of this section.

(d) The statement required by subdivisions (b) and (c) of this section is not required for release to the protected person or to his or her legal representative, for releases made by a physician or public health officer to a contact, or for releases made by a physician to a person authorized pursuant to law to consent to the health care of the protected person when the person has been counseled and the disclosure is medically necessary pursuant to Public Health Law, section 2782(4)(e). For disclosures of confidential HIV-related information from the patient's medical record to persons who are permitted access to this information pursuant to section 7064.8(a)(3), (4), (6), (7), (9) and (10) and section 7064.8(e) and (f) of this Part, it shall be sufficient for the statement required by subdivisions (b) and (c) of this section to appear in the medical record itself.

History

Sec. filed: April 24, 1989 as emergency measure; July 18, 1989 as emergency measure; Aug. 29, 1989 as emergency measure; Sept. 26, 1989 as emergency measure; eff. Oct. 3, 1989 eff. Oct. 24, 1989.

Section 7064.8. Confidentiality and disclosure

(a) No person who obtains confidential HIV-related information in the course of providing any health or social service or pursuant to a release of confidential HIV-related information may disclose or be compelled to disclose such information, except to the following:

(1) the protected individual or, when the protected individual lacks capacity to consent, a person authorized pursuant to law to consent to health care for the individual;

(2) any person to whom disclosure is authorized pursuant to a release of confidential HIV-related information in accordance with section 7064.7(a) of this Part;

(3) any agent or employee of a health facility or health care provider if:

(i) the agent or employee is authorized to access medical records;

(ii) the health facility or health care provider itself is authorized to obtain the HIV-related information; and

(iii) the agent or employee provides health care to the protected individual, or maintains or processes medical records for billing or reimbursement.

(4) a health care provider or health facility, including a health care provider employed or health facility operated by the Department of Corrections and Community Supervision, when knowledge of the HIV-related information is necessary to provide appropriate care or treatment to the protected individual or a child of the individual;

(5) a health facility or health care provider, in relation to the procurement, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical education, research, therapy, or for transplantation to individuals;

(6) health facility staff committees, or accreditation or oversight review organizations authorized to access medical records, provided that such committees or organizations may only disclose confidential HIV-related information:

(i) back to the facility or provider of a health or social service;

(ii) to carry out the monitoring, evaluation, or service review for which it was obtained; or

(iii) to a Federal, State or local government agency for the purposes of and subject to the conditions provided in subdivision (e) of this section;

(7) a Federal, State, county or local health officer when such disclosure is mandated by Federal or State law;

(8) authorized agencies as defined by section 371(10) of the Social Services Law, and corporations incorporated or organized to receive children for adoption or foster care, in connection with foster care or adoption of a child. Such agency shall be authorized to redisclose such information only pursuant to the provisions of article 27-F of the Public Health Law or in accordance with the provisions of section 373-A of the Social Services Law;

(9) third-party reimbursers or their agents to the extent necessary to reimburse health care providers, including health facilities, for health services, provided that an otherwise appropriate authorization for such disclosure has been secured;

(10) an insurance institution, for other than the purpose set forth in paragraph (9) of this subdivision, provided the insurance institution secures a dated and written authorization that indicates that health care providers, health facilities, insurance institutions, and other persons are authorized to disclose information about the protected individual, the nature of the information to be disclosed, the purposes for which the information is to be disclosed and which is signed by:

(i) the protected individual;

(ii) if the protected individual lacks the capacity to consent, such other person authorized pursuant to law to consent for such individual; or

(iii) if the protected individual is deceased, the beneficiary or claimant for benefits under an insurance policy, a health services plan, or an employee welfare benefit plan as authorized in article 27-F of the Public Health Law;

(11) to a funeral director upon taking charge of the remains of a deceased person when such funeral director has access in the ordinary course of business to HIV-related information on the death certificate of the deceased individual as authorized by Public Health Law section 4142;

(12) any person to whom disclosure is ordered by a court of competent jurisdiction pursuant to section 2785 of the Public Health Law;

(13) an employee or agent of the Division of Parole, Division of Probation and Correctional Alternatives or local probation department, or Commission of Correction, to the extent the employee or agent is authorized to access records containing such information in order to carry out his or her agency's functions, powers, and duties with respect to the protected individual, pursuant to each agency's regulations promulgated in accordance with article 27-F of the Public Health Law;

(14) a medical director of a local correctional facility in accordance with the policies and procedures of the correctional facility; and

(15) an employee or agent of a provider of health or social services, including but not limited to the Department of Corrections and Community Supervision and local correctional facilities, when reasonably necessary to provide supervision, monitoring or administration of services and when these employees or agents have access in the ordinary course of business to records relating to the care, treatment, or provision of a health or social service, and in accordance with such provider's regulations promulgated in accordance with article 27-F of the Public Health Law. Disclosure to an employee or agent of a local correctional facility pursuant to this paragraph shall be consistent with section 601 of the Correction Law and Part 7033 of this Chapter and shall be authorized only when such disclosure is necessary to:

(i) enable the chief administrative officer to appropriately maintain custody and supervision of the protected person or provide for the safety and protection of the protected person or provide for the safety and protection of staff, other inmates, or the facility; and

(ii) the medical director reasonably believes that without disclosure circumstances will exist creating a significant risk of contracting or transmitting HIV infection.

(b) A State, county or local health officer may disclose confidential HIV-related information when:

(1) disclosure is specifically authorized or required by Federal or State law; or

(2) disclosure is made pursuant to a release of confidential HIV-related information; or

(3) disclosure is requested by a physician pursuant to subdivision (e) of this section; or

(4) disclosure is authorized by court order pursuant to the provisions of section 2785 of the Public Health Law.

(c) A physician may disclose the confidential HIV-related information during contact notification pursuant to section 7064.10 of this Part.

