BOARD OF CORRECTION
CITY OF NEW YORK

Notice of Adoption of Rules

Notice is hereby given in accordance with section 1043(f) of the New York City Charter that the Board of Correction is adopting rules relating to the use of restrictive housing in facilities operated by the Department of Correction.

These rules are promulgated pursuant to sections 1043 and 626 of the New York City Charter.

On April 13 and April 14 2021, the Board of Correction held electronic public hearings on these rules. On June 8, 2021, the Board of Correction approved these rules at a public meeting also held electronically.

STATEMENT OF BASIS AND PURPOSE

Under § 626 of the New York City Charter, the Board of Correction ("Board" or "BOC") is authorized to establish minimum standards "for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction" of the New York City Department of Correction ("Department" or "DOC"). Pursuant to this authority, the Board hereby creates a new chapter 6 of its rules and amends certain existing rules, designed to ensure that people in the Department of Correction's custody: (1) are placed in restrictive housing in accordance with due process and procedural justice principles; and (2) are confined in the least restrictive setting and for the least amount of time necessary to address the specific reasons for their placement and to ensure their own safety as well as the safety of staff, other people in custody, and the public. Notably, these rules end the inhumane practice of solitary confinement (also referred to as punitive segregation or "PSEG") in the New York City jails, replacing it with a more humane alternative that still holds people accountable for the commission of serious offenses in custody. In contrast to PSEG, the new model—known as the Risk Management and Accountability System ("RMAS")—guarantees that people in custody who have committed serious offenses in jail still receive at least 10 hours outside of their cell per day with some opportunity for socialization. The rules also prohibit the Department from routinely shackling people during their time out of cell.

From Reforms to Rules

In just five years — 2014 through 2018 — the New York City jail system underwent groundbreaking reforms. These critical changes spurred a period of innovation and experimentation as the Department, under the oversight of the Board, developed alternatives to punitive segregation, alternative ways to reduce violence in the jails, and alternative strategies to manage its adolescent and young adult populations. Implementation of reforms required DOC to seek variances (i.e. temporary exceptions) from the Minimum Standards and led to the Board's imposition of conditions on granting the variances.

In January 2015, the Board enacted historic amendments to its Minimum Standards: namely, limitations on the use of punitive segregation ("PSEG")[1] and the creation of enhanced supervision housing ("ESH")[2] for adults as part of systemic reforms in the City jails. The reforms included the elimination of PSEG for 16 to 21-year-olds and individuals with serious mental or serious physical disabilities or conditions.[3] Approximately one year later, in December 2015, BOC enacted further amendments, including some proposed by DOC, such as the 60-day sentence for assaults on staff. The Department achieved elimination of PSEG for adolescents (i.e., people ages 16 and 17) in December 2014 and for young adults (i.e., people ages 18 through 21) in October 2016. Just two years later, in October 2018, DOC achieved another milestone — the transfer of adolescents off Rikers Island to the Horizon Juvenile Center in the Bronx, under the joint care of DOC and ACS.[4]

The elimination of punitive segregation for young people led the Department to establish alternative restrictive housing for the young adult jail population: Second Chance Housing Unit ("Second Chance"), Transitional Restorative Unit ("TRU"), Secure Unit ("Secure"), and Young Adult ESH ("YA-ESH").

During this period of reform, the Department commingled young adults with adults in certain ESH units, implemented the routine use of restraint desks in ESH Level 1 during all lock-out time, and operated a highly restrictive unit in West Facility without affording due process to the adults and young adults placed there. The Board viewed these actions as running counter to basic tenets underlying the Department's Young Adult Plan[5], the PSEG amendments, and the intended purposes of ESH. This retrenchment of the 2014-2015 reforms led to variances and variance

[1] Minimum Standard ("Min. Std.") § 1-17 ("Limitations on the Use of Punitive Segregation").
[2] Min. Std. § 1-16 ("Enhanced Supervision Housing").
[3] Min. Std. § 1-17(b)(iii) ("Exclusions").
[4] "ACS" is the NYC Administration for Children's Services. As of October 1, 2020, adolescents are in the sole custody of ACS.
[5] In 2016, the Department of Correction put forth a plan to account for the developmental differences of the Young Adult population and their overall well-being while in custody. This plan included the following goals: removing all Young Adults from Punitive Segregation; housing Young Adults separately from adults; creating alternatives to Punitive Segregation housing; training all steady officers assigned to Young Adult housing in Safe Crisis Management; training all steady officers assigned to alternative housing units in Cognitive Behavioral Therapy; and providing a minimum of 5 hours of programming per day for Young Adults in the general population.

conditions, most of which continue to the present day. It also led to the Board's unanimous vote in 2016 to conduct rulemaking on restrictive housing.[6]

2019 Board Vote on Proposed Rules

On October 31, 2019, the Board voted to formally propose restrictive housing rules ("2019 Rule"), which were the result of extensive fact-finding in 2017-2018. This included discussions with 30 organizations and individuals — the local defense bar, criminal justice advocates, national criminal justice organizations and oversight entities, Correction Officers' Benevolent Association (COBA), correctional experts, and academics — and our City partners, DOC and CHS.[7] This comprehensive effort also entailed a literature review and examination of DOC directives, policies, and reports; Board staff research, analyses, and reports; consultation of model restrictive housing standards at the national and international level; and study of restrictive housing in jails and prisons nationwide. Recognizing the importance of capturing the voices of people in custody and uniformed staff about what it was like to reside or work in restrictive housing, in 2019, BOC staff also spoke with correction officers and people in custody in various restrictive housing units as part of the fact finding and rules development process.[8]

The 2019 Rule[9] included the following key provisions: (i) the maximum PSEG sentence was reduced from 30 to 15 days (other than for serious assault on staff)[10]; (ii) the maximum PSEG sentence for serious assault on staff remained at 60 days, but with the ability to earn a sentence reduction for good behavior[11]; (iii) expansion of exclusions from PSEG I (defined as 20-hour daily lock-in for people found guilty of Grade I violent offenses)[12]; (iv) elimination of an automatic monetary fine for all guilty infractions[13]; (v) videotaping of people's refusal to sign their notice of infraction or attend their hearing, and the requirement that DOC place a person in PSEG with 30 days of adjudication of guilt or else the person could not be placed there at a later time[14]; (vi) elimination of the routine use of restraints, including restraint desks, by February 2022[15]; and (vii) codification of variance conditions and standardization of existing DOC policies governing "transitional/administrative housing" (i.e., non-disciplinary restrictive housing), such as the increase in daily lock-out from seven to 10 hours for young adults, individual behavior support

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[6] Minutes of January 12, 2016 Public Meeting (at 7-8), https://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes-(1.12.16).pdf.

[7] "CHS" is the NYC Health + Hospitals' Correctional Health Services Division.

[8] Transcript of December 2, 2019 CAPA Hearing, pp. 5-6.

[9] The 2019 Rule is available at: https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2019.10.29%20-%20Rule%20and%20Certifications.pdf.

[10] 2019 Rule § 6-07(a)(i).

[11] *Id.*, § 6-07(a)(viii).

[12] *Id.*, § 6-07(a)(1)(i).

[13] *Id.*, § 6-07(c).

[14] 2019 Rule §§ 6-30(b)(7) ("Notice of Infraction"), 6-30(b)(6) (same), 6-30(c)(5) ("Disciplinary Hearing"-"Videotaping"), and 6-30(e)(2) ("Disciplinary Sanctions").

[15] *Id.*, § 6-36(g).

plans, periodic reviews, and a rebuttable presumption of progression within housing levels of a restrictive housing unit or out of the unit, based on specified criteria.[16]

2019 CAPA Hearings and the Path to Ending PSEG

The 2019 Rule was subject to the Citywide Administrative Procedure Act (CAPA) rulemaking process,[17] which included two public hearings — on December 2 and December 16, 2019 — for the presentation of oral testimony[18] and a three-month public comment period (November 1, 2019-January 31, 2020) for the submission of written comments.[19] The Board received oral testimony from 59 individuals and 54 written comments.

The vast majority of those who testified and/or submitted written comments — PSEG survivors and their loved ones; mental health, criminal justice, legal, and human rights experts; elected officials[20]; faith leaders; and community members (collectively, "commentators") — called for the immediate end to punitive segregation (also referred to as "solitary confinement") in the New York City jails. Commentators cited numerous studies finding that PSEG/solitary confinement causes severe and long-lasting psychological, emotional, and physical harm and is ineffective in preventing violence[21]. PSEG/solitary confinement survivors, both currently and formerly in DOC custody, described the damaging effects of isolation in moving detail.[22] Commentators also cited evidence that solitary confinement is disproportionately inflicted on Black and Latinx people, queer, transgender, and non-conforming people, young people, and people with mental health needs.[23] Some commentators invoked the memory of Layleen Polanco, a 27-year-old Afro-Latinx

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[16] *Id.*, See, generally, Subchapter E ("Transitional/Administrative Housing"); §§ 6-12(b) ("Young Adults with Ten (10)-Hour Daily Lockout"), 6-14 ("Individual Behavior and Programming Plan"), and 6-14 ("Periodic Review of Placement).

[17] New York City Charter ("Charter") § 1401 *et seq.*

[18] Transcripts of the December 2019 hearings are available at: https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/December/NYC-Board-of-Correction-CAPA-Hearing-re-Restrictive-Housing-Proposal-Rule-2019-12-02.pdf (December 2, 2019 hearing transcript) and https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/December/BOC-Capa-Hearing-Re-Restrictive-Housing-Proposal-Rule-2019-12-16.pdf (December 16, 2019 hearing transcript).

[19] The written comments are available at: https://www1.nyc.gov/site/boc/jail-regulations/rulemaking-2017.page (see comments listed underneath the heading "Written Comments").

[20] Elected officials who testified and/or submitted comments urging the end to punitive segregation in the jails included NYC Public Advocate Jumaane D. Williams, NYC Council Speaker Corey Johnson, NYC Council Members Daniel Dromm, Bill Perkins, Keith Powers (Chair of Committee on Criminal Justice), Carlina Rivera, Antonio Reynoso, members of the Council's Progressive Caucus and Women's Caucus, and NYC Comptroller Scott M. Stringer.

[21] For discussion of these studies, see "Subchapter D: Elimination of Punitive Segregation," pp.22-24, below.

[22] See, e.g., testimony of Trent Taylor, Marvin Mayfield, Vidal Guzman, Herbert Murray, Harvey Murphy, Evie Litwok, and Candie at the December 2019 CAPA hearings as well as the comments of incarcerated people submitted by advocates.

[23] 1/31/20 comment letter from 63 organizations and 20 individuals endorsing the "Blueprint for Ending Solitary Confinement in NYC Jails" and the enclosed Blueprint, p. 3.

transgender woman, who died after nine days in the Restrictive Housing Unit (a form of punitive segregation) on Rikers Island on June 7, 2019.[24]

Commentators called for the City to eliminate PSEG as it currently exists — a punitive approach based on sensory deprivation, lack of normal human interaction, and extreme idleness — and replace it with a disciplinary model that ensures safety through separation and promotes violence reduction/prevention through positive incentives, effective programming targeted at the underlying reason for violent behavior, and meaningful human engagement. Some commentators cited housing programs or models that have proved to be successful alternatives to PSEG in the city jails, such as the Clinical Alternatives to Punitive Segregation (CAPS) program, which CHS operates for seriously mentally ill individuals who have committed a Grade I violent offense.[25]

Following the CAPA hearings and public comment period, the Board commenced review of the oral testimony and written comments regarding the 2019 Rule. At the public meeting on March 10, 2020 and at public meetings thereafter, the Board acknowledged the broad consensus among those who testified and/or submitted comments to end PSEG in the City's jail system. The Board recognized the harmful and long-term impacts of extreme isolation and idleness that have been the hallmarks of punitive segregation in the City jails. At the same time, the Board emphasized that the primary goal of all stakeholders — maintaining the safety of staff and people in custody — could only be achieved by simultaneously ending PSEG and implementing an alternative disciplinary system that keeps all those who work or reside in the jails safe. Moreover, the alternative system must separate violent perpetrators from and limit their engagement with others immediately following a violent incident, hold perpetrators of violence accountable for their misconduct, and provide all necessary supports to address their violent behavior and prevent its reoccurrence.[26]

On June 29, 2020, the Mayor and Board Chair Jones Austin issued a joint press release calling for the end to PSEG and announcing the formation of a working group to develop an alternative disciplinary system "of accountability with a focus on safety for both staff and detained persons,"

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[24] See BOC's 6/23/20 "Report on the Death of Layleen Xtravaganza Cubilette-Polanco, 1991-2019," available ("Polanco Report") at: https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06_Polanco/Final_Polanco_Public_Report_1.pdf.

[25] See, e.g., Blueprint, p. 4; 1/31/20 Brooklyn Defender Services comment letter (p. 9); 12/16/19 Comptroller Scott Stringer comment letter (p. 2); 12/2/19 CAPA Hearing testimony of: Julia Solomons (Bronx Defenders), p. 73; Public Advocate Jumaane Williams, pp. 78-79; Julia Davis (Children's Defense Fund), p. 85; 12/16/19 CAPA Hearing testimony of: Council Member Daniel Dromm, p. 10 and Alana Silvin (on behalf of Speaker Corey Johnson), pp. 36-37.

[26] Testimony of Interim Chair Jacqueline Sherman at March 10, 2020 public meeting (3/10/20 Hearing Tr., pp.3-5) ; testimony of Chair Jennifer Jones Austin at May 12, 2020 public meeting (5/12/20 Hearing Tr., pp. 4-5); testimony of Chair Jones Austin at July 14, 2020 public meeting (7/14/20 Hearing Tr., pp. 3-4); Minutes of September 14, 2020 public meeting (p. 3); Minutes of October 13, 2020 public meeting (p. 3); and Minutes of November 10, 2020 public meeting. All of the foregoing hearing transcripts and minutes are available on BOC's website at: https://www1.nyc.gov/site/boc/meetings/2020-meetings.page.

"effective and robust programming," and "investment in training" of staff.[27] Led by Board Vice-Chair Stanley Richards and including DOC Commissioner Cynthia Brann, Just Leadership USA President, CEO DeAnna Hoskins, and COBA President Benny Boscio, the Working Group worked over the next three months to produce recommendations to be presented for inclusion in the proposed rules.[28],[29]

Guided by the Working Group's recommendations, BOC's *ad hoc* Rulemaking Committee developed a new rule to, among other things, eliminate punitive segregation and all other forms of restrictive housing except for the Transitional Restorative Unit ("TRU") and the Second Chance Housing Unit (which are both units for young adults with 14 hours of lock-out). Since the proposed elimination of punitive segregation and the creation of an alternate disciplinary housing model represented a significant change from the 2019 Rule, the Board determined to restart the CAPA process and afford the public a full opportunity to testify about and submit written comments on any new revisions to the proposed Chapter 6 rules.

2021 Proposed Rule and Changes to State Law

On March 9, 2021, at a regularly scheduled public meeting, the Board voted to formally propose a new rules package ("2021 Proposed Rule")[30] which, among other things, sought to end the use of PSEG and most other forms of restrictive housing (including ESH) and replace the eliminated units with the Risk Management Accountability System (RMAS), a three-level alternative disciplinary model intended to separate people from general population in response to their commission of an offense.

The new CAPA period commenced with the Board's March 9, 2021 vote. Pursuant to CAPA, the Board then held two public hearings on the 2021 Proposed Rule—one in the morning on April 13, 2021[31] and one in the evening on April 14, 2021.[32] The Board also continued to accept written comment and additional oral comment via a dedicated voicemail line until April 23, 2021, at which point the CAPA public comment period closed. In total, during this public comment period, the Board received oral testimony from at least 124 unique individuals (with at least 17 offering

[27] June 29, 2020 Press Release, available at: https://www1.nyc.gov/office-of-the-mayor/news/481-20/mayor-de-blasio-board-correction-chair-jennifer-jones-austin-working-group-end, p. 1.
[28] *Id.*, pp. 1-2.
[29] COBA President Boscio neither participated in developing nor endorsed any of the Working Group's recommendations. He has publicly opposed the elimination of punitive segregation.
[30] The 2021 Proposed Rule is available at: https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2021-Restrictive-Housing/2021.03.05-Proposed-Rule.pdf.
[31] Due to the ongoing COVID-19 pandemic, this hearing was held virtually. A video of the hearing can be found at https://youtu.be/ke_1GHLj_c8.
[32] Due to the ongoing COVID-19 pandemic, this hearing was held virtually. A video of the hearing can be found at https://youtu.be/hZ57UgPFxfI.

multiple testimonies).[33] The Board also received 48 written testimonies, from government agencies and officials, to advocacy organizations and individuals.[34]

A significant portion of those offering testimony on the Proposed 2021 Rule expressed concern that the three-level RMAS system, as designed, was not sufficiently time-limited, and that people would remain there indefinitely. Many commentators also called for more out-of-cell programming for people in RMAS, as well as legal representation for people in RMAS to ensure due process and fairness.

As the Board was considering public comment on the Proposed 2021 Rule, it was also familiarizing itself with recent changes to state law governing restrictive housing, in particular amendments to the State Commission on Correction's (SCOC's) regulations related to special housing (i.e. disciplinary and administrative segregation), and the newly passed Humane Alternatives to Long-Term (HALT) Solitary Confinement bill (A.2500 / S.1623). While the Board concluded that the new provisions of HALT were nonbinding on the 2021 Proposed Rule—as HALT applies only to cell confinement for more than 17 hours per day, and RMAS was designed so that people would not be confined to a cell for more than 14 hours—the Board recognized that certain of the new SCOC regulations preempted provisions in the 2021 Proposed Rule. Specifically, the SCOC's new regulations necessitated changing the structure of RMAS so that it was time-limited to 30 days in total (subject to specific exceptions).[35] The Board also made additional changes to the 2021 Proposed Rule based on feedback from the public and from DOC and CHS.

The following is a descriptive summary of the final rule package, including (i) amendments to Chapter 1 Standards to make them consistent with the Chapter 6 rules (Section I); and (ii) the new rules in Chapter 6 (Section II). Chapter 6 includes rules regarding immediate placement responses to violence, restraints and canines, and variances, as well as a chart reflecting dates for implementation of rules that will not be implemented on the Effective Date. Chapter 6 also sets forth a comprehensive set of rules addressing key aspects of RMAS, including placement criteria and exclusions; time limitations, periodic reviews, and progression; procedural due process protections; case management and individual behavior support plans; staffing, training, and programming; and out-of-cell time and other conditions.