(d) A physician may, upon the consent of a parent or guardian, disclose confidential HIV-related information to a State, county, or local health officer for the purpose of reviewing the medical history of a child to determine the fitness of the child to attend school.

(e) Confidential HIV-related information may be disclosed to a governmental agency or to authorized employees or agents of a governmental agency pursuant to the regulations of the governmental agency when the person providing health services is regulated by the governmental agency or when the governmental agency supervises or administers the health program or a social service program and when such employees or agents have access to records in the ordinary course of business and when access is reasonably necessary for supervision, monitoring, administration or provision of services. Such authorized employees or

agency may include attorneys authorized by a government agency when access occurs in the ordinary course of providing legal services and is reasonably necessary for supervision, monitoring, administration or provision of services.

(f) Confidential HIV-related information may be disclosed to authorized employees or agents of a person providing health or social services when such person is either regulated by a governmental agency or when a governmental agency administers the health or social service program, and when such employees or agents have access to records in the ordinary course of business and when access is reasonably necessary for supervision, monitoring, administration or provision of services and when such employee or agent has been authorized by law. Such authorized employees or agents may include attorneys authorized by persons providing health services when access occurs in the ordinary course of providing legal services and is reasonably necessary for supervision, monitoring, administration or provision of services.

(g) A physician may disclose confidential HIV-related information pertaining to a protected individual to a person, known to the physician, authorized pursuant to law to consent to the health care for a protected individual when the physician reasonably believes that:

(1) disclosure is medically necessary in order to provide timely care and treatment for the protected individual; and

(2) after appropriate counseling as to the need for such disclosure the protected individual will not inform a person authorized by law to consent to health care; provided, however, that the physician shall not make such disclosure if, in the judgment of the physician:

(i) the disclosure would not be in the best interest of the protected individual; or

(ii) the protected individual is authorized pursuant to law to consent to such care and treatment.

(3) A physician's decision to disclose pursuant to this paragraph, and the basis for that decision, shall be recorded in the medical record.

(h) Nothing in this section shall limit a person's or agency's responsibility or authority to report, investigate, or redisclose, child protective and adult protective services information in accordance with title 6 of article 6 and titles 1 and 2 of article 9-B of the Social Services Law, or to provide or monitor the provision of child and adult protective or preventive services.

(i) Confidential HIV-related information shall not be disclosed to a health care provider or health care facility if the sole purpose of disclosure is infection control when such provider or facility is regulated under Public Health Law and required to implement infection control procedures pursuant to Department of Health regulation.

(j) Confidential HIV-related information shall not be disclosed to a health care provider or health care facility if the sole purpose of disclosure is infection control precautions when such provider

or facility is regulated under Public Health Law and required to implement such precautions pursuant to Department of Health regulation. This restriction shall not limit access to HIV-related information by a health care provider's infection control personnel for purposes of fulfilling their designated responsibilities.

(k) Confidential HIV-related information disclosed pursuant to this subdivision shall be securely packaged and shall contain the redisclosure statement required by section 7064.7(b) of this Part.

History

Sec. filed: April 24, 1989 as emergency measure; July 18, 1989 as emergency measure; Aug. 29, 1989 as emergency measure; Sept. 26, 1989 as emergency measure; Oct. 3, 1989; amds. filed: April 2, 1996; March 24, 1998 eff. April 8, 1998; amd. filed May 21, 2013 eff. June 5, 2013.

Section 7064.9. Documentation of HIV-related information and disclosures

(a) Confidential HIV-related information shall be recorded in the medical record such that it is readily accessible to provide proper care and treatment.

(b) All disclosures of confidential HIV-related information must be noted in the record, except:

(1) only initial disclosures to insurance institutions must be noted;

(2) notation is not required for disclosure to agents or employees of health facilities or health care providers authorized under section 7064.8(a)(3) of this Part; and

(3) notation is not required for persons engaged in quality assurance, program monitoring or evaluation, nor for governmental payment agents acting pursuant to contract or law.

(c) Confidential HIV-related information may be noted in a certificate of death, autopsy report or related documents prepared pursuant to article 41 of the Public Health Law or other laws relating to documentation of cause of death.

(d) The protected person shall be informed of disclosures of HIV information upon request of the protected person.

(e) Confidential HIV-related information shall not be disclosable pursuant to Public Officers Law, article 6, the Freedom of Information Law.

History

Sec. filed: April 24, 1989 as emergency measure; July 18, 1989 as emergency measure; Aug. 29, 1989 as emergency measure; Sept. 26, 1989 as emergency measure; Oct. 3, 1989 eff. Oct. 24, 1989.

Section 7064.10. Contact notification

(a) A physician may disclose HIV-related information, without the protected person's consent, to a contract or to a public health officer when:

(1) the physician reasonably believes disclosure is medically appropriate and a significant risk of infection exists; and

(2) the protected person has been counseled to notify his/her contacts, has been provided a reasonable opportunity to do so, and the physician reasonably believes the protected person will not inform the contacts.

(b) The physician must inform the protected person of the physician's intent to disclose and inform the protected person that he or she may choose whether the physician or public health officer will notify the contact. The physician shall honor the protected person's choice. All notification shall be in person, except where circumstances compel otherwise.

(c) The identity of the protected person shall not be disclosed to the contact.

(d) When a public health officer is requested to notify contacts, the officer shall meet with the protected person, unless conditions prevent it, to counsel and verify information prior to any notification of such person's contacts. Local health units must provide HIV contact notification services.

(e) The person notifying the contact shall provide counseling or make referrals for counseling as appropriate. Such counseling must address coping emotionally with potential exposure to HIV, an explanation regarding the nature of HIV infection and HIV-related illness, availability of anonymous and confidential testing, information on preventing exposure or transmission of HIV infection, information regarding problems that might occur as the result of disclosure of HIV-related information, and the legal protections against such disclosures.