I. Amendments to Chapter 1 Standards

[33] A summary of all oral testimony is located at https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2021-Restrictive-Housing/Summary%20of%20All%20Oral%20Testimony%20Received%20by%20BOC%20during%20Public%20Comment%20Period.pdf

[34] Written public comment received by the Board during the 2021 CAPA period is located under the heading "Written Comments" at https://www1.nyc.gov/site/boc/jail-regulations/public-comment-proposed-restrictive-housing-rule-2021.page

[35] The SCOC Chairman's Memorandum and regulatory additions and amendments, dated February 8, 2021, is located at https://scoc.ny.gov/pdfdocs/CM-2-New-Regulations-Governing-Special-Housing.pdf .

The Board amends certain of its Minimum Standards in Chapter 1 of Title 40 of the Rules of the City of New York. The amendments:

- Prohibit, with certain exceptions, the commingling of young adults (ages 18-21) and adults (ages 22 and over);

- Ensure that all provisions in Chapter 1 are consistent with the restrictive housing rules in Chapter 6; and

- Further the Board's commitment to employing person-first and gender-inclusive language in its Standards and general communications by modernizing all such language in each amended section of Chapter 1.

Following is a descriptive summary of the amendments.

Amendments to § 1-02(c): Commingling of Young Adults with Adults

In 2015, the Board amended Minimum Standard § 1-02(c) to create a unique category of people in custody — young adults ages 18 through 21 — who were to be housed separately and apart from the adults in the Department's custody (§ 1-02(c)(1))[36] and provided age-appropriate programming (§ 1-02(c)(2)).[37] These revisions were designed to reduce violence by: (i) segregating developmentally distinct age groups; (ii) fostering age-appropriate rehabilitative opportunities, and (iii) ensuring compliance with federal and local Prison Rape Elimination Act (PREA) standards.

Although the amended rule became effective in July 2016, the Board has continuously passed variances exempting the Department from full compliance. The Board began granting these variances to DOC in fall 2015. The latest iteration of the variance was passed on January 12, 2021 and allowed the Department to house young adults ages 19 through 21 under certain conditions.[38] As of December 15, 2020, 89% (n=319) of young adults in DOC custody were housed with their age group; 10% (n=34) were in comingled housing; and 1% (n=4) were housed with adults in specialized medical or mental health housing areas as permitted by other Board variances requested by CHS.

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[36] Min. Std. § 1-02(c)(1) states: "No later than October 15, 2015, the Department shall implement the requirement . . . that [people in custody] ages 18 through 21 be housed separately and apart from [people] over the age of 22."

[37] Min. Std. § 1-02(c)(2) states: "Housing for [people in custody] ages 18 through 21 shall provide such [people] with age-appropriate programming. No later than August 1, 2015, the Department shall provide the Board with a plan to develop such age-appropriate programming."

[38] Record of Variance Action, with conditions, dated January 12, 2021, available at https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2021/January/2021.01%20-%20Record%20of%20Variance%20Action%20-%20YA%20Co-mingling_final.pdf

On October 31, 2019, the Board voted to formally propose a restrictive housing rule (i.e., the 2019 Rule) that would codify these variance conditions. During the comment period on the 2019 Rule, advocates and others voiced their opposition to this proposed change on the ground it marked a troubling departure from the DOC's Young Adult Plan and would allow the Department to remove young adults from age-appropriate services, education, and programming. Further, there was no evidence that the practice of housing young adults with adults reduces violence.[39]

At public meetings during the last quarter of 2020, Board members expressed concern about the unacceptably high percentage of young adults housed with adults and their resulting lack of access to young-adult specific programming. They emphasized that it is precisely young adults who have engaged in violence who would benefit the most from such programming. Consequently, proposed rule § 1-02(b)(3) through (4) require that young adults be housed separate and apart from adults, except when housed in specialized medical housing units, specialized mental health housing, pregnant person housing or the Department nursery.[40]

Rule § 1-02(c)(3) states that the Department shall comply with the following data reporting requirements on commingling young adults with adults: (i) provide the Board with a monthly public census showing which housing units and facilities house young adults; the census shall indicate how many young adults are in each unit and whether the unit is a young-adult only unit or a commingled housing unit;[41] (ii) report to the Board the locations of all units operating as young adult-only housing units at each facility, the date each unit started operating as a young adult-only unit, and the date each unit stopped operating as a young adult-only unit;[42] and (iii) provide

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[39] See, e.g., the following comments on the 2019 Rule: Children's Rights comment letter, December 12, 2019, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2019-12-16-Public-Comment-Opposing-Restrictive-Housing-Rulemaking-Childrens-Rights.pdf, pp. 1-2; Children's Defense Fund-New York comment letter, November 27, 2019, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2019-11-27-FINAL-CDF-Public-Comment-BOC.pdf, pp. 1-3; Urban Justice Center Mental Health Project, comment letter, January 31, 2020, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2020-01-31-UJC-MHP-Comments-on-Restrictive-Housing-Rulemaking.pdf, p. 9; Legal Aid Society comment letter, January 31, 2020, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2020-01-31-LAS-Comments-on-BOC-Proposed-Rules.pdf, p. 10; Girls for Gender Equity comment letter, December 18, 2019, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/Girls-for-Gender-Equity-Comment-on-Restrictive-Housing.pdf, pp. 1-2.

[40] Rule § 1-02(c)(3) through (4). The rules define specialized medical units as "housing units for persons with medical conditions, such as infirmaries and contagious disease units (CDUs), where entry and discharge are determined by CHA according to clinical criteria" (rule § 6-03(b)(14)), and specialized mental health units as "Program for Accelerating Clinical Effectiveness (PACE) units, and Clinical Alternatives to Punitive Segregation (CAPS) units, where entry and discharge are determined by CHA according to clinical criteria" (rule § 6-03(b)(15)). These exceptions were the subject of two continuing variances one granted in November 2015 and the other in July 2016.

[41] Rule § 1-02(c)(3)(i).

[42] Rule § 1-02(c)(6)(ii).

BOC with monthly public reports on the Department's plans for housing and providing age-appropriate programming and services to young adults (i.e., Young Adult Plan).[43]

Amendments to Ensure Consistency between Chapter 1 and Chapter 6 Standards

The other amendments to Chapter 1 Standards eliminate specific references to punitive segregation and enhanced supervision housing (ESH) and insert references to RMAS where appropriate.

Section 1-05 (Lock-in)

The amendments to § 1-05 eliminate the reference to punitive segregation and provide that the Chapter 1 Minimum Standards relating to lock-in do not apply to RMAS, where lock-in is governed by rule § 6-16.

Section 1-06 (Recreation)

Section 1-06(g) regarding recreation for people in segregation has been amended to replace the terms punitive segregation and "close custody" with a reference to RMAS.[44]

Existing § 1-06(h) states that a person in custody's "access to recreation may be denied for up to five days only upon conviction of an infraction for misconduct on the way to, from or during recreation." Subdivision (h) has been amended based upon SCOC guidance that the Department may not restrict recreation as part of a disciplinary sanction. It also now requires that the Chief of Department approve any limitations imposed on someone's access to recreation.

Section 1-07 (Religion)

Whereas existing § 1-07(h) ensures the free exercise of religion for all persons in punitive segregation, including congregate religious activities with appropriate security, the amendment replaces "punitive segregation" with a reference to RMAS.

Section 1-08 (Access to Courts and Legal Services)

Section 1-08(f)(6) is amended to eliminate references to punitive segregation and ESH and permit the Department to reduce or eliminate law library hours in RMAS Levels 1 and 2 provided that an alternative method of access to legal materials is instituted to permit effective legal research.

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[43] Rule § 1-02(c)(6)(iii).

[44] Close custody was declared unlawful in *Matter of Jackson v Horn*, 27 Misc. 3d 463, 474 (Sup. Ct. N.Y. Cty. 2010) (holding that DOC's practice of confining people in close custody housing units violated §1-05 of the Board's Minimum Standards).

Section 1-08(j)(1) is amended to eliminate language allowing a person to be excluded from law library following a disciplinary infraction, in keeping with the SCOC guidance provided in the recreation context specifying that essential services cannot be restricted as part of a disciplinary sanction.

Section 1-09 (Visiting)

The amendment to § 1-09(f) permits the Department to impose limitations on contact visits with persons in RMAS according to the criteria in § 1-09(h) and the due process provisions governing disciplinary hearings set forth in rule § 6-24.

Section 1-11 (Correspondence)

Sections 1-11(c)(6) and 1-11(e)(1) currently permit the Warden of a facility to read non-privileged correspondence pursuant to a lawful search warrant or a Warden's written order articulating a reasonable basis to believe that the correspondence constitutes a security threat. In such cases, §§ 1-11(c)(6)(ii)-(iii) and 1-11(e)(1)(ii)-(iii) allow the Warden to read such correspondence without any notification to the sender or recipient when that person is in ESH; the existing sections also exempt the Warden from maintaining a written record of correspondence that has been read so long as the sender or recipient is in ESH. The amendments eliminate these exceptions related to people in ESH, and instead mandate that Wardens will be required to notify everyone in custody when a determination has been made to read their correspondence and will be required to keep a written record of all correspondence read pursuant to § 1-11.

Section 1-16 (EHS) and Section 1-17 (Limitations on the Use of PSEG)

As discussed above, these sections shall be repealed upon implementation of RMAS.

Non-Substantive Language Amendments (§§ 1-05 through 1-09 and § 1-11)

People in DOC custody are people first and the circumstance of their incarceration is not their defining feature. Therefore, the Board has made a commitment to employ person-first language in its Standards and general communications going forward. To this end, the Board is deleting all references to "Inmates" in favor of person-first terms such as "people/persons/individuals in custody" in Minimum Standards §§ 1-05 through 1-09 and § 1-11. The Board is also making a concerted effort towards gender inclusivity in its use of language and will avoid the use of terminology that suggests a gender binary.

II. CHAPTER 6 RULES

Subchapter A: Core Principles § 6-01

Rule § 6-01 enumerates the core principles upon which the Chapter 6 Standards are based. These principles are reflected in other Board Standards, model criminal justice standards, and DOC's policies on restrictive housing.

The first principle[45] seeks to protect the safety of people in DOC custody and the staff who work in DOC facilities[46] by*:* (i) ensuring that all people in custody and all staff are treated with dignity and respect; (ii) prohibiting restrictions that dehumanize or demean people in custody[47]; (iii) placing restrictions on people in custody that are limited to those required to achieve the appropriate objectives for which the restrictions are imposed[48]; and (iv) confining people to the least restrictive setting and for the least amount of time necessary to address the specific reasons for their placement and to ensure their own safety as well as the safety of staff, other people in custody, and the public.[49]

The second core principle[50] aims to place people in custody into restrictive housing in accordance with due process and procedural and restorative justice principles by: (i) explaining disciplinary rules and the sanctions for violating them when people are first admitted to DOC custody; (ii) imposing sanctions that are proportionate to the offenses committed; and (iii) applying disciplinary rules and imposing sanctions fairly and consistently.[51]

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[45] Rule § 6-01(a)(1)(i) through (iv).

[46] *See, e.g.,* Minimum Standard ("Min. Std."); § 1-16 (a) (ESH/"Purpose"); § 1-16(b) (ESH/ "Policy"); ABA Criminal Justice Standards on Treatment of Prisoners, Part I ("ABA Std.") (2011), Stds. 23-2.6(a) and 23-2.7, https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/Treatment_of_Prisoners.authcheckdam.pdf; American Correctional Association Restrictive Housing Expected Practices, ("ACA Std.")**)** (January 2018), Std. 4-RH-0001, http://www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards___Accreditation/Standards/Restrictive_Housing_Committee/ACA_Member/Standards_and_Accreditation/Restrictive_Housing_Committee/Restrictive_Housing_Committee.aspx?hkey=458418a3-8c6c-48bb-93e2-b1fcbca482a2; and U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing, Final Report ("DOJ Final Report"**)** (January 2016) (at 1), https://www.justice.gov/archives/dag/file/815551/download.

[47] *See, e.g.,* ABA Std. 23-1.1(d); United Nations Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules"), Rule 1, https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf.

[48] *See, e.g.,* Min. Std. § 1-16(d)(1) (ESH/"Conditions, Programming and Services"); § 1-17(b)(4) (PSEG/ "Exclusions"); ABA Std. 23-1.1(c); and DOJ Final Report, Guiding Principle No. 19, https://www.justice.gov/archives/dag/file/815556/download.

[49] *See, e.g.,* Min. Std. § 1-02(f)(1) ("Classification of Prisoners"/"Security classification"); § 1-17(e) (PSEG/"Required out-of-cell time"); Variance from Min. Std. § 1-16(c)(1)(ii) (YA-ESH Variance), Condition Nos. 2, 5, and 7, https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/February/2019.02.12%20DRAFT%20Record%20of%20Variance%20Action%20-%20YA%20ESH.pdf; ABA Std. 23-2.6(a); DOJ Final Report, Guiding Principle Nos. 1 and 2; and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Standards ("CPT Stds."), Standard 61, https://rm.coe.int/16806cccc6.

[50] Rule § 6-01(a)(2)(i) through (iv).

[51] *See, e.g.,* Min. Std. § 1-16(g) (ESH/"Placement Review Hearing"); Min. Std.§ 1-17(c) (PSEG/ "Due process"); ABA Std. 23-4.2; and DOJ Final Report, Guiding Principle No. 20.

The third core principle[52] strives to promote the rehabilitation of people in custody and reintegrate them into the community by: (i) incentivizing good behavior; (ii) allowing people placed in restrictive housing as much out-of-cell time and programming participation as practicable, consistent with safety and security; and (iii) providing necessary programs and resources.[53]

The fourth and final core principle[54] seeks to monitor and track compliance with the rules and the core principles on which they are based by developing compliance metrics and regularly reporting outcomes to the Board and the public.[55] In furtherance of this principle, rules regarding data collection and review are designed to ensure that the Department and CHS track the information necessary to monitor compliance with the rules and promote transparency on compliance through regular reporting.

Chapter 6's data reporting provisions take a comprehensive and holistic approach toward data collection and review. They require DOC and CHS to publicly report information on compliance and conditions of confinement in restrictive housing and regular data sharing with the Board.[56] Many of the reporting provisions, such as those related to, RMAS,[57] are intended to replace existing rules or codify variance reporting conditions.[58] Regular reporting required in the rules will ensure the Board, DOC, CHS, and the public have the necessary information from which to measure compliance and progress. The rules related to each report also require that the Board and the Department jointly develop reporting templates for approval by the Board to ensure the necessary compliance metrics are clearly communicated to the public. The rules also require the Department to develop the system(s) necessary to collect accurate, uniform data to track due

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[52] Rule § 6-01(a)(3)(i) through (iii).

[53] *See, e.g.,* § 1-16(a) (ESH/"Purpose"); ABA Std. 23-3.8(d); DOJ Final Report, Guiding Principle No. 30; and Association of State Correctional Administrators Restrictive Status Housing Policy Guidelines, August 9, 2013 ("ASCA Stds."), Std. No. 4, https://asca.memberclicks.net/assets/2013%20ASCA%20Resolution%20Restrictive%20Housing%20Status%20Policy%20Guidelines.pdf.

[54] Rule § 6-01(a)(4)(i) and (ii).

[55] *See, e.g.,* § 1-16(i) (ESH/"Board Review of ESH Implementation"); § 1-17(h) (PSEG/"Reports on punitive segregation"); conditions imposed on variances regarding commingling of young adults with adults, Young Adult-ESH, the Secure Unit, and PSEG (waiver of 7-day requirement), https://www1.nyc.gov/site/boc/jail-regulations/variances.page; ABA Stds. 23-11.1 and 23-11.3.

[56] *See, e.g.,* rules § 6-04(e) (Pre-Hearing Detention); § 6-05(k) (De-escalation Confinement); and § 6-25 (Data Collection and Review/RMAS).

[57] *Id.*

[58] *See, e.g.,* Min. Std. § 1-16(i) ("Board Review of ESH Implementation"); Min. Std. § 1-17(h) ("Reports on punitive segregation"); Variance from Min. Std. § 1-16(c)(1)(ii) (YA-ESH Variance), Condition Nos. 13 and 15 through 17, https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/November/2020.11%20-%20%20%20Record%20of%20Variance%20Action%20-%20YA%20ESH%C2%AD_final.pdf; and Variance from Min. Std. § 1-02(c)(1) ("Young Adult (YA) Commingling Variance"), Conditions Nos. 9 through 11, https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2021/January/2021.01%20-%20Record%20of%20Variance%20Action%20-%20YA%20Co-mingling_final.pdf

process requirements and compliance with RMAS rule provisions in a manner that may be analyzed electronically by the Board.[59]

The Department has begun soliciting recommendations from vendors to modernize the manner in which operations are tracked, recorded, and communicated. Currently, many processes related to restrictive housing exist only on paper forms and in paper logbooks. This inhibits efficient and safe operations and effective monitoring of compliance with the Minimum Standards. The Board understands that DOC has committed to enhancing and developing systems necessary to track the data and produce the reports required by the rules. Investments in comprehensive data tracking systems will position the Department to determine the effectiveness of agency programs, initiatives, policies, and practices; make data-driven policy decisions; and implement targeted corrective action when necessary.[60] With such systems, DOC would be able to determine whether any of its restrictive housing models or restrictions have been effective in preventing or reducing violence in the jails.

Subchapter B: Definitions §§ 6-02 and 6-03

General Definitions (§ 6-02)

Rule § 6-02 sets forth definitions of terms used throughout Chapter 6. Of note is the definition of a person confined in a DOC facility as a "person in custody." As noted in Section I, the Board has made a commitment to employ person-first language in its Standards and general communications going forward. To this end, the new Chapter refers to people in DOC custody as "people in custody."