(f) If a protected person is now deceased and the physician reasonably believes the protected person had not informed his/her contacts and reasonably believes disclosure is medically appropriate and that a significant risk of infection exists, the physician may notify the contact or request the public health officer to notify the contact. All such notifications shall be in person, except where circumstances reasonably prevent doing so, and the identity of the deceased shall not be disclosed.

(g) A physician shall have no obligation to identify or locate any contact.

History

Sec. filed: April 24, 1989 as emergency measure; July 18, 1989 as emergency measure; Aug. 29, 1989 as emergency measure; Sept. 26, 1989 as emergency measure; Oct. 3, 1989 eff. Oct. 24, 1989.

Section 7064.11. Penalties and immunities

(a) Any person who shall:

(1) perform, permit, or procure the performance of an HIV-related test in violation of section 2781 of the Public Health Law; or

(2) disclose, compel another person to disclose, or procure the disclosure of confidential HIV-related information in violation of section 2782 of the Public Health Law shall be subject to a civil penalty not to exceed $5,000 for each occurrence. Such penalty may be recovered in the same manner as the penalty provided in section 12 of the Public Health Law.

(b) Any person who willfully commits an act enumerated in subdivision (a) of this section shall be guilty of a misdemeanor and subject to the penalties provided in section 12-b of the Public Health Law.

History

Sec. filed: April 24, 1989 as emergency measure; July 18, 1989 as emergency measure; Aug. 29, 1989 as emergency measure; Sept. 26, 1989 as emergency measure; Oct. 3, 1989 eff. Oct. 24, 1989.

Section 7064.12. Approved forms; informed consent, release

(a) Each local correctional facility shall maintain an adequate supply of forms approved by the New York State Department of Health for the purpose of informed consent relative to any HIV-related test and authorization for release of confidential HIV-related information.

(b) Such forms shall be used pursuant to the requirements of article 27-F of the Public Health Law and this Part.

History

Sec. filed: April 24, 1989 as emergency measure; July 18, 1989 as emergency measure; Aug. 29, 1989 as emergency measure; Sept. 26, 1989 as emergency measure; Oct. 3, 1989 eff. Oct. 24, 1989.

PART 7070 EDUCATIONAL SERVICES FOR YOUTH

Section 7070.1. Policy

In cooperation with the appropriate school district, each local correctional facility shall provide all eligible youth the opportunity to participate in educational services pursuant to section 3202(7) of the Education Law. Eligible youth are entitled to receive such educational services and shall be encouraged to become involved in an educational program provided by the school district so that they may obtain those skills and credentials necessary to function more productively both during incarceration and after release.

History

Sec. filed Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7070.2. Definitions

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

(a) *Eligible youth* shall mean an inmate who:

(1) is under 21 years of age;

(2) has not received a high school diploma; and

(3) has been incarcerated in a local correctional facility for 10 or more calendar days or who, in the judgment of the chief administrative officer, can reasonably be expected to be incarcerated for a period of 10 or more calendar days.

(b) *Educational services* shall mean those services made available to an eligible youth by the school district in which each local correctional facility is located pursuant to section 3202(7) of the Education Law and 8 NYCRR 118.3 and 118.4. Such services shall include:

(1) an evaluation of each eligible youth to determine individual educational needs; and

(2) individual or small group instruction designed to meet the identified educational needs of each such youth.

(c) *School day* shall mean any day of the year when school is in session, excluding July and August, as determined by the school district in which each local correctional facility is located.

History

Sec. filed Jan. 19, 1988; amd. filed March 24, 1998 eff. April 8, 1998. Amended (a)(3).

Section 7070.3. Facility/school district planning and coordination

(a) The chief administrative officer of each local correctional facility shall designate an individual who shall act as a liaison with education personnel and be responsible for coordinating the delivery of educational services to eligible youth within the facility pursuant to the requirements of this Part.

(b) The individual designated by the chief administrative officer pursuant to subdivision (a) of this section shall consult with the school district in which the facility is located to establish written policies and procedures for the delivery of educational services to eligible youth within the facility.

(c) At a minimum, such policies and procedures shall address the following issues:

(1) allocation and maintenance of classroom space within the facility which promotes safe and effective learning environments and accommodates the needs of education personnel and eligible youth;

(2) instructor orientation pursuant to the requirements of section 7070.5 of this Part;

(3) scheduling of instructional time for eligible youth participating in educational services;

(4) supervision of classroom areas by facility staff as deemed appropriate by the chief administrative officer while inmates are receiving educational instruction;

(5) procedures for escorting inmates to and from the program by facility staff;

(6) provision of a secure area within the facility for the storage of instructional materials, equipment and records, if education personnel or facility staff determine such an area is necessary;

(7) pursuant to section 3202(7)(d) of the Education Law, procedures for apprising eligible youth who are being released or discharged that further educational services may be available through the school district in which such youth reside or in which the youth are otherwise entitled to attend school;

(8) procedures for how the school district shall assist the facility to provide such information to eligible youth pursuant to 8 NYCRR 118.2;

(9) circumstances under which it is permissible for eligible youth to be absent from educational instruction;

(10) denial or restriction of eligible youth participation in educational services pursuant to the requirements of section 7070.7 of this Part;

(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

(12) delineation of specific facility and education staff roles and responsibilities concerning program implementation.

(d) A copy of the current written policies and procedures required pursuant to this section shall be provided to the school district in which each facility is located, and maintained on file within the facility.

History

Sec. filed Jan. 19, 1988 eff. Feb. 3, 1988; amd. filed Jan. 26, 2021 eff. Feb. 10, 2021.

Section 7070.4. Procedures for providing educational services to eligible youth

(a) During the admissions process the chief administrative officer of each local correctional facility shall determine which inmates within the facility are eligible youth as defined in section 7070.2(a) of this Part.