Definition of Restrictive Housing and Related Terms (§ 6-03)

Generally, § 6-03(a)(1) and (2) define restrictive housing as the placement of people in custody into housing units separate and apart from the general population where all those in the unit are subject to restrictions not applicable to the general population. A unit is restrictive if out-of-cell time in the unit or in any other level of the unit is less than 14 hours a day (as is offered to the general population).[61] A unit is also restrictive for purposes of this rule if it has one or more of the following characteristics: (i) services mandated under Chapter 1 of the Standards are provided in

[59] Rules § 6-24(i)(1) and § 6-25(b).

[60] The Vera Institute of Justice ("Vera") recommends that prisons and jails "[d]evelop robust systems for collecting and reporting data on the use of restrictive housing and other relevant measures, such as outcomes of the disciplinary process. Such data should be used to measure the impact of policy changes, identify areas in which the desired outcomes are not being achieved, and ensure that all people benefit from the improvements (including populations such as youth, women, and people of color)." Vera, "Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems" (May 2018) (at 37), https://www.vera.org/downloads/publications/rethinking-restrictive-housing-report.pdf.

[61] Rule § 6-03(a)(1)).

the housing unit as opposed to a facility's common areas, such as the chapel or law library;[62] (ii) a person is housed alone in a unit;[63] and (iii) the physical design of the unit cannot accommodate more than four others in custody.[64]

The Rule's definition of restrictive housing was developed to address various forms of restrictive housing currently operating in the New York City jails. This includes punitive segregation of three types — PSEG I (also known as CPSU), the Restrictive Housing Unit, and PSEG II — and the Enhanced Supervision Housing or "ESH," all of which are units where people are held separate and apart from the general population as a consequence of behavior. The Rule's definition also includes housing units where the physical design of the unit permits people confined in the unit to congregate with a small number of other people in custody, such as units currently found at West Facility, North Infirmary Command (NIC), and Manhattan Detention Complex (MDC). Finally, the restrictive housing definition also encompasses units currently characterized as "solo housing," previously defined as a temporary individual placement in a housing area after all other feasible alternatives for placement were determined to be unsuitable. The definition does not include units currently operating for young adults where privileges are restricted but daily lockout is 14 hours (Transitional Restorative Unit ("TRU") and Second Chance Housing Unit).

►Immediate Placement Responses to Violence

Immediate placement responses to violence, addressed in Subchapter C (§§ 6-04–6-06), include pre-hearing detention — the placement of a person into RMAS Level 1 pending the investigation or adjudication of the person's disciplinary infraction for a Grade I violent offense. Also subject to Subchapter C rules are de-escalation confinement (§ 6-05), and the emergency lock-in of people in their cells (§ 6-06).

►RMAS

The Risk Management Accountability System, addressed in Subchapter E (§§ 6-08–6-26), is defined as a progression model that separates people from general population in response to their commission of an infraction that currently would render them eligible for PSEG I, RHU, or PSEG II, and holds them accountable through a swift, certain, fair, and transparent process. RMAS promotes prosocial behavior and progression through positive incentives as well as case management services, behavior support plans, and evidence-informed programming, tailored to the person's individual needs. RMAS includes Levels 1 and 2, with Level 1 being the most restrictive.[65]

►RRU

[62] Rule § 6-03(a)(2)(i).
[63] Rule § 6-03(a)(2)(ii).
[64] Rule § 6-03(a)(2)(iii).
[65] Rule § 6-03(b)(16).

The Restorative Rehabilitation Unit, addressed in Subchapter F (§ 6-27), is defined as a general population housing area of 15 or less people that offers enhanced programming, security, and therapeutic support for people stepping down from RMAS.

Subchapter C: Immediate Placement Responses to Violence § 6-04, § 6-05, and § 6-06

Subchapter C covers: (1) pre-hearing detention; (2) confinement for de-escalation purposes; and (3) emergency lock-ins. These forms of restrictive confinement, which the Department utilizes as immediate responses to violence, are discussed below.

Pre-Hearing Detention (§ 6-04)

People who must be immediately separated from others after committing a violent or other serious infraction are placed in pre-hearing detention ("PHD") to ensure the safety and security of staff and other people in custody. Rule § 6-04 incorporates provisions of Minimum Standard § 1-17(c)(2) (PSEG/"Due Process") stating that people in custody who qualify for and are placed in PHD shall be afforded an infraction hearing no later than seven (7) business days after PHD placement, and time spent in PHD in RMAS Level 1 prior to the infraction hearing shall count toward the person's placement in RMAS Level 1.[66] The rule expands upon these requirements by codifying certain provisions in DOC policies regarding placement criteria and time limitations governing the Department's use of PHD.

To monitor compliance with § 6-04, subdivisions (e) and (f) require: (i) the Department to produce semi-annual reports on DOC's use of pre-hearing detention; and (ii) the Board and the Department jointly develop the reporting template, which shall be approved by the Board.

Confinement for De-Escalation Purposes (§ 6-05)

Closed Housing Units

Rule § 6-05 sets forth parameters for the Department's confinement of people in custody for de-escalation purposes and builds upon DOC's existing policies on this subject. The need for parameters arose, in part, out of Board staff's discovery in 2016 of people being held in housing units classified as "closed" by DOC, yet serving as temporary space for people who required immediate removal from their housing unit after a violent incident.[67] When a person in custody was moved to one of these units, few staff members were alerted to where the individual was and official records did not reflect these locations. The person was effectively hidden, including from BOC staff and other oversight. Health staff was also not aware of the location of their patients in these units, creating dangerous barriers to medication and healthcare. Board staff further

[66] Rule § 6-04 and other Chapter 6 rules are intended to replace Min. Std. § 1-17 ("Limitations on the Use of Punitive Segregation") in its entirety as discussed later in Section I and in Section II, below.
[67] BOC Report on Satellite Intake: https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2018.10.19 - Satellite Intake Report.pdf.

determined that these units operated in violation of Minimum Standards and without any written procedures. In response to the Board's concerns, the Department reported it would cease the practice of placing people in closed housing areas.

The Use of Intake Areas for De-escalation Confinement

At the outset, we note that mention of the *Nunez* litigation in our Statement of Basis and Purpose is for historical background only, and any requirements stemming from that litigation would supersede local rules. Nothing in our rules is intended to or could interfere with the orders and related agreements related to the Nunez litigation. As the *Nunez* Monitor has repeatedly noted in his Reports, the high number of uses of force occurring in intake areas has been of concern since the effective date of the *Nunez* Agreement.[68] The practice of escorting people in custody to an intake area immediately following a use of force or a person-on-person fight interferes with the delivery of prompt medical access to injured individuals and diverts DOC intake staff from their primary duty of processing people in and out of the facility. Additionally, placing an agitated person in the intake pens "brings unnecessary chaos and tension into the area, and sometimes erupts into additional violence," and "the inherently chaotic environment of intake does not serve the de-escalation purpose for an agitated" person in custody.[69]

In prior monitoring periods, the Department initiated, on a pilot basis, Satellite Intake — a separate facility location where people were placed in individual cells as opposed to intake pens. DOC ceased this practice at the end of June 2018. Since then, the Monitor has continued to emphasize "the importance of a de-escalation tool in managing the immediate aftermath following an incident" and has encouraged the Department to reconsider Satellite Intake or a similar option as a viable strategy for post-incident response.[70]

During the Ninth Monitoring Period (i.e., the last six months of 2019), the Monitoring Team began to more closely scrutinize use of force incidents involving self-harm.[71] As part of this assessment, the Monitoring Team reviewed a number of self-harm incidents, including evaluation of the high-profile suicide attempt by 18-year-old Nicholas Feliciano, in an intake pen in November 2019.[72] According to press reports, he had been in an intake cell for approximately six hours before he

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[68] Ninth Report of the *Nunez* Independent Monitor ("Ninth Report"), https://www1.nyc.gov/assets/doc/downloads/pdf/9thMonitorsReport052920AsFiled.pdf, p.19; see also: Fourth Report (pp. 31, 67-68, and 250-252); Fifth Report (pp. 19-20, 60-61, 181-182); Sixth Report (pp. 1, 16, 196-197); Seventh Report (pp. 240-241); Eighth Report (pp. 32, 287); Ninth Report (pp. 22-28, 321-322); Tenth Report (pp. 19, 26-28, 279); All of the Monitor's Reports are posted on DOC's website at https://www1.nyc.gov/site/doc/media/nunez-reports.page.

[69] Ninth Report, p. 19.

[70] *Id.*, p. 322.

[71] Remedial Consent Order Addressing Non-Compliance, *Nunez v. City of New York,* 11 Civ. 5845, https://www.justice.gov/usao-sdny/press-release/file/1301816/download, p. 3.

[72] *Id*.

tried to hang himself from a pipe with a piece of clothing, as several officers stood by without intervening for seven minutes.[73] As a result, he allegedly suffered permanent brain damage.[74]

In August 2020, the *Nunez* parties entered into a Remedial Consent Order Addressing Non-Compliance which, among other things, requires the Department, in consultation with the Monitor, to develop and implement a de-escalation protocol to be followed after UOF incidents. The protocol, which is subject to the Monitor's approval, must be designed to minimize the use of intake areas to hold people in custody.

Section 6-05 Parameters

The parameters set forth in rule § 6-05 are designed to prevent unregulated use of closed housing units as occurred in 2016 and prevent the dangers associated with the use of intake areas, as discussed in Monitor Reports over the past four years and exemplified by the tragic incident involving Mr. Feliciano.

Rule § 6-05 permits the Department to confine people in custody for de-escalation purposes only (1) when a person's behavior poses an immediate threat to the safety of the persons or others or significantly disrupts DOC activities in progress;[75] (2) to temporarily house a person in custody for the person's own safety after the person has been assaulted or otherwise victimized by another person in custody;[76] or (3) to facilitate the decontamination of people in custody following exposure to chemical spray.[77]

Rule § 6-05 requires, among other things, that the Department utilize only individual cells for the purpose of de-escalation confinement, and that such cells be located in areas other than intake areas.[78] Cells used for de-escalation confinement must have the features specified in, and be maintained in, accordance with the personal hygiene and space requirements of 40 RCNY § 1-03 and § 1-04.[79] Meals and snacks must be served to people in de-escalation confinement at or about the same time and of the same quality and quantity as the meals served to people in general population.[80]

The Department must ensure the immediate notification to CHA[81] of a person's placement in de-escalation confinement, including the initial and any subsequent locations of such confinement,

[73] *Id.*

[74] *Id.*

[75] Rule § 6-05(a)(1).

[76] Rule § 6-05(a)(2).

[77] Rule § 6-05(a)(3).

[78] Rule § 6-05(d).

[79] Rule § 6-05(e).

[80] Rule § 6-05(f).

[81] Rule § 6-02(b) defines "CHA" as "the Correctional Health Authority designated by the City of New York as the agency responsible for health and mental health services for people in the care and custody of the

so that the person's access to healthcare services and medication is not interrupted.[82] DOC must conduct visual and aural observation of people in de-escalation confinement every 15 minutes.[83]

A person in custody's initial placement in de-escalation confinement shall be no more than six (6) hours, and re-authorization must be based upon written approval up DOC's security chain of command every three (3) hours for a maximum of six (6) hours.[84] The approval for each three-hour authorization must consider the reasons therefor, including what attempts were made by the Department to transfer the person in custody out of de-escalation confinement.[85] Should DOC keep a person in de-escalation confinement for more than six (6) hours, it must declare an emergency variance pursuant to 40 RCNY § 1-15(b)(3).[86] Such declaration must include how long someone was kept there and the reasons why the person was not placed elsewhere. For the purposes of compliance with these time limitations, the length of a person in custody's de-escalation confinement shall be calculated from the time of initial placement in the de-escalation confinement cell or area until the individual is transported to a newly assigned housing area, and shall include the time the person spends in any other subsequent de-escalation confinement cell or area to which the Department moves the individual prior to rehousing.[87]

To monitor compliance with § 6-05, subdivisions (i) and (j) require the Department to produce quarterly reports on DOC's use of de-escalation confinement; and the Board and the Department jointly develop the reporting templates, which shall be subject to the Board's approval.

Finally, rule § 6-05(k) requires DOC to commence using cells outside of intake areas for de-escalation purposes within six months of the Effective Date. Until then, the Department must operate intake areas used for this purpose in compliance with the other requirements of § 6-05.[88] Additionally, de-escalation confinement in an intake area must have an adequate number of flush toilets, wash basins with drinking water, and appropriate furnishings for seating and reclining to accommodate the number of people in custody confined there.[89] Such areas must be maintained in a clean and sanitized manner.[90]

Emergency Lock-Ins (§ 6-06)

Department policy permits staff to lock down housing areas and facilities to investigate or avoid serious violent incidents, conduct searches for contraband, and restore order. As a security

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Department." Hereinafter, this Statement will refer to CHS as the current health care provider in the New York City jails.

[82] Rule § 6-05(b).
[83] Rule § 6-05(c).
[84] Rule § 6-05(g)(1) through (2).
[85] Rule § 6-05(g)(2).
[86] Rule § 6-05(g)(3).
[87] Rule § 6-05(g)(4).
[88] Rule § 6-05(k)(1).
[89] Rule § 6-05(k)(2).
[90] *Id.*

response that impacts many people and services, Board analyses find that lock-ins contribute to perceptions of unfair and excessive punishment, frustrations, and tensions in the jails, and that they hinder DOC's and CHS's ability to meet the Minimum Standards.

The amendment to § 1-05(a) ("Lock-in"/"Policy") states that except for people confined in RMAS housing or for medical reasons in contagious disease units, the time spent by people confined to their cells "should be kept to a minimum and required only when necessary for the safety and security of the facility." Rule § 6-06 on emergency lock-ins (or "lockdowns") builds on § 1-05(a). The rule is intended to minimize the impact of emergency lock-ins on access to mandated services, ensure adequate coordination between DOC and CHS when they occur, and improve transparency and accountability around the Department's use of this practice.

In 2018, the Board issued several reports on the number of emergency lock-ins and the total lock-in time experienced by people in custody from January 2017 through November 2017. This analysis found, among other things, that: (i) there was an 88% increase in the Department's use of emergency lock-ins since 2008; (ii) from 2016 to 2017, there was a 32% increase in the total number of emergency lock-ins; and (iii) DOC's current method of reporting and tracking these lock-ins does not readily allow for an accurate or comprehensive understanding of the number of lockdowns, total duration of lock-in time by people in custody, and the services impacted.[91]

The Board's May 2019 report[92] analyzed emergency lock-ins occurring in 2018 and found that while the Department had reduced the use of emergency lock-ins by 18% (from 1,595 in 2017 to 1,313 in 2018) and decreased their average duration by 8% (from 12 to 11 hours), more than half of all emergency lock-ins (58%, n=768) still resulted in nine (9) or more hours of continuous lock-in time for people in custody. The Board's report also found significant and concerning discrepancies between DOC and CHS documentation of the impact on health-related services. Board interviews with people working or held in areas where extended lock-ins occurred also confirmed that lockdowns can contribute to tensions and perceptions of unfairness. In its most recent analysis of 2019 data, the Board found that the Department had reduced the total number of emergency lock-ins by 46% (from 1,313 in 2018 to 706 in 2019) and maintained the average duration of 11 hours. More than half of all emergency lock-ins (56%, n=393) had resulted in nine (9) or more hours of continuous lock-in time for people in custody.

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[91] Lockdown Report (January 2018), https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Lockdown-Report-Jan-8-2018.pdf; Additional Lockdown Findings (January 2018), https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/April-20-2018/2018.01%20-%20Additional%20Lockdown%20Findings.pdf; Audit of DOC Facility Report of Area Lock-In Forms (April 2018) https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/April-20-2018/2018.01%20-%20Additional%20Lockdown%20Findings.pdf; and Consecutive Lockdowns and Duration of Lockdowns (April 2018), https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/continuous_lockdowns_report_final.pdf.

[92] Annual Lockdown Report (May 2019), https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Lockdown%20Report%202019_5.13.19_FINAL.pdf.

In response to the Board's findings, the Department publicly agreed to the Board's recommendations to continue reducing the number and duration of lockdowns and work toward ending the use of facility-wide lockdowns; notifying the public of lockdowns impacting visits and/or phone calls; and update the Incident Reporting System to track the impact of lockdowns on services, in a manner that may be analyzed electronically by the Board. Section 6-06 incorporates these recommendations.[93] The rule further provides: (i) DOC shall limit the scope of emergency lock-ins so that only those housing areas that must be locked down are affected;[94] (ii) as soon as an emergency lock-in occurs, or is extended beyond a regularly scheduled lock-in period, DOC shall notify the Board and CHS, in writing, as to the facilities and specific housing area locations and number of people impacted;[95] (iii) in all housing areas where lock-ins have continued for more than six (6) consecutive hours or more, CHS shall complete clinical rounds to check for medical and mental health; additionally, DOC shall ensure timely access to medical and mental health care during any lock-in and provide for other delayed or missed services as quickly as possible following the lock-in[96]; (iv) for lock-ins continuing for 24 hours or more, DOC shall notify the Board, in writing, of the steps taken to address the emergency and lift the lock-in;[97] and (v) DOC and CHS shall issue a written directive to staff regarding the requirements of § 6-06.[98] The directive must include protocols for communication and coordination between DOC and CHS during and after emergency lock-ins.[99]

Section § 6-06 requires quarterly DOC data reporting to the Board on emergency lock-ins to monitor compliance.[100] The rule also requires CHS to produce quarterly data reports on the impact of emergency lock-ins on required health services (rounding, scheduled and unscheduled services, and sick call) and share with the Board the data it used to produce the reports.[101]

Subchapter D: Prohibition On The Use Of Punitive Segregation: § 6-07

Between 2012 — when the average daily population ("ADP") in PSEG reached its peak (n=868) — and 2020 -- when the ADP in PSEG was 108 people [102] – the average daily PSEG population declined by 88%. As of December 10, 2020, there were 92 individuals held in PSEG.[103] The Department has only infrequently extended a person's PSEG sentence beyond the 30- and 60-day limitations in the 2015 rule amendments. During the period from September 1, 2015 through April 16, 2020 DOC considered only 39 "7-day waiver" requests, of which it approved 29 and

[93] Rules §§ 6-06(a), (c), (d), (e), (f), and (j).
[94] Rule § 6-06(b).
[95] Rule § 6-06(c)
[96] Rule § 6-06(g).
[97] Rule § 6-06(h).
[98] Rule § 6-06(l).
[99] *Id.*
[100] Rule § 6-06(m).
[101] Rule § 6-06(o).
[102] This number – 108 – represents the combined population in PSEG I, RHU, and PSEG II.
[103] 61 individuals in PSEG I, 28 individuals in RHU, and 3 individuals in PSEG II.

denied 10.[104] The Department's reliance on the use of "60-day overrides" also has decreased over time.[105] In 2015, DOC requested 114 and approved 94 of such overrides, as compared to 2020, when it requested only 15 and approved only 4.[106]

The Board applauds the Department for its considerable achievements in PSEG reform and has designed the following rules to replace punitive segregation and other forms of restrictive housing with RMAS — an alternative disciplinary model to ensure safety, accountability, and support in the NYC jails.

Rule § 6-07(a) recognizes that punitive segregation (also known as solitary confinement):

> imposes significant risks of psychological and physical harm on people in custody. These risks are intensified for those with pre-existing mental illness or medical conditions and young adults. The risk of self-harm and potentially fatal self-harm is also strongly associated with solitary confinement. The hallmarks of solitary confinement — social deprivation and enforced idleness — create these serious health risks and are antithetical to the goals of social integration and positive behavioral change.

Rule § 6-07(b) requires that the Department eliminate punitive segregation — PSEG I, RHU, and PSEG II — in all its existing and future facilities and implement RMAS by November 1, 2021. Thereafter, as prescribed in § 6-07(c), the only form of restrictive housing permitted in DOC facilities will be RMAS housing pursuant to rules § 6-08 through § 6-26.

The scientific evidence is well-established that punitive segregation's extreme isolation and deprivation of positive environmental stimulation places people in custody at significant risk of serious psychological harm.[107] A Rikers study by Drs. Homer Venters, Ross MacDonald, and

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[104] Min. Std. § 1-17(d)(2) requires that a person who has served 30 consecutive days in PSEG be released for at least seven (7) days before the person can be returned to PSEG. In September 8, 2015, DOC first requested, and the Board approved, a variance permitting the Department, "in highly exceptional circumstances presenting safety and security concerns" to waive this requirement. Since then, the Board repeatedly approved renewal of this variance subject to certain conditions. The Department has not considered or approved a 7-day waiver request since October 26, 2018. Moreover, this variance was last approved by the Board on January 16, 2020 and expired on April 16, 2020, after which the Department did not request to renew it.

[105] Min. Std. § 1-17(d)(3) states that a person may not be held in PSEG for more than a total of 60 days within a six-month period unless, upon completion of or throughout the 60-day period, the person has continued to engage in persistent, serious acts of violence, other than self-harm, such that any placement other than PSEG would danger other incarcerated persons or staff.

[106] BOC reports on punitive segregation: https://www1.nyc.gov/site/boc/reports/BOC-Reports/punitive-segregation-reports.page.

[107] Craig Haney (2018), "Restricting the Use of Solitary Confinement," Annual Review of Criminology (2018) ("Haney") (pp. 286-299), https://www.annualreviews.org/doi/full/10.1146/annurev-criminol-032317-092326;

Daniel Selling, among others, found that people who had spent time in PSEG were almost seven times more likely to attempt to commit acts of self-harm " during the days they were not in solitary confinement," relative to people who were never placed there.[108] A study of over 200,000 individuals who were incarcerated and released from the North Carolina prison system from January 2000 to December 2015 found that those held in solitary confinement were more likely to die in the first year after release from incarceration, especially from suicide or homicide; more likely to die of an opioid overdose in the first two weeks after release; and more likely to be reincarcerated.[109]

There is little evidence that punitive segregation is necessary to ensure safety or that without it, more violence would occur.[110] The Vera Institute of Justice reports that "[s]ubjecting incarcerated people to the severe conditions of segregated housing and treating them as the 'worst of the worst' can lead them to become more, not less, violent.[111] Studies show that people who have been placed in solitary confinement are more likely to commit crimes after their release than those who were not in solitary.[112] In contrast, states that have reduced their use of solitary confinement have demonstrated little or no increase in prison violence.[113]

Stuart Grassian, "Psychiatric Effects of Solitary Confinement, 22 Wash. U. J. L. & Pol'y 325 (2006), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy.

[108] Kaba F., Lewis A., Glowa-Kollisch S., et al., "Solitary Confinement and Risk of Self-Harm Jail Inmates," American Journal of Public Health. Vol. 104(3): 442-447, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/.

[109] Brinkley-Rubinstein L., Sivaraman J., Rosen D., et al., "Association of Restrictive Housing During Incarceration with Mortality After Release," JAMA Network Open, 2019;2(10):e1912516, https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350.

[110] Shames, A., Wilcox, J. & Subramanian, R., "Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives," Vera Institute of Justice, May 2015, pp. 18-20, https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf.

[111] *Id.*

[112] Butler B., Simpson M. & Robertson R., "A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas, ALU (Feb. 2015), p. 8, https://www.aclutx.org/sites/default/files/field_documents/SolitaryReport_2015.pdf (Of all those who were released from Texas prisons in 2006, 48.8% were re-arrested within three years. For those who were released from isolation units, 60.8 percent were rearrested during that period); Lowell D., Johnson C., & Cain K., "Recidivism of Supermax Prisoners in Washington State," Crime & Delinquency 53(4): 633-656 (Oct 1, 2007) (Study found higher felony recidivism rates among people released directly from supermax units in Washington State compared to those in the general population), https://www.studypool.com/uploads/questions/262416/20170124233153article_for_review_9.3.pdf; "Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons, Vera Institute of Justice (May 2006), https://www.vera.org/downloads/Publications/confronting-confinement/legacy_downloads/Confronting_Confinement.pdf (finding that solitary confinement was related to higher-than-average recidivism rates, especially when people are released into the community directly from solitary confinement).

[113] Shames, A., Wilcox, J. & Subramanian, R., "Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives," Vera Institute of Justice, May 2015, pp. 18-20, https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-

As described below, RMAS — the disciplinary model that will replace PSEG in the jails — will eliminate the harmful effects of punitive segregation while ensuring the safety of staff and people in custody, holding those who commit violence accountable for their misconduct, and providing people with the supports necessary to address the root causes of violence while in RMAS and also upon discharge from RMAS, thereby preventing further violence.

Subchapter E: Risk Management Accountability System (RMAS) §§ 6-08 through 6-26

Purpose (§ 6-08)

Rule § 6-08 states that the purpose of RMAS is to: (i) separate from the general population a person in custody in response to the person's recent commission of an offense, which significantly threatens the safety and security of other people in custody and staff; (ii) hold incarcerated individuals accountable for their misconduct through swift, certain, fair, and transparent processes; (iii) promote prosocial behavior and progression back to general population through utilization of positive incentives, case management services, and behavior support plans, and individualized evidence-based programming; and (iv) provide people in custody with meaningful opportunities to socially engage with others and pursue productive activities.

Exclusions (§ 6-09)

Rule § 6-09(a) excludes from RMAS: (i) people with a mental disorder that qualifies as a serious mental illness; (ii) people diagnosed with an intellectual disability (expanding the current mental illness exclusion for PSEG, in conformity with CHS's current practice)[114]; and (iiii) pregnant persons, persons within eight (8) weeks of pregnancy outcome, or persons caring for a child in the Department nursery program.[115]

The rule emphasizes CHS's authority in determining which of its patients fit the exclusionary criteria, as well as CHS's authority to remove patients from RMAS to specialized medical units at

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report_1.pdf ("In Colorado, for example, the state has reduced its use of solitary confinement by 85%, and assaults on staff are at their lowest point since 2006. . . In addition, other states, including Illinois, Maine, New Mexico and Washington have reduced their use of solitary confinement, opting to use alternative strategies. Evidence to date suggests there has been little or no increase in prison violence as a result").

[114] Compare Min. Std. § 1-17(b)(iii) (people with "serious mental disabilities or conditions" shall be excluded from PSEG) with rules § 6-09(a)(1) through (2) (excluding from RMAS people "with a mental disorder that qualifies as serious mental illness," and those "diagnosed with an intellectual disability").

[115] Rule § 6-09(a)(3); See Humane Alternatives to Long-Term (HALT) Solitary Confinement bill (A. 2500/S. 1623) (eliminates segregated confinement (more than 17-hour daily lock-in) for pregnant and new mothers), https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A02500&term=2019&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y; DOJ Report, Guiding Principle No. 49 ("Women who are pregnant, who are post-partum, who recently had a miscarriage, or who recently had a terminated pregnancy should not be placed in restrictive housing").

any time.[116] Finally, rule § 6-09(d) ensures that people who are excluded from RMAS at one time are not able to be placed in RMAS at a later date for the same infraction.

Placement Criteria (§ 6-10)

Under rule § 6-10(a), a person may be confined in RMAS Level 1 only in PHD following a Grade I offense or upon a finding, after a disciplinary hearing, that the person is guilty of having committed a Grade I violent offense; the placement must occur within 30 days of adjudication of guilt.[117] A Grade I violent offense is one which under existing Minimum Standard § 1-17, would have rendered the person eligible for placement in PSEG I. Grade I violent offenses include violent conduct such as a stabbing or slashing or assault of a person causing serious injury.

Under rule § 6-10(b), a person may be placed directly into RMAS Level 2 only upon a finding, after a disciplinary hearing, that the person is guilty of having committed a Grade I non-violent or a Grade II offense; the placement must occur within 30 days of adjudication of guilt.[118] Such offenses are those which under Minimum Standard § 1-17 would have rendered a person eligible for placement in PSEG II. Grade II infractions include non-violent conduct such as making, possessing, selling or exchanging any amount of a narcotic, narcotic paraphernalia or other controlled substance.

In furtherance of the central tenets of due process and procedural justice, rule § 6-10(c) requires that a person's sentence after being found guilty of an offense at a disciplinary hearing must be proportionate to the infraction charge. Additionally, pursuant to rule § 6-10(d), the Department must provide the Board with a written penalty grid describing, among other things, each offense that would render a person eligible for placement in RMAS Level 1 or 2 and the sentence range for each offense. DOC must share the penalty grid with the Board within 3 months of the Effective Date of the Rule.

Case Management (§ 6-11)

Rule § 6-11(a) requires the assignment of a case manager to each person in custody upon the person's placement into RMAS. To ensure continuity of engagement and support, the assigned case manager will, to the extent practicable, remain the person's case manager throughout the person's stay in RMAS and also once they step down to a RRU.[119] Additionally, case managers must possess a combination of credentials and experience that render them particularly qualified to assist people through RMAS and upon discharge.[120]

[116] Rule §§ 6-09 (b) and (c).
[117] See also rule 6-24(g).
[118] Id.
[119] Rule § 6-11(a).
[120] Rule § 6-11(b).

Individual Behavior Support Plan (§ 6-12)

Rule § 6-12(a) calls for the development of written individual behavior support plans for all people in custody upon their placement in RMAS that: (i) outline program expectations and services to facilitate the person's reintegration into housing in the general population;[121] and (ii) tailor plan goals to the individual's age, literacy, education level, and capacity to complete programming.[122] The Department shall review and update the person's progress toward meeting these goals with the person's participation at each periodic review.[123]

Each individual behavior support plan ("IBSP") must also include a detailed assessment of what led the person to engage in the violent or disruptive behavior, whether the person will be receiving mental health services; what programming and/or services will be provided to address the person's misbehavior and prevent its reoccurrence, whether special security staffing arrangements will be employed to manage the person's behavior, and whether the involvement of family members, criminal defense counsel, and community resources will be employed to assist the person in meeting the goals of the person's IBSP.[124]

Rule § 6-12(d) requires enhanced engagement of a person who commits a Grade I violent infraction while in RMAS Level 1. Specifically, the Department must review the person's IBSP and update it to include the strategies DOC will employ to prevent the person from engaging in further violent or disruptive behavior.[125] Upon approval of the updated plan by the Chief of Department, the plan (and the Chief's approval) will be transmitted to CHS, the Board, and the affected person.[126] The person's case manager must also meet with the person at least five days a week to review the person's progress toward meeting the plan's goals and further update the plan if necessary. [127]

Rule § 6-12 expands the purpose and scope of individualized support plans currently used in ESH, TRU, and Second Chance as per DOC policy and is also considered a best practice in other jurisdictions.[128]

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[121] Rule § 6-12(a)(1).
[122] Rule § 6-12(a)(2).
[123] Rule § 6-12(a)(3).
[124] Rule § 6-12(a)(4)(i) through (v).
[125] Rule § 6-12(d)(1).
[126] Rule § 6-12(d)(2) through (3).
[127] Rule § 6-12(d)(4).
[128] At the Middlesex County Adult Correction Center in New Jersey, weekly interdisciplinary restrictive housing meetings comprised of senior facility staff, classification and intelligence staff, and mental health staff discuss the status of people in restrictive housing and their individualized case plans, to ensure they can successfully transition to less restrictive housing as soon as possible. Vera, "Rethinking Restrictive Housing" (May 2018) (at 24), https://www.vera.org/downloads/publications/rethinking-restrictive-housing-report.pdf; the Nebraska Department of Correctional Services (NDCS) utilizes a high-level Central Office Multi-Disciplinary Review Team that must approve the placement of prisoners in its "longer term restrictive housing" unit and periodically reviews each prisoner, including his behavioral programming

Progression (§ 6-13)

As described above on pp. 6-7, the 2021 Proposed Rule originally conceived of RMAS a three-tiered progression model, with different criteria and exclusions for progression in each level. Following extensive public comment calling for more certain limits in the RMAS levels, and in consideration of the new time limits on special housing imposed by the SCOC, the rule was revised to make RMAS a two-tiered disciplinary model with stricter progression requirements. Specifically, § 6-13 has been revised to ensure that most people move through both levels of RMAS in no more than 30 days, with up to 15 days in each level. Section 6-13(a) specifies that there is strong presumption people will move out of Level 1 to Level 2 after 15 days, subject to a limited exception in § 6-15 in cases where there is specific, documented intelligence that someone poses a serious safety threat if they were to be transferred. Section 6-13(b) likewise suggests a presumption of 15 days in Level 2, stating that after a total of 30 days in RMAS (in any combination of levels), people must step down to the RRU unless the Department pursues the limited exception under § 6-15.

Periodic Review of Individual Behavior Support Plans (§ 6-14)

Rule § 6-14 furthers one of the core principles underlying the Chapter 6 Standards; namely to promote prosocial behavior and progression back to general population through case management services, behavior support plans, and individualized evidence-based programming;. In order to monitor a person's progress towards behavioral change, this section requires: (i) periodic reviews at least every 15 days for people in RMAS[129]; (ii) 24 hours' notice to incarcerated individuals of their review, the right to participate in the review, and to submit a written statement;[130] and (iii) a multidisciplinary team, including DOC program staff and the person's case manager, to consider various factors, including whether the programming and therapeutic options

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plan, to determine whether transfer to a less restrictive setting is safely possible. NDCS Administrative Regulation No. 210.01 re Restrictive Housing (rev'd. 7.14.16), Appendix III to "The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the Nebraska Department of Correctional Services," Vera Institute of Justice (2016), https://storage.googleapis.com/vera-webassets/downloads/Publications/safe-alternatives-segregation-initiative-findingsrecommendations/legacy_downloads/safe-alternatives-segregation-initiative-findingsrecommendations-ndcs.pdf/; the North Dakota Department of Corrections and Rehabilitation (NDDOCR) operates the Behavioral Intervention Unit or BIU for individuals who commit the most serious in-custody offenses and utilizes individualized behavior plans to monitor progress toward plan goals and make progression decisions (Bertsch," Reflections on North Dakota's Sustained Solitary Confinement Reform" (October2018) (at 72-74), https://law.yale.edu/sites/default/files/area/center/liman/document/asca_liman_2018_restrictive_housing_released_oct_2018.pdf; DOJ Report, Guiding Principle No. 5 ("For every [person in custody] in restrictive housing, correctional staff should develop a clear plan for returning the [person] to less restrictive housing as promptly as possible. This plan should be shared with the [person] unless doing so would jeopardize the safety of the inmate, staff, other inmates, or the public").

[129] Rule § 6-14(a).

[130] Rule § 6-14(b).

currently offered to the person are having a positive behavioral impact, and if not, what other available programming and therapeutic options might be more successful in helping the person to further the goals of their individual behavior support plan.[131] Following all periodic reviews, the team's conclusions are to be recorded in a written report and made available to the person within one business day of the review, subject to security redactions.[132]

Recognizing that this new periodic review process marks a significant departure from past practices, the Mayor's Office has committed to funding a formal evaluation of the process by a third-party auditor and contracted independent auditor after 3 months, 6 months, and annually thereafter. The purpose of such audit would be to analyze outcomes, to determine the process's efficacy, and to recommend any necessary changes.

Extensions (§ 6-15)

As described in § 6-13, the rules contemplate that people will generally spend 30 or less day in RMAS –15 days in Level 1 and 15 days in Level 2. That said, the rules allow the Department to extend a person's time in each level under certain exceptional circumstances where a person poses a serious safety threat if they were to be transferred. In such cases, the facility head and the Chief of the Department each must render a written determination citing to specific documented intelligence that the person poses serious threat to safety if they were moved, and these determinations may only be made on a 7-day basis.[133] The Board expects that that specific, documented intelligence will consist of physical evidence, such as recordings, or credible testimony of an impending threat; evidence of an individual's past behavior will not be sufficient for the Department to invoke an extension under this standard. Sections 15(b), (c), and (g) outline the process by which these written determinations must be made and served on the individual in custody, their legal representative, the Board, and CHS.

The extensions outlined in this section are intended to apply only in exceptional circumstances. Where possible, the Department should still make every attempt to find a suitable and safe housing arrangement in a less restrictive environment before invoking the limited extensions outlined in § 6-15. To ensure that most people still move through RMAS within the presumed time periods, the Board has added additional guardrails around the extension process, including ensuring (i) that the Department provide the affected person with sufficiently detailed information about why their time is being extended;[134] (ii) that people can file an administrative appeal to DOC's General Counsel once they have been held in RMAS for more than 30 days;[135] and (iii) that people have access to legal representation for purposes of this administrative appeal.[136] Section 6-15(j) outlines the timeline for the administrative appeal process.

[131] Rule § 6-14(c).
[132] Rule § 6-14(d).
[133] Rule § 6-15(a).
[134] Rule § 6-15(d) – (f).
[135] Rule § 6-15(i).
[136] Id.