(b) Except as otherwise provided in subdivision (c) of this section, during the admissions process facility staff shall provide each eligible youth with the following information concerning the educational services program:

(1) advise the youth that he/she may attend this program during incarceration in a local correctional facility as long as he/she has not received a high-school diploma, is under the age of 21 and is likely to be incarcerated for 10 days or more;

(2) advise the youth that the educational program shall:

(i) consist of small group or individual instruction and will be designed to fit his/her educational needs;

(ii) be designed to increase his/her level of achievement in reading, mathematics and written and oral communication and to prepare a student to pass the high-school equivalency diploma examination;

(iii) if necessary, be designed to provide special assistance in speaking or writing English;

(iv) enable him/her to continue with studies if he/she plans to return to school or a BOCES program after release; or

(v) provide employment preparation education, which may include identifying his/her skills and assisting him/her on how to search for employment and how to develop positive work habits;

(3) advise the youth that if he/she chooses to participate in the program, he/she will be in class for at least three hours each day when school is in session in the school district in which the facility is located, and the importance of regular class attendance; and

(4) advise the youth how he/she can request to participate in the program at any later time during incarceration pursuant to the facility's procedures.

(c) Whenever an eligible youth is admitted to a facility and such youth's physical or mental condition is such that facility staff determine it would be more appropriate to delay providing the youth with information on the program pursuant to the requirements of this section, the requirements of subdivisions (b), (d) and (e) of this section shall be completed as soon as possible, but in no case later than three days after such youth is admitted to the facility.

(d) Facility staff shall make reasonable efforts to assist all eligible youth, including those who may be non-English speaking, to understand the information provided concerning the educational services program pursuant to subdivision (b) of this section.

(e) Except as otherwise provided in subdivision (c) of this section, during the admissions process each eligible youth shall be asked if he/she does or does not wish to participate in such program.

(f) After the admissions process has been completed, all eligible youth shall be permitted to request access to educational services at any time during the period of their incarceration by following procedures established by the facility pursuant to the requirements of this Part.

(g) Whenever an eligible youth indicates his desire to access educational services during incarceration by following the facility's procedures for requesting to participate in the program, facility staff shall submit a request for such services to the school district in which the facility is located by the end of the next school day.

(h) Such request shall be made in writing and on a form prescribed by the State Education Department.

(i) Facility staff shall also forward a copy of such form to the State Education Department by the end of the next school day after the form has been completed.

(j) A copy of such completed form shall be placed and retained in each eligible youth's facility file.

(k) Pursuant to section 3202(7)(d) of the Education Law, each local correctional facility shall apprise each eligible youth upon release or discharge from the facility that further educational

services may be available through the school district in which the youth resides or in which the youth is otherwise entitled to attend school.

(l) Whenever an eligible youth who is being released or discharged indicates the desire to access educational services after release or discharge, facility staff shall consult with the school district in which the facility is located, if necessary, to determine the school district in which such youth will be eligible to attend school after release or discharge.

(m) Within three school days after such eligible youth indicates the desire to access such services after release or discharge, facility staff shall notify in writing the appropriate school district that such youth has indicated he/she wishes to access educational services after release or discharge.

(n) Each local correctional facility shall maintain written records verifying that the specific procedures required in subdivisions (a)-(m) of this section have been completed.

(o) A written record concerning participation in the educational services program by eligible youth shall be maintained by facility staff in each local correctional facility.

(p) Such record shall include, but need not be limited to:

(1) the dates and times when educational services were provided;

(2) a daily list of all eligible youth participating in such services;

(3) the dates and times when educational services were restricted or denied due to an emergency situation pursuant to section 7070.7(c)(2) of this Part, including an explanation why such action was necessary; and

(4) a list of all eligible youth restricted or denied from participating in educational services pursuant to section 7070.7(c) (1) of this Part.

History

Sec. filed Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7070.5. Instructor orientation

(a) Before education personnel provide instruction to eligible youth pursuant to the requirements of this Part, facility staff shall provide education personnel with a brief orientation program on facility policies and procedures.

(b) Such orientation program shall:

(1) provide education personnel with information and instructions concerning security procedures to be followed while they are in the facility;

(2) provide education and facility staff an opportunity to discuss and resolve issues related to program implementation; and

(3) be designed to facilitate delivery of the education program within the correctional setting.

History

Sec. filed Jan. 19, 1988 eff. Feb. 3, 1988.

Section 7070.6. Scheduling of instructional time

(a) Pursuant to 8 NYCRR 118.4(b), the program schedule within each local correctional facility shall provide a minimum of three hours of instructional time per student each school day.

(b) The scheduling of instructional time for educational services within each local correctional facility shall be determined in conjunction with education personnel from the school district in which the facility is located.

(c) Each local correctional facility's daily schedule of activities, programs and services shall be organized so that no eligible youth who participates in educational services at the facility is denied the opportunity to also participate in the following programs or services because of attendance at educational instruction:

(1) exercise, pursuant to Part 7028 of this Title;

(2) legal services, pursuant to Part 7039 of this Title;

(3) religious services, pursuant to Part 7024 of this Title;

(4) visitation, pursuant to Part 7008 of this Title; and

(5) health services, pursuant to Part 7010 of this Title.

History

Sec. filed Jan. 19, 1988; amd. filed March 24, 1998 eff. April 8, 1998. Amended (c)(1).

Section 7070.7. Restriction or denial of educational services

(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.

(b) An eligible youth's participation in educational services shall not be restricted or denied as a result of such youth's involvement in a disciplinary matter unrelated to the youth's participation

in the facility's educational program, except when such involvement demonstrates that the youth's presence in such program presents a clear threat pursuant to paragraph (c)(1) of this section.

(c) An eligible youth's participation in educational services may only be denied or restricted by the chief administrative officer under the following conditions:

(1) the chief administrative officer has determined that the presence of such youth in the educational program presents a clear threat to himself/herself, the safety of other inmates and/or the safety of educational or facility staff; or

(2) an emergency situation exists within the facility which temporarily prevents or significantly interferes with the delivery of such services.