Finally, pursuant to rule § 6-15(h), the Department may not extend a person's length of stay in RMAS by imposing consecutive lengths of stay regarding multiple offenses for which the incarcerated person was found guilty at a hearing. Instead, the Department must sentence someone according to the top charge for which they were found guilty.

Required Out-of-Cell Time (§ 6-16)

Rule § 6-16 requires that people in RMAS Level 1 be permitted at least 10 out-of-cell hours per day.[137] People in Level 2 must be afforded at least 12 out-of-cell hours each day.[138]

Other Conditions (§ 6-17)

Rule § 6-17 describes the following conditions, which become less restrictive as a person moves through RMAS.

(i) Rounding and Safety

Rule § 6-17(a) requires that security staff conduct visual observations of all persons housed in RMAS every 15 minutes when they are confined to their cells, borrowing from a former DOC policy which required the same in PSEG.[139] The rule explicitly requires that staff check for and confirm signs of life during these visual observations, a provision borne out of the Board's 2019 death review of Layleen Polanco which found that irregular and superficial rounding practices resulted in staff's failure for several hours to discover that Ms. Polanco had died while locked in her cell in the Restrictive Housing Unit (RHU).[140]

The Board's report on Layleen Polanco's death also found that housing area officers' lack of notice about Ms. Polanco's serious medical condition (epilepsy) ultimately compromised her safety in that unit. Consequently, the Board recommended that CHS and DOC develop a protocol to inform all housing area officers when someone in their charge has a serious medical condition where a medical emergency would be more likely to occur than for someone without such a condition. Given patient privacy considerations and confidentiality constraints on CHS, the Board recommended that the agencies design a protocol that would not reveal specific diagnoses or private medical information. As described further in § 6-21(a), the Board's rule codifies this recommendation to create a process whereby people in custody with certain enumerated medical conditions are identified by CHS on a list that is accessible to DOC. The Department is then responsible for ensuring that housing area staff are aware when someone in their custody has a serious medical condition. Rule § 6-17(b) seeks to add an additional level of protection for medically vulnerable people by requiring that at the beginning of every tour, all security staff

[137] Rule § 6-16(a).

[138] Rule § 6-16(b).

[139] DOC Directive 4501R-D re "Pre-Hearing Detention and Punitive Segregation Status Inmates," (eff. January 23, 2016), section IV(D)(8), p. 28.

[140] Supra, fn. 24.

confirm in their housing area logbooks that they have checked whether anyone on the unit has been identified by CHS as having a serious medical condition.

(ii) Meaningful Engagement

Separation of a person from general population after the person commits a violent offense and limitation on how many people the person may engage with following a violent incident are necessary to ensure the safety of staff and other people in custody. Rule § 6-17(c) balances safety concerns with the opportunity for meaningful engagement in RMAS Level 1. People confined in Level 1 will have the opportunity to meaningfully engage both visually and aurally with at least one other person in custody during lockout in a setting where people can converse without needing to raise their voices to be heard.[141] DOC plans to expand the structurally restrictive housing units at North Infirmary Command (NIC) for this purpose. People housed in RMAS Level 2 will have the opportunity to meaningfully engage both visually and aurally with at least three other people during lockout,[142] as is the case currently in the Secure Unit at George R. Vierno Center (GRVC). The Department plans to expand structurally restrictive housing at GRVC for this purpose.

(iii) Individual Restrictions

Rule § 6-17 states that to the extent the Department imposes individual restrictions on a person in custody confined in RMAS that deviate from those imposed on people housed in the general population, such restrictions must be limited to those required to address the specific safety and security threat posed by the person.[143] Individual restrictions must also be imposed in conformity with due process. For example, if DOC wants to limit access to contact visits of a person in custody who is confined in RMAS, a hearing shall be held, as required in 40 RCNY § 6-24(d), which shall address the criteria set forth in 40 RCNY § 1-09(h) with regard to both the incarcerated person and any individual visitors with whom DOC wishes to limit contact.[144]

(iv) Law Library Services

Rule § 6-17 permits law library services to be provided in RMAS Level 1 and Level 2 units instead of a law library.[145] Such alternative must, at a minimum, provide access to law library services by means of electronic legal research and typing equipment in each Level 1 and Level 2 unit[146]; and assign one library coordinator to every two RMAS units at least five times per week[147]. The

[141] Rule § 6-17(c).
[142] Rule § 6-17(d).
[143] Rule § 6-17(e).
[144] Rule § 6-17(f). Subdivision (f) is patterned on the same provision in 40 RCNY § 1-16(d)(2) (ESH).
[145] Rule § 6-17(g).
[146] Rule § 6-17(g)(1).
[147] Rule § 6-17(g)(2).

coordinator will provide instruction on available research tools and respond to incarcerated people's requests for law library services.[148]

(v) Recreation

Rule § 6-17(h) provides that, to the extent the Department offers people confined in RMAS recreation in outdoor recreation pens or in vacant cells, DOC must equip these pens or cells with exercise equipment such as dip bars, high bars, or pull-up bars.

(vi) Air Conditioning

Rule § 6-17(i) requires that all RMAS Level 1 and Level 2 units be air conditioned during the heat seasons.

(vii) Natural Light

Finally, based on testimony received during the public comment period, rule § 6-17(j) requires that all RMAS cells have access to natural light (i.e. windows to the outdoors).

Staffing (§ 6-18)

Rule § 6-18(a) states that the Department shall make strong efforts to staff RMAS units with as many steady officers as possible during each tour. Section 6-18(a) also requires the Department to retain records sufficient to show accurate, uniform data on the security staff transferring in and out of RMAS units and the years of experience and training of security staff assigned to and working in these units. DOC shall semi-annually report this information, in writing, to the Board.

Rule § 6-18(b) requires that DOC provide the Board with DOC's staffing plans developed for RMAS and regularly update BOC on any material changes to such plans.

Training (§ 6-19)

Rule § 6-19(a) incorporates Chapter 1 Minimum Standards § 1-16(e)(1) (ESH) and § 1-17(f)(1) (PSEG), and provides that (i) DOC staff assigned to RMAS units shall receive special training designed to address the unique characteristics of these units and the people in custody who are housed in these units; and (ii) such training shall include, but not be limited to, recognition and understanding of mental illness and distress, effective communication skills, and conflict de-escalation techniques. Rule § 6-19(b) requires specialized training for staff working with young adults housed in RMAS, including trauma-informed training on managing and understanding young adult populations and crisis intervention.

[148] Rule § 6-17(g)(3).

Rule § 6-19(c) requires the Department to provide hearing adjudicators and other staff involved in RMAS sentencing and placement decisions training on procedural and restorative justice principles and written policies to guide sentencing and placement decisions. This requirement is informed by the findings and recommendations of the Vera Report and the Board's ESH Reports.

Vera determined that people in custody, as well as DOC and CHS staff, find the disciplinary process difficult to understand and attributed this to: (i) inconsistent DOC directives and other official documents;[149] (ii) a lack of clear communication between the Department's Adjudication Unit and the various parties involved in an incident regarding outcomes of the disciplinary process;[150] and (iii) as discussed below, delays and backlogs in the process, resulting in distrust in disciplinary proceedings and outcomes.[151] To address these issues, Vera recommended, among other things, that all correction officers be trained on due process and procedural justice principles.[152]

Rule § 6-19(d) states that on at least an annual basis, the Department shall provide the Board with information related to the training to be provided in accordance with 6-20(a) through (c) including, but not limited to the length of each type of training required by DOC, training schedules, and curricula.

Programming (§ 6-20)

Programming is an essential support for people confined in RMAS to assist them in maintaining good behavior while in RMAS and upon release to general population. Rule § 6-20 requires the Department to offer at least five hours of daily programming—not including daily recreation, meals, showers, or sick call—to people in RMAS and to those who step down from RMAS to the RRU.[153] Such programming must include in- and out-of-cell programming which is evidence-informed, age-appropriate, and tailored to each person's individual behavior support plan. Programming must also be aimed at facilitating rehabilitation, addressing the root causes of violence, and minimizing idleness. DOC shall also provide people confined in RMAS with access to both in-cell and out-of-cell productive activities.[154] In Level 1, at least one hour of daily programming must be in-person therapeutic programming, led by therapeutic programming staff in a separate shared space dedicated for such purpose (i.e. not in a space regularly used for

[149] Vera Report, Finding B12 at 43.
[150] *Id.*
[151] *Id.*, Finding B11 at 41.
[152] *Id.*, Rec. G8 at 78-79 ("Vera encourages [DOC] to train all staff on procedural justice; while the Adjudication Unit plays a key role in [DOC's] due process procedures, staff at all levels initiate and engage with the adjudication process. By adding concepts of procedural justice into [DOC]'s training curriculum, [DOC] has the opportunity to further legitimatize the disciplinary process, equip its officers with the tools to effectively respond to unwanted behavior, and ultimately increase compliance with departmental rules.").
[153] Rule § 6-20(b). Five hours of daily programming is a key component of the Department's Young Adult Plan; see https://www1.nyc.gov/site/boc/jail-regulations/ya-plan.page.
[154] Rule § 6-20(a).

RMAS lock-out, such as individual dayroom attached to a cell).[155] Similarly, in Level 2, at least two hours of programming must be in-person therapeutic programming, led by therapeutic programming staff in a separate shared space dedicated for such purpose (i.e. not in a lock-out cage).[156] The Department must ensure that any spaces used for therapeutic programming ensure a sufficient degree of privacy so that people can fully engage with the programming.[157]

Rule § 6-20(f) requires the Department to offer at least five hours of daily programing to young adults confined in RMAS, inclusive of school hours.[158] DOC shall also insure that young adults are offered and are able to access three hours of educational services per day.

Rule § 6-20 requires the Department to report data and other information to the Board so that BOC can effectively monitor DOC's compliance with this section. For example, the Department must provide and regularly update the Board with information on program offerings in RMAS and for people who step down from RMAS to the RRU;[159] document each individual's participation in each program session offered and refusals to participate in programming and the reasons therefor;[160] and provide the Board with quarterly public reports on programming for adults and young adults by RMAS level.[161] Such reports must contain the data points specified in rule § 6-20(j).

Access to Health Services (§ 6-21)

(i) Serious Medical Conditions

The Board carefully reviewed the 2019 death of Layleen Polanco, who died of a fatal seizure while inside of a cell in the Restrictive Housing Unit (RHU) at Rose M. Singer Center on Rikers Island, and published a report with recommendations on June 2020.[162] One such recommendation was for CHS to develop and implement a clinical instrument to identify people with serious medical conditions at intake and in subsequent clinical encounters who are at elevated risk for negative outcomes if placed in cell housing areas.[163] Prior to proposing the 2019 Rule and to the issuance of the Polanco report, the Board worked with CHS to design such a process in the context of

[155] Rule § 6-20(d).
[156] Rule § 6-20(e).
[157] Rule § 6-20(f).
[158] This provision is consistent with YA-ESH Variance condition no. 15 (stating that DOC "shall offer five hours of programming to each young adult in YA-ESH each day. For young adults enrolled in school, the five hours of programming can include three hours of school." November 10, 2020 Record of Variance Action (p. 3), https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/November/2020.11%20-%20%20%20Record%20of%20Variance%20Action%20-%20YA%20ESH%C2%AD_final.pdf.
[159] Rule § 6-20(h).
[160] Rule § 6-20(i).
[161] Rule § 6-20(j).
[162] *Supra*, fn. 24.
[163] *Id.*

punitive segregation. This new process was meant to advance the Board's goal of protecting medically vulnerable people from increased risk in prolonged isolation, while at the same time addressing CHS's dual loyalty[164] concerns about the existing PSEG exclusion process by having CHS identify medically vulnerable people at intake rather than following a disciplinary hearing. A week after the release of the Board's Polanco report, on June 29, 2020, the Mayor and Board Chair announced that "effective immediately," DOC would exclude individuals with several key medical conditions from being placed in any form of restrictive housing, including people on asthma medication, antiepileptic medications for seizures, or blood thinners, have any history of organ transplant, or have a diagnosis of heart disease, lung disease, or kidney disease.

This Chapter eliminates solitary confinement in the City jails, replacing it with an alternative disciplinary model (RMAS) that does not rely on the extended periods of isolation that characterize DOC's existing punitive segregation model. As the health risks to people with serious medical conditions stand to be similar whether they are in RMAS or in any other housing area in the jail system, it does not follow that medical conditions should exclude someone from RMAS. Rather, the rule builds off the lessons learned in the Polanco death review and from negotiations surrounding the 2019 Rule to ensure that people with serious medical conditions are properly supervised. Accordingly, rule § 6-21(a) requires CHS to identify individuals with serious medical conditions at intake and in clinical encounters, and without disclosing specific diagnoses, make a current list of such individuals available to the Department. The rule then requires the Department to ensure that staff in RMAS units are aware of all people in the unit who have been identified as having a serious medical condition. The goal of this provision—in conjunction with the 15-minute rounding/confirming signs of life required in § 6-17(a) and the daily clinical rounds required in § 6-21(b)—is to ensure adequate supervision of people with serious medical conditions so that medical events can be addressed as quickly as possible.

(ii) Daily Rounds

Rule § 6-21(b) incorporates and amends the requirement for daily CHS medical rounds in ESH per § 1-16(d)(4)[165] and daily mental health rounds in PSEG per § 1-17(d)(6) by requiring daily clinical rounds in RMAS to assess medical and mental health, and specifies that such rounds must be documented in writing.

(iii) Notification to CHA

[164] "Dual loyalty is an ethical dilemma commonly encountered by health care professionals caring for people in custody. Dual loyalty may be defined as clinical role conflict between professional duties to a patient and obligations, express or implied, to the interests of a third party such as an employer, an insurer, or the state." Pont, et al., Dual Loyalty in Prison Health Care, 102 Am J Public Health, 475 (2012), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3487660/.

[165] Minimum Standard § 1-16(d)(4) states that "[a]ll [people in custody] in ESH shall be seen at least once each day by medical staff who shall make referrals to medical and mental health services where appropriate."

To ensure continuity of medical and mental health treatment, it is vital that the Department immediately notify CHA, in writing, of each placement of a person in custody into restrictive housing. Rule § 6-21(c) incorporates this requirement.

(iv) Clinical Treatment

Rule § 6-21(d) recognizes the legal and ethical requirements to treat patients in private and confidential settings. Cell-side discussions of medical conditions are overheard by others, subject to significant background noise, and ineffective. The rule prohibits cell-side mental health and medical treatment. Instead the rule requires DOC to ensure that all individuals in RMAS are brought to the facility clinic for their scheduled appointments. Nothing in this provision is intended to prevent CHS from interacting with a person in a cell who is in the midst of a crisis or emergency situation.

(v) Notification of Removal

Rule § 6-21(e) states that each time CHS determines removal of a person from RMAS to an alternative housing unit is appropriate, CHS shall notify the Board in writing of the circumstances related to the determination (e.g., medical or mental health concern, disability).

(vi) Data Collection and Review

Rule § 6-21 requires monthly public reports on compliance with the rule's requirements,[166] and data sharing with the Board.[167]

Fines (§ 6-22)

Rule § 6-22 adopts a Vera Report recommendation to eliminate the Department's automatic $25 fine assigned to all guilty infractions because "fines disproportionately impact indigent individuals, and there is little evidence that they lead to behavioral changes."[168] The fine also penalizes infracted people's families — most of whom are poor — by deducting the $25 from moneys families have placed in their loved ones' commissary accounts.[169] DOC shall only include a financial penalty as an option for restitution for destruction of property, and any imposition of a fine shall take into account the person's ability to pay.

Disciplinary System Plans (§ 6-23)

[166] Rule § 6-21(f)(1) through (7).
[167] Rule § 6-21(g).
[168] Vera Report, Rec. B14 at 54; the Report further stated that "in meetings and focus groups with the Vera team, [DOC] staff reported fines were an ineffective sanction" (p. 54).
[169] *See*, NYC Comptroller Report, "Fees, Fines and Fairness: How Monetary Changes Drive inequity in New York City's Criminal Justice System" (September 2019), https://comptroller.nyc.gov/reports/fees-fines-and-fairness/.

Rule § 6-23 requires that, within three months of the Effective Date, the Department submit to the Board a written plan for a disciplinary process, one for young adults and one for adults, that addresses (i) Grade III offenses ("violations"),[170] and (ii) people who are excluded from placement in RMAS under rule § 6-09.[171]

As required by rule § 6-23(b)(1) through (8), each plan shall include: (i) mechanisms for addressing violations without resort to RMAS placement or limitations on individual movement or social interaction, such as positive behavioral incentives and privileges, targeted programming to address problematic behavior, and conflict resolution approaches in response to interpersonal conflict within the jails; (ii) criteria for restricting or affording privileges based on behavior (e.g., commissary); (iii) a process for DOC staff to respond to violations swiftly and consistently; (iv) a plan for communication of the rules of conduct, DOC responses to rule violations, and due process procedures in a clear and understandable manner to people in custody and all DOC staff, including non-uniformed staff who have routine contact with people in custody; (v) training curricula for uniformed and non-uniformed staff on the disciplinary process and procedures; (vi) assistance to people in custody to understand the disciplinary process and procedures and their rights thereunder; (vii) a process for engaging DOC staff in the plans' development; and (viii) potential housing options for people excluded from RMAS. Upon review of the plans, the Board and the Department shall jointly develop a public reporting template on the disciplinary systems.[172] The template shall be subject to the Board's approval.[173]

Due Process and Procedural Justice (§ 6-24)

Rule § 6-24 affords all people in RMAS procedural due process protections including written notice, a hearing, legal representation, written determination, and right to appeal. Section 6-24's provisions expand and seek to standardize the varying procedural due process protections currently set forth in Minimum Standards § 1-16(g) (ESH/"Placement Review Hearing") and § 1-17(c) (PSEG/ "Due Process") as well as Department policies.