(d) Whenever possible, prior to making a determination to restrict or deny educational services to an eligible youth pursuant to the requirements of paragraph (c)(1) of this section, the chief administrative officer shall discuss the matter with the youth's instructor(s).

(e) Any determination to restrict or deny an eligible youth's participation in educational services pursuant to paragraph (c)(1) of this section shall be made in writing.

(f) Such written determination shall include, but need not be limited to:

(1) the date of the determination;

(2) the name of the eligible youth affected;

(3) the date when services are to be denied and the date when services may be resumed, if applicable;

(4) the nature of and/or time period for any restriction of services;

(5) the specific facts and reasons underlying the decision;

(6) comments and/or recommendations made by the youth's instructor(s), if solicited; and

(7) the signature of the chief administrative officer.

(g) Whenever an eligible youth's participation in educational services is restricted or denied by the chief administrative officer pursuant to paragraph (c)(1) of this section, such youth shall be advised that at any time he/she may submit comments in writing to the chief administrative officer concerning this action.

(h) Whenever a determination is made to restrict or deny an eligible youth's participation in educational services pursuant to paragraph (c)(1) of this section, the chief administrative officer shall review such determination in writing within one school day and every school day thereafter while such restriction or denial is in effect.

(i) Such written review shall include, but need not necessarily be limited to, the following information:

(1) the date of the review;

(2) comments submitted by the eligible youth, if available;

(3) comments made by the youth's instructor(s);

(4) justification for either continuing the denial or restriction of such services or for permitting the youth to resume participation in the program;

(5) recommendations as appropriate; and

(6) the signature of the chief administrative officer.

(j) Copies of each determination and review made pursuant to this section shall be distributed as follows by the end of the next school day following the date of the determination or review:

(1) provided to each eligible youth;

(2) placed and retained in the youth's facility file;

(3) forwarded to the youth's instructor(s); and

(4) placed in and retained as part of the centralized record required by section 7075.6 of this Part.

History

Sec. filed Jan. 19, 1988 eff. Feb. 3, 1988; amd. filed May 21, 2019 eff. June 5, 2019; amd. filed Jan. 26, 2021 eff. Feb. 10, 2021.

Section 7070.8. Program continuity following transfer

(a) Whenever an eligible youth who has either requested to participate or is already participating in educational services is transferred to another local or State correctional facility, the chief administrative officer of the sending facility shall:

(1) notify the youth's instructor(s) by the end of the next school day following the youth's transfer; and

(2) if the form prescribed by the State Education Department has already been completed for the youth, provide the receiving facility with a copy of such form.

(b) During the admission of each such eligible youth to a receiving local correctional facility, facility staff shall complete the procedures specified in section 7070.4(a)-(e) of this Part.

History

Sec. filed Jan. 19, 1988 eff. Feb. 3, 1988.

PART 7075 CONFINEMENT AND DEPRIVATION

Section 7075.1. Purpose

The purpose of this Part shall be to ensure that incarcerated individuals are confined to individual occupancy housing units, and deprived of essential services, only when necessary, and for the least amount of time necessary, to maintain the safety, security and good order of the facility and, absent exigent circumstances, this period of confinement or deprivation may not risk significantly compromising the health of the individual.

History

Sec. filed May 21, 2019 eff. June 5, 2019; emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7075.2. Definitions

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

(a) *Chief Administrative Officer* shall mean the highest-ranking facility official present during the time period in which a determination must be rendered.

(b) *Facility* shall mean a county jail or penitentiary, or a local correctional facility under the jurisdiction of the New York City Department of Correction.

(c) *Essential service* shall mean any right, service, item or article guaranteed an incarcerated individual by the provisions of this Chapter.

(d) *Individual occupancy housing unit, multiple occupancy housing unit, medical housing unit, dayroom space* and *sleeping area* shall each have the same meaning as provided in Part 7040 of this Title.

(e) *Segregation* shall mean the involuntary confinement of an incarcerated individual to an individual occupancy housing unit, or to the sleeping area of a multiple occupancy housing unit, for any duration. Segregation shall not include such confinement during established sleep hours, confinement for purposes of medical or mental health treatment, confinement to a housing unit designated for classification purposes, confinement for the purpose of providing constant supervision, routine confinement necessary for a change of shift, conducting an incarcerated population count, or the provision of routine services, or temporary confinement necessary to quell a disturbance or incident.

(f) *Segregated individual* shall mean any incarcerated individual subject to segregation.

(g) *Segregated confinement* shall mean the confinement of an incarcerated individual to an individual occupancy housing unit, in any form, for more than seventeen (17) hours a day, other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment.

(h) *Administrative segregation* shall mean any segregation, as defined in subdivision (e) of this section, that does not constitute a disciplinary sanction, imposed pursuant to section 7006.9 of this Title, or segregation pending a disciplinary hearing, ordered pursuant to section 7006.7 of this Title.

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

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

History

Sec. filed May 21, 2019 eff. June 5, 2019; amd. filed Jan. 26, 2021 eff. Feb. 10, 2021; emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7075.3. Policy

Consistent with the requirements of this Part, each facility shall establish and implement policies and procedures designed to ensure that the segregation of incarcerated individuals, and the deprivation of essential services, is limited in both scope and duration to maintain the safety, security and good order of the facility and, absent exigent circumstances, may not risk significantly compromising the health of the individual.

History

Sec. filed May 21, 2019 eff. June 5, 2019; emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7075.4. Confinement

(a) Other than incarcerated individuals subject to segregation, segregated confinement, voluntary confinement, confinement during established sleep hours, confinement for purposes of medical or mental health treatment, confinement to a housing unit designated for classification purposes, confinement for the purpose of providing constant supervision, routine confinement necessary for a change of shift, conducting an incarcerated population count, or

the provision of routine services, or temporary confinement necessary to quell a disturbance or incident, any incarcerated individual assigned to an individual or multiple occupancy housing unit shall have unrestrained access to adjoining dayroom space.

(b) Absent exigent circumstances, no incarcerated individual shall be confined in any room, space or other area of the facility that is not designed, intended and purposed for the confinement of individuals, nor any housing unit, cell or pen not listed as appropriate housing on, or beyond the allowable duration specified by, the maximum facility capacity formulation issued by the commission pursuant to section 7040.7 of this Part. Additionally, no facility shall operate an incarcerated individual housing area, or subdivision thereof, for special housing unless it is specifically designated for such use on the maximum facility capacity formulation, issued by the commission pursuant to section 7040.7 of this Part.

(c) Each segregated individual assigned to a multiple occupancy housing unit shall be allowed a minimum of seven (7) hours per day outside the sleeping area.

(d) An administratively segregated incarcerated individual shall only be confined in special housing upon a determination of the chief administrative officer that such incarcerated individual's presence in the facility's general housing would pose an unreasonable and demonstrable risk to the safety and security of staff, incarcerated individuals, the facility, or would present an unreasonable risk of escape. Any such determination shall be made by the chief administrative officer in writing, and shall state the specific facts and reasons underlying the determination.

(e) The confinement of an incarcerated individual to an individual occupancy housing unit for medical or mental health treatment shall, if available, be within the facility's clinical area or in as close proximity to a medical or mental health unit as possible.

History

Sec. filed May 21, 2019 eff. June 5, 2019; amd. filed Jan. 26, 2021 eff. Feb. 10, 2021; emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7075.5. Deprivation of essential services

(a) Unless specifically allowed in this Chapter, the provision of an essential service to an incarcerated individual shall not be denied, restricted or limited as a means of discipline or punishment.

(b) Unless otherwise specified by the provisions of this Chapter, the provision of an essential service to an incarcerated individual shall not be denied, restricted or limited unless the chief administrative officer determines that providing such essential service would cause a threat to

the safety, security, or good order of the facility, or the safety, security, or health of any individual. Any such determination shall be made by the chief administrative officer in writing, and shall state the specific facts and reasons underlying the determination.

(c) Any determination made pursuant to subdivision (b) of this section shall be reviewed by the chief administrative officer at intervals not to exceed seven days. A review conducted by the chief administrative officer, pursuant to this subdivision, which may impact an individual's health shall include consultation with the jail physician, facility medical director, or other qualified facility health staff. Following each such review, the chief administrative officer shall document, in writing, a summary of any consultation with health staff, whether such determination shall continue or cease, and state the specific facts and reasons underlying the continuance or termination.

History

Sec. filed May 21, 2019 eff. June 5, 2019; emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); amd. filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7075.6. Recordkeeping

Each facility shall maintain a centralized record of all written determinations and reviews required by the provisions of this Part.

History

Sec. filed May 21, 2019 eff. June 5, 2019.

PART 7076 SEGREGATED CONFINEMENT

Section 7076.1. Purpose

The purpose of this Part shall be to ensure that the conditions, programming, duration, recordkeeping and reporting of segregated confinement practices in local correctional facilities remain consistent with relevant law and ensure the fair and humane treatment of affected incarcerated individuals.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7076.2. Definitions

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

(a) *Segregated confinement* shall mean the confinement of an incarcerated individual to an individual occupancy housing unit, in any form, for more than seventeen (17) hours a day, other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment.

(b) *Special population* shall mean any incarcerated individual:

(1) 21 years of age or younger;

(2) 55 years of age or older;

(3) with a disability, as defined in section 292 of the Executive Law; or

(4) who is pregnant, in the first eight (8) weeks of the post-partum recovery period after giving birth, or caring for a child in the facility.

(c) *Residential rehabilitation unit* shall mean a separate housing unit used for therapy, treatment, and rehabilitative programming of incarcerated individuals who have been determined to require more than fifteen (15) days of segregated confinement pursuant to facility proceedings.

(d) *Chief administrative officer* shall mean the highest-ranking facility official present during the time period in which a determination must be rendered.

(e) *Violent felony act* shall have the same meaning as provided in section 7006.1 of this Title.

(f) *Facility* shall mean a county jail or penitentiary, or a local correctional facility under the jurisdiction of the New York City Department of Correction.

(g) *Individual occupancy housing unit* shall have the same meaning as provided in Part 7040 of this Title.

(h) *Maximum facility capacity* shall have the same meaning as provided in section 7040.2 of this Title.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7076.3. Policy

Consistent with the requirements of this Part, each facility shall establish and implement policies and procedures with respect to the conditions, programming, duration, recordkeeping and reporting of segregated confinement.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7076.4. Conditions and function

(a) All facility housing areas in which incarcerated individuals are subject to segregated confinement shall create the least restrictive environment necessary for the safety of incarcerated persons, staff, and the security of the facility.

(b) No individual may be placed in segregated confinement based on the same act or incident that was previously used as the basis for such placement.

(c) No individual may be held in segregated confinement for protective custody. Any unit used for protective custody must, at a minimum, conform to the requirements governing residential rehabilitation units, as set forth in Part 7077 of this Title.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7076.5. Programming

(a) Incarcerated individuals in segregated confinement shall be offered out-of-cell programming at least four (4) hours per day, including at least one (1) hour for exercise.

(b) Incarcerated individuals in segregated confinement shall be offered programming led by program or therapeutic staff five (5) days per week, except on recognized state legal holidays. All other out-of-cell time may include peer-led programs, time in a day room or out-of-cell recreation area with other people, congregate meals, volunteer programs, or other congregate activities.