(i) Purpose

As stated in rule § 6-24(a), the protections set forth in this rule are intended to ensure that people in custody are placed into RMAS in accordance with due process and procedural justice principles. These protections are consistent with a central tenet of procedural justice — that "people believe justice as fair, based on their perception of fairness in the *process*, not just the perception of a fair *outcome*."[174] Research suggests that when people are treated with procedural justice and respect, "they view law and legal authorities as more legitimate and entitled to be obeyed. As a result, people become self-regulating, taking on the personal responsibility for

[170] Rule § 6-23(a)(1). Grade III offenses are minor rule violations that currently result in a reprimand but not placement in punitive segregation.
[171] Rule § 6-23(a)(2).
[172] Rule § 6-23(c).
[173] *Id.*
[174] Vera Report at 79 (emphasis in original).

following social rules."[175] Incorporating procedural justice principles in the New York City jails means ensuring through effective communication that people in custody understand the rules and the sanctions for violating them; sanctions proportionate to the offense are imposed consistently and fairly; and sentences are served swiftly following adjudication of guilt.[176]

As discussed below, rule § 6-24 adds new provisions regarding the videotaping of refusals to sign infraction notices and attend disciplinary hearings; legal representation for charges that could result in RMAS placement; and a process for ensuring people's placement in RMAS follows quickly upon adjudication.

(ii) Investigations

Subdivision (b) of § 6-24 states that: (i) disciplinary investigations must be conducted "promptly, thoroughly, and objectively;"[177] (ii) DOC personnel conducting the investigation must be the rank of Captain or above and must not have reported, participated in, or witnessed the conduct;[178] (iii) if the rule violation in question could lead to a subsequent criminal prosecution, DOC must inform the person in custody who is interviewed that any statements made by the person may be used against the person in a subsequent criminal trial, that the person has the right to remain silent, and that silence will not be used against the person;[179] (iv) all investigations must be documented in written reports that include "a description of the physical, testimonial, and documentary evidence as well as investigative facts and findings;"[180] (v) all investigations must commence within 24 hours after the Department is on notice of the incident[181]; and (vi) the Department shall only proceed with adjudication of charges against a person in custody upon a determination that there is reasonable cause to believe the person committed the infraction charged.[182]

(iii) Notice of Infraction

Rule § 6-24(c) requires that prior to the disciplinary hearing: (i) people in custody must receive written notice detailing the charges against them;[183] (ii) people who are unable to read or

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[175] Tom R. Tyler, "Restorative Justice and Procedural Justice: Dealing with Rule Breaking," *Journal of Social Issues*, Vol. 62, No. 2, 2006 (at 308), https://courses.washington.edu/pbafhall/514/514%20Readings/tyler%20justice.pdf.

[176] Vera Report at 45.

[177] Rule § 6-24(b)(1) is consistent with 40 RCNY § 5-30(a) which also states that all PREA investigations into allegations of sexual abuse and sexual harassment must be conducted "promptly, thoroughly, and objectively."

[178] Rule § 6-24(b)(2).

[179] Rule § 6-24(b)(3).

[180] Rule § 6-24(b)(4) incorporates 40 RCNY § 5-30(f)(2)'s PREA requirement of written reports in PREA investigations.

[181] Rule § 6-24(b)(5).

[182] Rule § 6-24(b)(6).

[183] Rule § 6-24(c)(1) incorporates the same language in Minimum Standard § 1-17(c)(1) (PSEG).

understand the notice shall be provided with assistance;[184] (iii) the notice must be served upon any person placed in pre-hearing detention within 24 hours of such placement[185] and upon people not in pre-hearing detention no later than two (2) business days after the incident, absent extenuating circumstances;[186] (iv) any member of DOC staff, except those who participated in the incident, may serve the person charged with the notice of infraction;[187] and (v) all refusals to sign the notice shall be videotaped.[188]

(iv) Disciplinary Hearing

Rule § 6-24(d) incorporates the due process provisions in Minimum Standard § 1-17(c), including the right to: (i) legal representation for charges that could result in a placement in RMAS; (ii) appear in person, make statements, present material evidence, and call witnesses at the infraction hearing; and (iii) a written determination.[189] Additionally, the Department has the burden of proof in all disciplinary proceedings, and a person's guilt must be shown by a preponderance of the evidence.[190] Section 6-24(d) also incorporates DOC policy on who can serve as a hearing adjudicator, how due process violations must be addressed, time limits on the length of hearings and hearing adjournments, and the right to appeal an adverse decision.[191] Finally, people's refusal to attend their hearing must be videotaped and made a part of the hearing record; if a person refuses to participate while at the hearing, then an audiotaped refusal at the hearing will suffice for purposes of this provision.[192]

(v) Legal Representation

As per Minimum Standards § 1-16 (ESH) and § 1-17 (PSEG), people in custody are currently afforded the assistance of a "hearing facilitator" only if the incarcerated person is "illiterate or otherwise unable to prepare for or understand the hearing process" or "has been unable to obtain witnesses or material evidence."[193] The facilitator is limited to assisting the person "by clarifying the charges, explaining the hearing process, and . . . gathering evidence,"[194] and is expressly prohibited from advocating on the person's behalf.[195] Pursuant to DOC Directives, the adjudication captain determines whether the individual is unable to prepare and present evidence or

[184] Rule § 6-24(c)(2) incorporates the same language in Minimum Standard § 1-17(c)(1) (PSEG).
[185] Rule § 6-24(c)(3).
[186] Rule § 6-24(c)(4).
[187] Rule § 6-24(c)(5).
[188] Rule § 6-24(c)(6).
[189] Rule § 6-24(d)(6)(i) through (vii).
[190] Rule § 6-24(d)(7).
[191] Rule § 6-24(d)(1), (3), and (8); § 6-24(h) (right to appeal).
[192] Rule § 6-24(d)(5).
[193] Min. Std. § 1-16(g)(5)(i)(ii); Min. Std. § 1-17(c)(4)(i)(ii).
[194] Min. Std. § 1-16(g)(5); Min. Std. § 1-17(c)(4)(i)(ii).
[195] PSEG Due Process Directive, III(C)(9) at 11.

arguments effectively on his or her behalf, in which case, a hearing facilitator will be assigned to assist the person.[196]

Proposed rule § 6-24(d)(9) provides that people who are charged with an offense that could result in a RMAS placement shall be permitted to have an attorney or other "legal representative" of their choosing to represent them at their disciplinary hearing.[197] Numerous criminal justice and legal advocacy organizations the Committee consulted and those who commented on the 2019 Rule and the 2015 PSEG amendments called for legal representation of people in custody at hearings.[198] The Board again received substantial testimony calling for legal representation during its 2021 public comment period.[199] The District of Columbia Department of Correction permits incarcerated people charged with a Class I offense to retain legal assistance from the Public Defender Service to represent them at their disciplinary hearing. This and other jurisdictions — Kentucky, Alaska, Wisconsin, and Federal Bureau of Prisons — permit "staff counsel" or "hearing

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[196] *Id.*, Section III(D)(10)(e) at 12; Draft ESH Directive, IV(E)(6) at 11-12); Secure Directive, IV(E)(6) at 8.

[197] Rule § 6-03(b)(8) defines "legal representative" as an attorney or layperson who works under the supervision of an attorney.

[198] In commenting on the 2019 Rule, the following organizations and elected officials advocated for legal representation of people at their disciplinary hearings: Legal Aid Prisoners' Rights Project, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2020-01-31-LAS-Comments-on-BOC-Proposed-Rules.pdf (pp. 5-6); Bronx Defenders, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2020-01-31-BOC-Restrictive-Housing-CommentsBRONX-DEFENDERS.pdf (pp. 1, 6); Brooklyn Defender Services, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2020-01-31-BDS-Comments-to-BOC-Restrictive-Housing-Rulemaking.pdf (p. 14); #HALT Solitary Campaign and JAC Petition to End Solitary Confinement, https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/October/Redacted-HALTsolitary-JAC-Petition-for-Rulemaking-to-End-Solitary-Confinement.pdf (pp. 15-16); Girls for Gender Equity, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/Girls-for-Gender-Equity-Comment-on-Restrictive-Housing.pdf (pp. 3-4); NY County Defender Services, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/NYCDS-Solitary-Comments.pdf; New York Lawyers for the Public Interest, https://www1.nyc.gov/assets/boc/downloads/pdf/boc_solitary_testimony.pdf (pp. 1-2); NYC Bar Committee on Corrections and Community Re-Entry, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2020-01-29-2020641-restrictivehousingincorrectionalfacilities-final-1-29-20.pdf (pp. 4-5); NYC Public Advocate Jumaane Williams, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/PA-BOC-TESTIMONY-12-16-19.pdf (p. 1); and NYC Council Member Dromm, https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/dromm-boc-restrictive-housing-comments-20191216.pdf (pp. 1-2);

[199] See written public comment on the 2021 Proposed Rule at https://www1.nyc.gov/site/boc/jail-regulations/public-comment-proposed-restrictive-housing-rule-2021.page, and a summary of oral public comment at https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2021-Restrictive-Housing/Summary%20of%20All%20Oral%20Testimony%20Received%20by%20BOC%20during%20Public%20Comment%20Period.pdf

advisors" to assist incarcerated persons in investigating the facts and presenting a defense at the hearing.[200]

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[200] The **District of Columbia DOC** permits an incarcerated person to (i) request legal assistance from the Public Defender Service ("PDS") for the District of Columbia or a staff representative when charges include a Class I offense; or (ii) request assistance from a staff representative "to prepare a defense" when charges include a Class II offense. PDS has an entire unit devoted to reentry and advocacy for incarcerated people, including representing them at disciplinary hearings at the jail, and they meet regularly with the DOC commissioner in a friendly exchange of information. The staff representative is chosen by the Disciplinary Board, not the person in custody. Staff representatives may also be requested for incarcerated people who are not capable of collecting evidence on their own. Staff representatives are granted sufficient time to meet with the incarcerated person before the hearing, gather evidence, question witnesses, and represent the person at the hearing. DCDOC Program Manual re Inmate Disciplinary and Administrative Housing Hearing Procedures at 14-15, https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PM%205300.1H%20Inmate%20Disciplinary%20and%20Administrative%20Housing%20Hearing%20Procedures%2006-28-17.pdf.
The **Massachusetts Department of Correction** allows attorney/law student representation at prison disciplinary hearings: https://www.plsma.org/prisoner-self-help/prison-procedures/discipline/. (The regulations governing prison disciplinary hearings are set forth in 103 CMR 430, https://www.mass.gov/doc/cmr-430-inmate-discipline/download.) For example, the Prisoner Legal Assistance Project at Harvard Law School represents prisoners at disciplinary hearings, https://today.law.harvard.edu/stand-up-for-their-rights-representing-prisoners-and-training-lawyers-for-40-years/ and https://clinics.law.harvard.edu/plap/.
The **Kentucky Department of Corrections** allows for the assignment of "Staff Counsel" or an "Assigned Legal Aide" to assist an incarcerated person in preparing and presenting a defense if the person is not capable of collecting and presenting evidence on the person's own behalf. Kentucky Corrections Adjustment Procedures and Programs at 4, https://corrections.ky.gov/About/cpp/Documents/15/CPP%2015.6.pdf.
The **Alaska Department of Corrections** allows any accused prisoner to request a "hearing advisor" to assist in "investigating the facts and preparing and presenting a defense at the disciplinary hearing, unless the infraction charged is a minor infraction"; additionally, a prisoner is entitled to legal representation at the disciplinary hearing if a criminal complaint is filed by the District Attorney. In that event, the prisoner may retain a private attorney or contact the Alaska Public Defender to determine eligibility for representation. Legal representation "is for the limited purpose of preserving and protecting the prisoner's Fifth Amendment right against self-incrimination. Attorneys are not allowed to argue the merits of the case or the sanctions." Alaska DOCS Procedure re Disciplinary Committee, Hearing Officers, and Basic Operation at 6, http://www.correct.state.ak.us/pnp/pdf/809.04.pdf.
The **Federal Bureau of Prisons** permits a staff representative, who is a full-time staff member, to represent an incarcerated person before a disciplinary hearing officer upon the accused's request. The representative speaks to witnesses and presents favorable evidence to the hearing officer on the merits of the charge. Guide to Segregation in Federal Prisons (6th page), http://www.washlaw.org/pdf/Guide_to_Segregation_in_Federal_Prisons.pdf.
Wisconsin DOC permits staff members to act as advocates for incarcerated persons accused of infractions. The advocate's purpose is to help the accused understand the charges against him, help in preparation and presentation of any defense the accused has, including gathering evidence and testimony, and preparing the accused's own statement. The advocate may speak on behalf of the accused at the hearing or may help the accused prepare to speak for himself. Wisconsin Administrative Code DOC 303.78(2), https://docs.legis.wisconsin.gov/code/admin_code/doc/303/X/78/2.

(vi) Disciplinary Sanctions – Addressing the Backlog

The Department reported that, as of September 30, 2020, 743 people in custody were waiting to be held in PSEG I, PSEG II, and RHU.[201] Historically, people in DOC custody have experienced significant delays between adjudication and placement into segregation, which result in a disciplinary system that "appears arbitrary" and negatively "impact[s] transparency and perceptions of fairness and legitimacy."[202]

Vera analyzed 9,793 infractions committed in 2015 that resulted in a segregation sanction and discovered that by the end of 2015 nearly half of those cases had not resulted in an admission into PSEG.[203] For those who were eventually admitted to PSEG, the average time between the issuance of a sanction and admission into PSEG was 13 days. One third of admissions into PSEG came after two or more infractions had been adjudicated guilty. The Vera Report attributes several causes for the backlog, including (i) a delay in mental health reviews of people with "M" designations, which is required before their placement in PSEG [204]; and (ii) waiting for a person to clear the 30-day or 60-day sentence limitations. Vera-run focus groups revealed that people in custody and Correction Officers did not understand why some people were placed into segregation while others were not, resulting in a system that appeared arbitrary.[205]

To address this issue, rule § 6-24(g) requires that placement in RMAS Level 1 or Level 2 occur within 30 days of adjudication of guilt. If the Department does not place a person into RMAS within this 30-day period, DOC may not place the person in RMAS at a later time. The purpose of this rule is to ensure that, in keeping with procedural justice and due process principles underlying Chapter 6, punishment is "swift, certain, and fair."[206]

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[201] DOC 60-Day Report on Punitive Segregation for the period 8/1/2020-9/30/2020, https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/PSEG-60-DAY/60-Day-PSEG-Report-August-and-September-2020.pdf

[202] Vera Report, Finding B11 at 41-42; Report of Dr. James Gilligan and Dr. Bandy Lee to the NYC Board of Correction (September 5, 2013) ("Gilligan and Lee Report") at 7, https://solitarywatch.org/wp-content/uploads/2013/11/Gilligan-Report.-Final.pdf ("Any behavioral control that punishment purports to effect also becomes counterproductive when there is a long delay between the punishable behavior and the time when the person is actually locked up. We have seen examples at Rikers Island where [people in custody] have waited a month or two before they are placed in [PSEG] – even if during that intervening time they had obeyed every rule in the book. By that point, the only lesson they will learn, at an emotional level, from being locked up is that they are being punished for having behaved themselves in the meantime. Thus, the use of [PSEG] in these circumstances is completely self-defeating, in that it stimulates instead of inhibit[s] antisocial behavior, by embittering the [people in custody], who can only feel that they are being punished arbitrarily and unfairly for pro-social, law-abiding behavior").

[203] For the purposes of the Vera Report, "PSEG" included PSEG I, PSEG II, and RHU.

[204] Pursuant to a settlement in *Brad H. v. City of New York*, a person is assigned an "M" designation (or Brad H. flag) if the person, during one incarceration event, has engaged with the mental health system at least three times or has been prescribed certain classes of medication.

[205] Vera Report at 41-42.

[206] *Id.* at 45; n. 72.

(vii)Disciplinary Due Process Reporting

To ensure compliance with the requirements of rule § 6-24, subdivision (i) of the rule requires the Department to: (i) develop the system(s) necessary to collect accurate, uniform data on these requirements;[207] (ii) provide public semiannual reports on the procedural due process protections provided to people placed in RMAS,[208] and share the data used to create the reports with the Board;[209] and (iii) to jointly develop with the Board the reporting template for these reports, which shall be subject to the Board's approval.[210]

Data Collection and Review (§ 6-25)

To ensure compliance with the rules on RMAS, § 6-25 requires that the Department: (i) maintain and update as necessary a list of the type and specific location of all RMAS units (including the opening and closing dates of all such units), and notify the Board in writing when any new RMAS units open, close, or change level;[211] (ii) maintain and develop the system(s) necessary to collect accurate, uniform data on RMAS and the requirements of 40 RCNY Subchapter E, and to centrally store related documentation, in a manner that may be analyzed electronically by the Board;[212] (iii) provide the Board with monthly public reports with information on RMAS including, among other things, placements, exclusions, periodic reviews, and lengths of stay;[213] (iv) produce monthly public reports of time spent out of cell, including separate programming space; access to law library; access to showers; participation in recreation; and time spent participating in programming for each individual in RMAS;[214] (v) on a monthly basis, share data with the Board used to create the public reports required by 40 RCNY § 6-25(c) and (d) and all RMAS placement, review and IBSP documentation;[215] and (vi) jointly develop with the Board reporting templates for the required reports.[216] These templates shall be subject to the Board's approval.[217] The requirement that DOC maintain and store data 'in a manner that may be analyzed electronically by the Board' is an effort to move the Department away from using paper-based systems to analyze and monitor compliance and to ensure the Board has the data necessary to efficiently analyze compliance with RMAS. Practically speaking, this would mean that the Department provide the Board with usable data, rather than scans of forms and logbooks, so that the Board can easily verify reported information. Finally, pursuant to rule § 6-24(g), the Board shall review the information provided by the Department and any other information it deems relevant to the assessment of RMAS. No later

[207] Rule § 6-24(i)(1).
[208] Rule § 6-24(i)(2)(i) through (vi).
[209] Rule § 6-24(i)(3).
[210] Rule § 6-24(i)(4).
[211] Rule § 6-25(a).
[212] Rule § 6-25(b).
[213] Rule § 6-25(c)(1) through (11).
[214] Rule § 6-25(d).
[215] Rule § 6-25(e).
[216] Rule § 6-25(f).
[217] *Id.*

than 18 months after implementation of RMAS, the Board shall meet to discuss the effectiveness of RMAS. The Board's discussion shall address but not be limited to findings regarding the conditions of confinement in RMAS and the impact on the mental health of people housed therein.