(c) If established that an incarcerated individual committed a violent felony act while in segregated confinement and poses a significant and unreasonable risk to the safety and security of other incarcerated individuals or staff, the chief administrative officer may restrict such individual's participation in programming and out-of-cell activities as necessary for the safety of other incarcerated individuals and staff. If such restrictions are imposed, the facility must provide at least four (4) hours out-of-cell time daily, including at least two (2) hours of therapeutic programming and two (2) hours of exercise, and must make reasonable efforts to reinstate access to programming as soon as possible. In no case may such restrictions extend beyond fifteen (15) days unless the incarcerated individual commits a new violent felony act justifying restrictions on program access, or if the chief administrative officer reasonably determines that the incarcerated individual poses an extraordinary and unacceptable risk of imminent harm to the safety or security of other incarcerated individuals or staff. Any extension of program restrictions beyond fifteen (15) days must be meaningfully reviewed and approved at least every fifteen (15) days by the chief administrative officer. Each review must consider the impact of therapeutic programming provided during the fifteen (15) day period on the individual's risk of imminent harm and the chief administrative must articulate in writing, with a copy provided to the incarcerated individual, the specific reason why the individual currently poses an extraordinary and unacceptable risk of imminent harm to the safety or security of incarcerated individuals or staff. In no case may restrictions imposed by the chief administrative officer extend beyond ninety (90) days unless the individual commits a new violent felony act justifying restrictions on program access.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7076.6. Duration of segregated confinement

(a) Incarcerated individuals of a special population shall not be placed in segregated confinement for any length of time, except as authorized by subdivision (a) of section 7006.7 of this Title as administrative segregation pending a disciplinary hearing.

(b) No incarcerated individual may be placed in segregated confinement for longer than necessary and no more than fifteen (15) consecutive days, nor shall any individual be placed in segregated confinement for more than twenty (20) total days within any sixty (60) day period except as otherwise provided in subdivision (c) of this section. At these limits, the incarcerated individual must be released from segregated confinement or, in facilities with a maximum facility capacity exceeding five hundred (500), diverted to a separate residential rehabilitation unit. If placement of such individual in segregated confinement would exceed the twenty (20) day limit and the chief administrative officer determines that the individual committed a violent felony act, the chief administrative officer may, in a facility with a maximum facility capacity exceeding five hundred (500), place the individual in segregated confinement until admission to a residential rehabilitation unit can be effectuated. Such admission to a residential rehabilitation unit shall occur as expeditiously as possible and in no case take longer than forty-eight (48) hours from the time such individual is placed in segregated confinement.

(c) For offenses determined to constitute a violent felony act, if occurring more than one time within any sixty (60) day period, up to an additional fifteen (15) consecutive days in segregated confinement may occur for each such additional incident. If such subsequent incident takes place in a residential rehabilitation unit or general population, the incarcerated individual may be returned to segregated confinement for up to fifteen (15) consecutive days. If such subsequent incident takes place in segregated confinement and causes physical injury to another person, the incarcerated individual may receive up to an additional fifteen (15) consecutive days in segregated confinement, provided however that the individual must spend at least fifteen (15) days in a residential rehabilitation unit in between each placement of up to fifteen (15) consecutive days in segregated confinement.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7076.7. Recordkeeping and reporting

(a) Any restriction, determination, extension, review or approval required or authorized by this Part shall be made by the chief administrative officer in writing, and shall state the specific facts and underlying reasons.

(b) Each facility shall maintain all records required by subdivision (a) of this section in a centralized location.

(c) Each facility shall publish monthly reports on its website, with semi-annual and annual cumulative reports, of the total number of people who are in segregated confinement on the first day of each month. The reports shall provide a breakdown of the number of people in segregated confinement by:

(1) age;

(2) race;

(3) gender;

(4) special health accommodations or needs;

(5) need for and participation in substance use disorder programs;

(6) pregnancy status; and

(7) number of days in segregated confinement.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

PART 7077 RESIDENTIAL REHABILITATION UNITS

Section 7077.1. Applicability and Purpose

(a) The purpose of this Part shall be to ensure that the conditions, programming, duration, recordkeeping and reporting of residential rehabilitation units in local correctional facilities remain consistent with relevant law and ensure the fair and humane treatment of affected incarcerated individuals.

(b) The requirements of this Part shall not apply to a facility with a maximum facility capacity of five hundred (500) or fewer.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022

Section 7077.2. Definitions

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

(a) *Segregated confinement* shall mean the confinement of an incarcerated individual to an individual occupancy housing unit, in any form, for more than seventeen (17) hours a day, other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment.

(b) *Residential rehabilitation unit* shall mean a separate housing unit used for therapy, treatment, and rehabilitative programming of incarcerated individuals who have been determined to require more than fifteen (15) days of segregated confinement pursuant to facility proceedings.

(c) *Chief administrative officer* shall mean the highest-ranking facility official present during the time period in which a determination must be rendered.

(d) *Violent felony act* shall have the same meaning as provided in section 7006.1 of this Title.

(e) *Facility* shall mean a county jail or penitentiary, or a local correctional facility under the jurisdiction of the New York City Department of Correction.

(f) *Individual occupancy housing unit* shall have the same meaning as provided in Part 7040 of this Title.

(g) *Maximum facility capacity* shall have the same meaning as provided in section 7040.2 of this Title.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7077.3. Policy

Consistent with the requirements of this Part, each facility shall establish and implement policies and procedures with respect to the conditions, programming, duration, recordkeeping and reporting of residential rehabilitation units.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7077.4. Conditions and function

(a) Residential rehabilitation units shall be therapeutic and trauma-informed, and aim to address individual treatment and rehabilitation needs and underlying causes of problematic behaviors.

(b) All residential rehabilitation units shall create the least restrictive environment necessary for the safety of incarcerated persons, staff, and the security of the facility.

(c) No individual may be placed in a residential rehabilitation unit based on the same act or incident that was previously used as the basis for such placement.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7077.5. Programming

(a) Upon admission to a residential rehabilitation unit, program and mental health staff shall administer assessments and develop an individual rehabilitation plan in consultation with the incarcerated individual, based upon the individual's medical, mental health, and programming needs. Such plan shall identify specific goals and programs, treatment, and services to be

offered, with projected time frames for completion and discharge from the residential rehabilitation unit.