Transition (§ 6-26)

Rule § 6-26 requires that pending implementation of RMAS and within prescribed timelines, the Department take the following action: (i) provide the Board with architectural renderings for RMAS housing units prior to their submission to the New York State Commission of Correction (SCOC);[218] the Department shall provide the Board with architectural renderings for such units as approved by SCOC within two (2) business days of SCOC's approval;[219] (ii) within one (1) month of the Effective Date, provide a comprehensive transition plan, in writing to the Board, which shall include specified documents and information concerning the elimination of punitive segregation and the implementation of RMAS;[220] (iii) starting the first business day of August 2021 and until RMAS implementation is complete, provide monthly progress reports regarding the elimination of current PSEG units (e.g. PSEG I/CPSU, PSEG II, RHU) and reduction in existing restrictive housing units (e.g., EHS, etc.), construction and opening of new RMAS units, including explanations for unanticipated delays, and development of policies governing the operation of RMAS, implementation of training on RMAS and programming, and the provision of services such as recreation, visits,[221] and privileges in the general population which exceed the requirements of the Minimum Standards outlined in Chapter 1 of Title 40 of the Rules of the City of New York.[222]

Subchapter F: Step-Down from RMAS, § 6-27

As explained above, RMAS is a time-limited disciplinary housing program that provides safety and accountability following a serious infraction. People in RMAS will be provided with a case manager, follow an individual behavior support plan (IBSP), have access to meaningful programming to address the root causes of the behavior that resulted in their RMAS placement, and meet regularly with a multidisciplinary team to assess their behavioral progress and make any necessary modifications to their IBSP. Borrowing from national best practices, the HALT Solitary Act, and public comment, these rules create a step-down general population unit called the Restorative Rehabilitation Unit (RRU) so that people transitioning out of RMAS can continue with their IBSP in a safe setting with higher staffing ratios and increased opportunities for prosocial programming.

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[218] Rule § 6-26(a).

[219] *Id.*

[220] Rule § 6-26(b)(1) through (7).

[221] Rule § 6-26(c)(1) through (9).

[222] Rule § 6-26(c)(7). The Department plans to incentivize good behavior in, and progression through RMAS by increasing privileges from level to level. To accomplish this, DOC intends to increase the privileges that people in general population receive so that individuals who are placed into RMAS could earn back these privileges by refraining from violence and engaging in good behavior. DOC would also accomplish this by increasing the minimum services people in custody must receive pursuant to the Board's Minimum Standards (e.g., increasing daily lock-out in general population, the hours of daily recreation, and the number/length of visits and telephone calls).

Restorative Rehabilitation Units (RRUs) (§6-27)

(i) Case Management, Individual Support Plans, and Periodic Reviews

Section 6-27(b)(1) seeks to promote consistency in behavioral treatment by ensuring, where possible, that people stepping down to the RRU are able to maintain the same case manager they worked with in RMAS. Relatedly, the rule requires that people stepping down from RMAS to the RRU continue on the same IBSP with the same multidisciplinary team, meeting at least every 15 days to assess progress and make any necessary adjustments to the plan or programming schedule.[223] Because the RRUs are general population units, there is no entitlement to progress out of them; however, the multidisciplinary team can recommend to the facility head that someone be moved to a regular general population unit if such transfer would be in the person's best interest.[224] In any event, the Department cannot transfer someone out of an RRU who has stepped down from RMAS unless the multidisciplinary team has first approved the transfer.[225]

(ii) Conditions

The rule mandates that RRUs afford identical services and out-of-cell time as regular general population units, and that they be located in cell housing units that physically resemble standard general population areas (e.g., areas with a congregate dayroom).[226] In order to promote safety and supervision, RRUs may not house more than 15 people at one time.[227]

(iii) Staffing and Training

To promote good order, § 6-27(d)(1) encourages the Department to staff the RRUs with as many steady officers as possible, and to strive for a significantly higher staffing ratios than in standard general population units. Relatedly, the rule requires that RRU housing area staff receive specialized training on the population and operations in these units, including training on mental illness and distress, effective communication skills, and conflict de-escalation techniques.[228] It also requires young adult-specific training for staff assigned to RRUs that house young adults.[229]

(iv) Programming

[223] Rule § 6-27(b)(2).
[224] Rule § 6-27(b)(3).
[225] Rule § 6-27(b)(4).
[226] Rule § 6-27(c)(1) and (2).
[227] Rule § 6-27(c)(3).
[228] Rule § 6-27(d)(2).
[229] Rule § 6-27(d)(3).

The RRU is designed to be a programming-intensive general population setting for people stepping down from RMAS. As such, the Department must offer at least 6 hours of daily programming for such people, in addition to one hour of daily recreation.[230] Meals, showers, and sick call may not count towards this programming requirement,[231] and at least 3 of the daily programming hours must be offered in a congregate setting and led by appropriate staff.[232]

(v) Data Collection and Review

Sections 6-27(f)(1) and (2) ensure that the Department electronically track and report data related to the operation of RRUs, including lists of where RRUs are located and their opening and closing dates. The rule also obligates the Department to provide the Board with a monthly public report containing various information about the RRUs (including but not limited to number of placements in the units, staffing ratios, and average daily population), as well as the underlying data used to create the report.[233] Finally, the Department must work jointly with the Board to develop the reporting templates for the monthly public report.[234]

Subchapter G: Restraints and Canines, §§ 6-28 and 6-29

Restraints (§ 6-28)

Rule § 6-28(a) states that nothing in this section shall prohibit: (i) the use of restraints that are reasonable and necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, prevent escape, control a person in custody, or protect staff, other people in custody, and others from injury; [235] (ii) the immediate use of restraints to prevent a person in custody from self-harm, harming others, or causing serious property damage; [236] or (iii) the routine use of restraints for movement, escort, and transportation purposes.[237]

(i) Limitations

Section 6-28(b) through (d) sets limitations on the use of restraints that are enumerated in Department policy, such as: (i) restraints shall be only be imposed when no lesser form of control would be effective in addressing the risks posed by unrestricted movement;[238] (ii) the method of restraint shall be the least intrusive necessary to control a person in custody's movement;[239] and

[230] Rule § 6-27(e)(1).
[231] *Id.*
[232] Rule § 6-27(e)(2).
[233] Rule § 6-27(f) and (g).
[234] Rule § 6-27(h).
[235] Rule § 6-28(a)(1).
[236] Rule § 6-28(a)(2).
[237] Rule § 6-28(a)(3).
[238] Rule § 6-28(b).
[239] Rule § 6-28(c).

(iii) restraints shall be removed as soon as possible after the risks posed by unrestricted movement are no longer present.[240] Limitations are also imposed on the use of restraints with respect to people who are in a wheelchair;[241] visually impaired;[242] deaf, hearing impaired, or have impaired speech and communicate with hand gestures.[243] Of note, New York Correction Law § 611 already places limitations on the use of restraints to people in custody who are in labor, admitted to a hospital for delivery, or recovering after giving birth.

(ii) Prohibitions

Rule § 6-28(h) states that restraints must never be used to cause unnecessary physical pain or discomfort,[244] e.g., applied as punishment or retaliation,[245] or used inside a cell unless the cell is being used to hold more than one person in custody and restraints are the only way to ensure the safety of those held in the cell.[246] These prohibitions are enumerated in DOC policy.

(iii) Restraint Desks

In November 2016, the Department introduced restraint desks in ESH Level 1 for adults and young adults. In restraint desks, people have their ankles shackled to a desk. The use of restraint desks in ESH magnifies what is already a highly restrictive environment,[247] and was not disclosed to the Board during ESH rulemaking. Moreover, conditioning one's right to lock-out on being shackled to a desk is inherently punitive and inhumane and undermines the principles of procedural justice that form the bedrock of our criminal justice system and the 2015 amendments to the Board's Minimum Standards.

Cognizant of the Department's safety concerns in moving too quickly in eliminating the use of restraint desks for young adults who have engaged in serious acts of violence, the Board — while repeatedly citing its concerns publicly — held off imposing an effective elimination of restraint desks in ESH Level 1 as a condition to the variance it has continually approved since October 2016.[248] Over the next two years, the Department implemented important reforms of ESH, particularly for young adults. These reforms — some of which are embodied in variance conditions[249] — include moving people faster through the program, making the young adult placement criteria more specific, conducting more frequent periodic reviews and involving young

[240] Rule § 6-28(d).
[241] Rule § 6-28(j).
[242] *Id.*
[243] Rule § 6-28(k).
[244] Rule § 6-28(h)(4).
[245] Rule § 6-28(h)(1).
[246] Rule § 6-28(h)(5).
[247] In ESH (for young adults and adults), outdoor recreation takes place in recreation cages; showering takes place in shower cells; meals are provided in-cell; daily medical rounds take place through solid cell doors; and most people in ESH are subject to enhanced restraints and restricted to booth visits.
[248] YA-ESH Variance.
[249] *Id.*, Condition Nos. 2, 5-8; Secure Variance, Condition Nos. 2 and 3.

adults in them, and establishing a separate school session for young adults in Levels 2 and 3, thereby obviating the need for restraint desks during school.

Between 2017 and 2019, the number of people in custody in ESH units with restraint desks has declined significantly. As of August 31, 2019, there were two ESH Level 1 housing units in operation housing 24 people in custody — four (4) young adults and 20 adults. This is down from August 31, 2017, when there were three (3) ESH units with restraint desks, housing 14 young adults and 28 adults. Similarly, the time spent by people in custody in ESH units with restraint desks declined significantly between 2017 and 2019. Young adults in ESH Level 1 on August 31, 2019 had spent an average of 27 total days (18 consecutive days) in ESH Level 1, compared to an average of 190 total days (83 consecutive days) for young adults on August 31, 2017. Adults in ESH Level 1 on August 31, 2019 had spent an average of 43 total days (32 consecutive days) in ESH Level 1, compared to an average of 176 total days (62 consecutive days) on August 31, 2017.

As of October 13, 2020, there were 13 young adults in ESH of which three were in Level 1 (with restraint desks). This decline coupled with the significant reduction in the overall jail population have paved the way for alternative measures such as smaller units and increased staffing ratios, which better reflect the intent of the Minimum Standards. This also led the Board, at the November 10, 2020 public meeting, to vote to approve a condition to the YA-ESH Variance, requiring the Department to discontinue the non-individualized use of restraints, including restraint desks, by Apr 15, 2021.[250]

For the foregoing reasons, rule § 6-28(e) states that the Department shall eliminate non-individualized use of restraint desks or other restraints during lockout in all facility housing units by November 1, 2021. Non-individualized use means placing any person or group of people in a restraint desk or other restraint as a condition of lockout, or solely based on their transfer to a restrictive unit."[251] Until then, subdivisions (f) through (g) of § 6-28 set forth conditions for the routine use of restraint desks, which are derived from Minimum Standard § 1-16[252] and conditions in the YA-ESH Variance.[253] This includes that: (i) the Department shall place a person in a restraint desk or other form of non-individualized restraint during lockout only if the person has recently participated in an actual or attempted slashing or stabbing, or engaged in activity that caused serious injury to a staff member or other person, and provided the use of a restraint desk is the least restrictive option necessary for the safety of others;[254] (ii) DOC shall review the placement of people in custody in routine restraint during lockout every seven (7) days;[255] and (iii) at each periodic review, a person in custody shall advance out of a restraint desk unless (a) the person

[250] YA-ESH Record of Variance, November 10, 2020, Condition No. 19 (p. 4), https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/November/2020.11%20-%20%20%20Record%20of%20Variance%20Action%20-%20YA%20ESH%C2%AD_final.pdf.
[251] Rule § 6-28(e).
[252] Min. Std. 1-16(h).
[253] YA-ESH Variance Condition Nos. 2, 6, and 7.
[254] Rule § 6-28(f).
[255] Rule § 6-28(g).

has engaged in disruptive, violent, or aggressive behavior in the previous seven (7) days; or (b) there is credible intelligence that the person may engage in violence in a less restrictive level or housing unit.[256]

(ii) Restraint Statuses

Rule § 6-28(m) requires the Department to collect data regarding restrictive statuses involving the use of restraints ("restraint statuses"). For the purposes of Chapter 6, restraint statuses are: Enhanced restraints, Red ID, and Centrally Monitored Cases that include the use of handcuff covers. Specifically, the rule requires DOC to: (i) prepare a semiannual report on the use, reviews, and appeals of restraint statuses[257] and (ii) the Board and the Department to jointly develop the reporting templates, which are subject to the Board's approval.[258]

Canines (§ 6-29)

Rule § 6-29 is based on a variance condition prohibiting the stationing of canines in ESH units that house young adults.[259] Consistent with DOC policy, § 6-29 permits the use of canines inside the secure perimeter of a facility only for searches,[260] and canines must never be used to extract people in custody from their cells, as a use of force, or for purposes of intimidation.[261]

Subchapter H: Variances § 6-30

Rule § 6-30 permits the Department and CHS to apply for a variance from a specific subdivision or section of these rules in accordance with § 1-15 of the Board's Minimum Standards.

Authority

The Board of Correction's authority for these rules is found in Sections 1043 and 626 of the New York City Charter.

[256] Rule § 6-28(g)(3).
[257] Rule § 6-28(m).
[258] Rule § 6-28(n).
[259] YA-ESH Variance, Condition No. 9.
[260] Rule § 6-29(a).
[261] Rule § 6-29(b)-(c).

PROPOSED RULES

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of the Board of Correction, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 1-16 of Chapter 1 of Title 40 of the Rules of the City of New York, relating to enhanced supervision housing, and section 1-17 of such title, relating to punitive segregation, are hereby REPEALED.

§ 2. Section 1-02 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-02 Classification of [Prisoners] <u>People in Custody</u>.

(a) *Policy.* Consistent with the requirements of this section the Department shall employ a classification system for [prisoners] <u>people in custody</u>.

(b) *Categories.*

(1) Sentenced [inmates] <u>individuals</u> shall be housed separate and apart from [inmates] <u>people</u> awaiting trial or examination, except when housed in:

[(i) punitive segregation;]

[(ii) medical housing areas;]

[(iii) mental health centers and mental observation cell housing areas;]

[(iv) enhanced supervision housing;]

[(v) nursery;]

[(vi) adolescent housing areas;]

<u>(i)</u> RMAS housing units, defined in 40 RCNY § 6-03(b)(16);

<u>(ii)</u> Specialized medical housing units, defined in 40 RCNY § 6-03(b)(17);

<u>(iii)</u> Specialized mental health housing, defined in 40 RCNY § 6-03(b)(18);

(iv) pregnant person housing and the Department nursery; and

[(vii)] (v) housing areas designated for [inmates] people ages 18 to 21 inclusive.

(2) Where sentenced [inmates] individuals are housed with [inmates] people awaiting trial or examination in the housing areas listed in subparagraphs (i) through [(vii)] (v) of paragraph (1) of this subdivision, the sentenced [inmates] individuals shall be treated as [inmates] people awaiting trial or examination for all purposes other than housing.

(3) Within the categories set forth in paragraph (1), and subject to the exceptions set forth in 40 RCNY § 1-02(b)(4), the following groupings shall be housed separate and apart:

(i) male adults, ages 22 and over;

(ii) male young adults, ages 18 to 21 inclusive;

[(iii) male minors, ages 16 and 17;]

([iv] iii) female adults, ages 22 and over;

([v]iv) female young adults, ages 18 to 21 inclusive[;].

[(vi) female minors, ages 16 and 17.]

(4) Young adults shall be housed separate and apart from adults, except when housed in:

(i) specialized medical housing units, as defined in 40 RCNY § 6-03(b)(17);

(ii) specialized mental health housing, as defined in 40 RCNY § 6-03(b)(18);

(iii) pregnant person housing and the Department nursery.

(c) *Inmates ages 18 to 21 inclusive*

(1) [No later than October 15, 2015, the Department shall implement the requirement of paragraph 2 of subdivision (b) of this section that inmates ages 18 through 21 be housed separately and apart from inmates over the age of 21.

(2)] Housing for [inmates] people in custody ages 18 through 21 shall provide such [inmates] people with age-appropriate programming. [No later than August 1, 2015, the Department shall provide the Board with a plan to develop such age-appropriate programming.]

(3) Data Collection and Review.

(i) The Department shall provide the Board with a monthly public census showing which housing units and facilities house 18-year-olds and 19-21-year-olds. The census shall indicate how many young adults are in each unit, the housing category of each

unit (e.g., general population, protective custody, specialized medical, specialized mental health, pregnant, nursery, etc.), and whether the unit is a young adult-only unit or a commingled housing unit.

(ii) The Department shall report to the Board the locations of all units operating as young adult-only housing units at each facility, including the dates each unit started operating as a young adult-only unit and the date each unit stopped operating as a young adult-only unit (if applicable).

(iii) The Department shall provide the Board with monthly, public reports on its plans for housing and providing age-appropriate programming and services to young adults in custody (i.e., Young Adult Plan). The monthly report shall include but not be limited to the following information as of the first day of the reporting month:

(A) Number of young adults, in total and disaggregated by gender, custody status (i.e., detainee, sentenced), and "M" designation, and the percent of young adults in each category out of the total young adult population and the DOC population as a whole;

(B) Number of young adults, in total and disaggregated by facility and by young adult-only versus commingled housing units, and percent of the young adult population in each category out of the total young adult population in custody;

(C) Number of young adults in young adult-only housing units, in total and disaggregated by classification level and custody status;

(D) Number of young adults in commingled housing units, in total and disaggregated by classification level and custody status;

(E) Number of young adults in medical and mental health housing units, in total and disaggregated by type of unit (e.g., CAPS, PACE, Detox, and Mental Observation);

(F) Number of young adults in restrictive housing units, in total and disaggregated by type and level of housing;

(G) Number of active young adult-only housing areas by facility during the reporting month;

(H) A list and description of the staff trainings focusing on working with the young adult population offered by the Department (e.g., Safe Crisis Management, Direct Supervision);

(I) For each training offered, the number and percent of staff working with young adults, in total (Department-wide) and disaggregated by facility and by status of young adult training received (qualified, trained but expired, never trained);

(J) A list and description of young adult program offerings by facility, housing type (young adult-only, commingled), and provider, specifying Department-led programming and programming offered by external providers;

(K) The number and percent of young adults in custody with an Individual Behavioral Support Plan; and

(L) Any other information the Department or the Board deems relevant to assessment of the Young Adult Plan.