(b) Incarcerated individuals admitted to a residential rehabilitation unit shall be offered at least six (6) hours of daily out-of-cell congregate programming, services, treatment, recreation, activities and/or meals, with an additional minimum of one hour for exercise. Exercise in all residential rehabilitation units shall take place in a congregate setting, unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other incarcerated individuals, staff, or the facility.

(c) Incarcerated individuals in residential rehabilitation units shall be offered programming led by program or therapeutic staff five (5) days per week, except on recognized state legal holidays. All other out-of-cell time may include peer-led programs, time in a dayroom or out-of-cell recreation area with other people, congregate meals, volunteer programs, or other congregate activities.

(d) An incarcerated individual in a residential rehabilitation unit shall have access to programs and work assignments comparable to core programs and types of work assignments in general population. Such incarcerated individuals shall also have access to additional out-of-cell, trauma-informed therapeutic programming aimed at promoting personal development, addressing underlying causes of problematic behavior resulting in placement in a residential rehabilitation unit, and helping prepare for discharge from the unit and to the community.

(e) If established that an incarcerated individual committed a violent felony act while in a residential rehabilitation unit and poses a significant and unreasonable risk to the safety and security of other incarcerated individuals or staff, the chief administrative officer may restrict such individual's participation in programming and out-of-cell activities as necessary for the safety of other incarcerated individuals and staff. If such restrictions are imposed, the facility must provide at least four (4) hours out-of-cell time daily, including at least two (2) hours of therapeutic programming and two (2) hours of exercise, and must make reasonable efforts to reinstate access to programming as soon as possible. In no case may such restrictions extend beyond fifteen (15) days unless the individual commits a new violent felony act justifying restrictions on program access, or if the chief administrative officer reasonably determines that the individual poses an extraordinary and unacceptable risk of imminent harm to the safety or security of incarcerated individuals or staff. Any extension of program restrictions beyond fifteen (15) days must be meaningfully reviewed and approved at least every fifteen (15) days by the chief administrative officer. Each review must consider the impact of therapeutic programming provided during the fifteen (15) day period on the individual's risk of imminent harm and the chief administrative officer must articulate in writing, with a copy provided to the incarcerated individual, the specific reason why the individual currently poses an extraordinary and unacceptable risk of imminent harm to the safety or security of other incarcerated individuals or staff. In no case may restrictions imposed by the chief administrative officer extend beyond

ninety (90) days unless the individual commits a new violent felony act justifying restrictions on program access.

(f) Restraints shall not be used when incarcerated individuals are participating in out-of-cell activities within a residential rehabilitation unit unless an individual assessment is made that restraints are required because of a significant and unreasonable risk to the safety and security of other incarcerated individuals or staff.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7077.6. Duration of stay

(a) Any sanction imposed on an incarcerated individual requiring segregated confinement shall run while the individual is in a residential rehabilitation unit and the individual shall be discharged from the unit before or at the time such sanction expires. If the individual's rehabilitation plan is successfully completed before the sanction expires, the individual shall have a right to be discharged from the unit upon such completion.

(b) If an incarcerated individual has not been discharged from a residential rehabilitation unit within one year of initial admission to such a unit, the individual shall have a right to be discharged from the unit unless the individual committed a violent felony act within the prior one hundred eighty (180) days and the individual poses a significant and unreasonable risk to the safety or security of incarcerated persons or staff. In any such case the decision not to discharge such individual shall be immediately and automatically subjected to an independent review by the chief administrative officer. An incarcerated individual may remain in a residential rehabilitation unit beyond the time limits provided in this section if approved by the chief administrative officer. In extraordinary circumstances, a person who has not committed a violent felony act within the prior one hundred eighty (180) days may remain in a residential rehabilitation unit beyond the time limits provided in this section if the chief administrative officer determines that such individual poses an extraordinary and unacceptable risk of imminent harm to the safety or security of incarcerated persons or staff.

(c) There shall be a meaningful periodic review of the status of each incarcerated individual in a residential rehabilitation unit at least every sixty (60) days to assess the individual's progress and determine if the individual should be discharged from the unit. Following such periodic review, if the individual is not discharged from the unit, program and mental health staff shall specify in writing the reasons for the determination and the program, treatment, service, and/or corrective action required before discharge. The incarcerated individual shall be given access to

the programs, treatment and services specified, and shall have a right to be discharged from the residential rehabilitation unit upon the successful fulfillment of such requirements.

(d) When an incarcerated individual is discharged from a residential rehabilitation unit, any remaining time to serve on any underlying disciplinary sanction shall be dismissed. If an incarcerated individual substantially completes the developed rehabilitation plan, the individual shall have any associated loss of good time restored upon discharge from the unit.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022).

Section 7077.7. Recordkeeping and reporting

(a) Any restriction, determination, extension, review or approval required or authorized by this Part shall be made by the chief administrative officer in writing, and shall state the specific facts and underlying reasons.

(b) Each facility shall maintain all records required by subdivision (a) of this section in a centralized location.

(c) Each facility shall publish monthly reports on its website, with semi-annual and annual cumulative reports, of the total number of people who are in residential rehabilitation units on the first day of each month. The reports shall provide a breakdown of the number of people in residential rehabilitation units by:

(1) age;

(2) race;

(3) gender;

(4) special health accommodations or needs;

(5) need for and participation in substance use disorder programs; and

(6) pregnancy status.

History

Emergency rulemaking eff. March 31, 2022, expires June 26, 2022 (Register dated April 13, 2022); emergency rulemaking eff. June 23, 2022, expires Aug. 21, 2022 (Register dated July 13, 2022); new adopted filed July 26, 2022 eff. Aug. 10, 2022 (Register dated August 10, 2022