(M) The Board and the Department shall jointly develop reporting templates for information required by 40 RCNY § 1-02(c)(3) for approval by the Board.

(d) [*Civil prisoners.*] *People in Custody for Civil Offenses.*[(1) Prisoners] People who are not directly involved in the criminal process [as detainees or serving sentence] and are confined for other reasons including civil process, civil contempt or material witness, shall be housed separate and apart from [other prisoners] the rest of the jail population and, if possible, located in a different structure or wing. They must be afforded at least as many of the rights, privileges and opportunities available to other [prisoners] people in custody.

(2) Within this category, the following groupings shall be housed separate and apart:

(i) male adults, ages 22 and over;

(ii) male young adults, ages 18 to 21 inclusive;

[(iii) male minors, ages 16 and 17];

([iv]iii) female adults, ages 22 and over;

([v]iv) female young adults, ages 18 to 21 inclusive.

[(vi) female minors, ages 16 and 17.]

(e) *Limited commingling.* Nothing contained in this section shall prevent [prisoners] people in custody in different categories or groupings from being in the same area for a specific purpose, including, but not limited to, entertainment, classes, contact visits or medical necessity.

(f) *Security classification.*

(1) The Department shall use a system of classification to group [prisoners] people in custody according to the minimum degree of surveillance and security required.

(2) The system of classification shall meet the following requirements:

(i) It shall be in writing and shall specify the basic objectives, the classification categories, the variables and criteria used, the procedures used and the specific consequences to the [prisoner] person in custody of placement in each category.

(ii) It shall include at least two (2) classification categories.

(iii) It shall provide for an initial classification upon entrance into the corrections system. Such classification shall take into account only relevant factual information about the [prisoner] person in custody, capable of verification.

(iv) It shall provide for involvement of the [prisoner] person in custody at every stage with adequate due process.

(v) [Prisoners] People placed in the most restrictive security status shall only be denied those rights, privileges and opportunities that are directly related to their status and which cannot be provided to them at a different time or place than provided to other [prisoners] individuals in custody.

(vi) It shall provide mechanisms for review of [prisoners] people placed in the most restrictive security status at intervals not to exceed four (4) weeks for [detainees] individuals awaiting trial and eight (8) weeks for sentenced [prisoners] people.

§ 3. Section 1-05 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-05 Lock-in.

(a) *Policy.* The time spent by [prisoners] people confined to their cells should be kept to a minimum and required only when necessary for the safety and security of the facility. The provisions of this section are inapplicable to [prisoners confined in punitive segregation] people confined in RMAS housing or [prisoners] people confined for medical reasons in the contagious disease units.

(b) *Involuntary lock-in.* [No prisoner] People shall not be required to remain confined to [his or her] their [cell] cells except for the following purposes:

(1) At night for count or sleep, not to exceed eight hours in any 24-hour period;

(2) During the day for count or required facility business that can only be carried out while [prisoners] people are locked in, not to exceed two hours in any 24-hour period. This time may be extended if necessary to complete an off count. [This paragraph shall not apply to prisoners confined in enhanced supervision housing, who may be locked in during the day for up to nine hours in any 24-hour period.]

(c) *Optional lock-in.*

(1) [Prisoners] People shall have the option of being locked in their cells during lock-out periods. [Prisoners] Individuals choosing to lock in at the beginning of a lock-out period of two

(2) hours or more shall be locked out upon request after one-half of the period. At this time, [prisoners] people who have been locked out shall be locked in upon request.

(2) The Department may deny optional lock-in to a [prisoner] person in mental observation status if a psychiatrist or psychologist determines in writing that optional lock-in poses a serious threat to the safety of that [prisoner] person. A decision to deny optional lock-in must be reviewed every ten (10) days, including a written statement of findings, by a psychiatrist or psychologist. Decisions made by a psychiatrist or psychologist pursuant to this subdivision must be based on personal consultation with the [prisoner] person in custody.

(d) *Schedule.* Each facility shall maintain and distribute to all [prisoners] people in custody or post in each housing area its lock-out schedule, including the time during each lock-out period when [prisoners] people may exercise the options provided by paragraph (c)(1) of this subdivision.

§ 4. Section 1-06 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-06 Recreation.

(a) *Policy.* Recreation is essential to good health and contributes to reducing tensions within a facility. [Prisoners] People in custody shall be provided with adequate indoor and outdoor recreational opportunities.

(b) *Recreation areas.* Indoor and outdoor recreation areas of sufficient size to meet the requirements of this section shall be established and maintained by each facility. An outdoor recreation area must allow for direct access to sunlight and air.

(c) *Recreation schedule.* Recreation periods shall be at least one hour; only time spent at the recreation area shall count toward the hour. Recreation shall be available seven (7) days per week in the outdoor recreation area, except in inclement weather when the indoor recreation area shall be used.

(d) *Recreation equipment.*

(1) The Department shall make available to [prisoners] people in custody an adequate amount of equipment during the recreation period.

(2) Upon request each facility shall provide [prisoners] people in custody with appropriate outer garments in satisfactory condition, including coat, hat, and gloves, when they participate in outdoor recreation during cold or wet weather conditions.

(e) *Recreation within housing area.*

(1) [Prisoners] People shall be permitted to engage in recreation activities within cell corridors and tiers, dayrooms and individual housing units. Such recreation may include but is not limited to:

(i) table games;

(ii) exercise programs; and

(iii) arts and crafts activities.

(2) Recreation taking place within cell corridors and tiers, dayrooms and individual housing units shall supplement, but not fulfill, the requirements of subdivision (c) of this section.

(f) *Recreation for [inmates] people housed in the contagious disease units.* In place of out-of-cell recreation, the Department, in consultation with medical providers, may provide [inmates] people confined for medical reasons in the contagious disease units with appropriate recreation equipment and materials for in-cell recreation. The Department must provide such [inmates] individuals with daily access to publications, such as newspapers, books, and magazines, which shall be made available in the six (6) most common languages spoken by the [inmate] jail population.

(g) *Recreation for [prisoners] people in [segregation] restrictive housing.* [Prisoners] Persons confined in [close custody or punitive segregation] RMAS as defined in Chapter 6 of these Rules shall be permitted recreation in accordance with the provisions of subdivision (c) of this section.

(h) *Limitation on access to recreation.* A [prisoner's] person's access to recreation may be denied for up to five days only [upon conviction of an infraction for misconduct on the way to, from or during recreation] due to imminent safety and security risks, which must be recorded and transmitted to the Board within one business day of the restriction. Any limits imposed on a person's access to recreation must be approved by the Chief of the Department.

§ 5. Section 1-07 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-07 Religion.

(a) *Policy.* [Prisoners] People in custody have an unrestricted right to hold any religious belief, and to be a member of any religious group or organization, as well as to refrain from the exercise of any religious beliefs. A [prisoner] person in custody may change his or her religious affiliation.

(b) *Exercise of religious beliefs.*

(1) [Prisoners] People in custody are entitled to exercise their religious beliefs in any manner that does not constitute a clear and present danger to the safety or security of a facility.

(2) No employee or agent of the Department or of any voluntary program shall be permitted to proselytize or seek to convert any [prisoner] person in custody, nor shall any [prisoner] person in custody be compelled to exercise or be dissuaded from exercising any religious belief.

(3) Equal status and protection shall be afforded to all [prisoners] people in the exercise of their religious beliefs except when such exercise is unduly disruptive of facility routine.

(c) *Congregate religious activities.*

(1) Consistent with the requirements of subdivision (a) of this section, [all prisoners] all persons in custody shall be permitted to congregate for the purpose of religious worship and other religious activities, except for [prisoners] people confined for medical reasons in the contagious disease units.

(2) Each facility shall provide all [prisoners] persons in custody with access to an appropriate area for congregate religious worship and other religious activities. Consistent with the requirements of paragraph (b)(1) of this section, this area shall be made available to [prisoners] people in custody in accordance with the practice of their religion.

(d) *Religious advisors.*

(1) As used in this section, the term "religious advisor" means a person who has received endorsement from the relevant religious authority.

(2) Religious advisors shall be permitted to conduct congregate religious activities permitted pursuant to subdivision (c) of this section. When no religious advisor is available, a [member of a prisoner] person in custody belonging to the religious group may be permitted to conduct congregate religious activities.

(3) Consistent with the requirements of paragraph (b)(1) of this section, [prisoners] people shall be permitted confidential consultation with their religious advisors during lock-out periods.

(e) *Celebration of religious holidays or festivals.* Consistent with the requirements of paragraph (b)(1) of this section, [prisoners] people shall be permitted to celebrate religious holidays or festivals on an individual or congregate basis.

(f) *Religious dietary laws.* [Prisoners] People in custody are entitled to the reasonable observance of dietary laws or fasts established by their religion. Each facility shall provide [prisoners] people with food items sufficient to meet such religious dietary laws.

(g) *Religious articles.* Consistent with the requirements of paragraph (b)(1) of this section, [prisoners] people in custody shall be entitled to wear and to possess religious medals or other religious articles, including clothing and hats.

(h) *Exercise of religious beliefs by [prisoners] people in [segregation] restrictive housing.*

(1) [Prisoners] People confined in [administrative or punitive segregation] in RMAS housing shall not be prohibited from exercising their religious beliefs, including the opportunities provided by subdivisions (d) through (g) of this section.

(2) Congregate religious activities by [prisoners] people in [close custody or punitive segregation] Levels 1 and 2 of RMAS housing as defined in Chapter 6 of these Rules shall be provided for by permitting such [prisoners] individuals to attend congregate religious activities with appropriate security either with each other or with other [prisoners] people in custody.

(i) *Recognition of a religious group or organization.*

(1) A list shall be maintained of all religious groups and organizations recognized by the Department. This list shall be in Spanish and English and shall be distributed to all [incoming prisoners] persons entering custody or posted in each housing area.

(2) Each facility shall maintain a list of the religious advisor, if any, for each religious group and organization, and the time and place for the congregate service of each religion. This list shall be in Spanish and English and shall be distributed to all [incoming prisoners] persons entering custody or posted in each housing area.

(3) [Prisoner requests] People in custody may make requests to the Department to exercise the beliefs of a religious group or organization not previously recognized [shall be made to] by the Department.

(4) In determining requests made pursuant to paragraph (3) of this subdivision, the following factors among others shall be considered as indicating a religious foundation for the belief:

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

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

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

(iv) whether the belief is deeply and sincerely held by the [prisoner] person making the request.

(5) In determining requests made pursuant to paragraph (3) of this subdivision, the following factors shall not be considered as indicating a lack of religious foundation for the belief:

(i) the belief is held by a small number of individuals;

(ii) the belief is of recent origin;

(iii) the belief is not based on the concept of a Supreme Being or its equivalent; or

(iv) the belief is unpopular or controversial.

(6) [In determining] Before the Department determines a request[s] made pursuant to paragraph (3) of this subdivision, [prisoners] the requestor shall be permitted to present evidence indicating a religious foundation for the belief.

(7) The procedure outlined in paragraphs (1) and (3) of this subdivision shall apply when a [prisoner] request made pursuant to paragraph (i)(3) of this subdivision is denied.

(j) *Limitations on the exercise of religious beliefs.*

(1) Any determination to limit the exercise of the religious beliefs of any [prisoner] person in custody shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within [24 hours] one business day of the determination.

(2) This determination must be based on specific acts committed by the [prisoner] person in custody during the exercise of his or her religion that demonstrate a serious and immediate threat to the safety and security of the facility. Prior to any determination, the [prisoner] individual must be provided with written notification of the specific charges and the names and statements of the charging parties and be afforded an opportunity to respond.

(3) Any person affected by a determination made pursuant to this subdivision may appeal such determination to the Board.

(i) The person affected by the determination shall give notice in writing to the Board and the Department of [his or her] the person's intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) The Board or its designee shall issue a written decision upon the appeal within 14 business days after receiving notice of the requested review.

§ 6. Section 1-08 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-08 Access to Courts and Legal Services.

(a) *Policy.* [Prisoners] People in custody are entitled to access to courts, attorneys, legal assistants and legal materials.

(b) *Judicial and administrative proceedings.*

(1) [Prisoners] People in custody shall not be restricted in their communications with courts or administrative agencies pertaining to either criminal or civil proceedings except pursuant to a court order.

(2) Timely transportation shall be provided to [prisoners] people scheduled to appear before courts or administrative agencies. Vehicles used to transport [prisoners] people in custody must meet all applicable safety and inspection requirements and provide adequate ventilation, lighting and comfort.

(c) *Access to counsel.*

(1) [Prisoners] People in custody shall not be restricted in their communication with attorneys. The fact that [a prisoner] someone is represented by one attorney shall not be grounds for preventing [him or her] that person from communicating with other attorneys. Any properly identified attorney may visit any [prisoner] person in custody with [the prisoner's] that person's consent.

(i) An attorney may be required to present identification to a designated official at the central office of the Department in order to obtain a facility pass. This pass shall permit the attorney to visit any [prisoner] person in the custody of the Department.

(ii) The Department only may require such identification as is normally possessed by an attorney.

(2) The Department may limit visits to any attorney of record, or an attorney with a court notice for [prisoners] individuals undergoing examination for competency pursuant to court order.

(3) Visits between [prisoners] people in custody and attorneys shall be kept confidential and protected, in accordance with provisions of 40 RCNY § 1-09. Legal visits shall be permitted at least eight hours per day between 8 a.m. and 8 p.m. During business days, four (4) of those hours shall be 8 a.m. to 10 a.m., and 6 p.m. to 8 p.m. The Department shall maintain and post the schedule of legal visiting hours at each facility.

(4) Mail between [prisoners] people in custody and attorneys shall not be delayed, read, or interfered with in any manner, except as provided in 40 RCNY § 1-11.

(5) Telephone communications between [prisoners] people in custody and attorneys shall be kept confidential and protected, in accordance with the provisions of 40 RCNY § 1-10.

(d) *Access to co-defendants.* Upon reasonable request, regular visits shall be permitted between [a detainee] people awaiting trial and all of [his or her] their co-defendants who consent to such visits. If any of the co-defendants are incarcerated, the Department may require that an attorney of record be present and teleconferencing shall be used, if available.

(e) *Attorney assistants.*

(1) Law students, legal paraprofessionals, and other attorney assistants working under the supervision of an attorney representing a [prisoner] person in custody shall be permitted to communicate with [prisoners] that person by mail, telephone and personal visits, to the same extent and under the same conditions that the attorney may do so for the purpose of representing the [prisoner] individual. Law students, legal paraprofessionals and other attorney

assistants working under the supervision of an attorney contacted by a [prisoner] person in custody shall be permitted to communicate with that [prisoner] individual by mail, telephone, or personal visits to the same extent and under the same conditions that the attorney may do so.

(2) An attorney assistant may be required to present a letter of identification from the attorney to a designated official at the central office of the Department in order to obtain a facility pass. A pass shall not be denied based upon any of the reasons listed in 40 RCNY § 1-09(h)(1).

(3) The pass shall permit the assistant to perform the functions listed in subdivision (e) of this section. It may be revoked if specific acts committed by the legal assistant demonstrate [his or her] the legal assistant's threat to the safety and security of a facility. This determination must be made pursuant to the procedural requirements of paragraphs (2), (4) and (5) of subdivision (h) of 40 RCNY § 1-09.

(f) *Law libraries.* Each facility shall maintain a properly equipped and staffed law library.

(1) The law library shall be located in a separate area sufficiently free of noise and activity and with sufficient space and lighting to permit sustained research.

(2) Each law library shall be open for a minimum of five (5) days per week including at least one (1) weekend day. On each day a law library is open:

(i) in facilities [with] housing more than six hundred (600) [prisoners] people, each law library shall be operated for a minimum of ten (10) hours, of which at least eight (8) shall be during lock-out hours;

(ii) in facilities [with] housing six hundred (600) or fewer [prisoners] people, each law library shall be operated for a minimum of eight (8) and a half hours, of which at least six (6) and a half shall be during lock-out hours;

(iii) in all facilities, the law library shall be operated for at least three (3) hours between 6 p.m. and 10 p.m.; and

(iv) the law library will be kept open for [prisoners'] people's use on all holidays which fall on regular law library days except New Year's Day, July 4th, Thanksgiving, and Christmas. The law library may be closed on holidays other than those specified provided that law library services are provided on either of the two days of the same week the law library is usually closed. On holidays on which the law library is kept open, it shall operate for a minimum of eight (8) hours. No changes to law library schedules shall be made without written notice to the Board of Correction and shall be received at least five (5) business days before the planned change(s) is to be implemented.

(3) The law library schedule shall be arranged to provide access to [prisoners] people in custody during times of the day when other activities such as recreation, commissary, meals, school, sick call, etc., are not scheduled. Where such considerations cannot be made, [prisoners] people shall be afforded another opportunity to attend the law library at a later time during the day.

(4) Each [prisoner] person in custody shall be granted access to the law library for a period of at least two (2) hours per day on each day the law library is open. Upon request, extra time may be provided as needed, space and time permitting. In providing extra time, [prisoners] people who have an immediate need for additional time, such as [prisoners] people on trial and those with an impending court deadline shall be granted preference.

(5) Notwithstanding the provisions of paragraph (f)(4), [prisoners] people housed for medical reasons in the contagious disease units may be denied access to the law library. An alternative method of access to legal materials shall be instituted to permit effective legal research.

(6) The law library hours for [prisoners] people in [punitive segregation or enhanced supervision] Levels 1 and 2 of RMAS housing as defined in Chapter 6 of these Rules may be reduced or eliminated, provided that an alternative method of access to legal materials is instituted to permit effective legal research.

(7) Legal research classes for people housed in general population [prisoners] shall be conducted at each facility on at least a quarterly basis. Legal research training materials shall be made available upon request to [prisoners] people in [special housing] Levels 1 and 2 of RMAS housing.

(8) The Department shall report annually to the Board detailing the resources available at the law library at each facility, including a list of titles and dates of all law books and periodicals and the number, qualifications and hours of English and Spanish-speaking legal assistants.

(g) *Legal documents and supplies.*

(1) Each law library shall contain necessary research and reference materials which shall be kept properly updated and supplemented and shall be replaced without undue delay when materials are missing or damaged.

(2) [Prisoners] People in custody shall have reasonable access to typewriters, dedicated word processors, and photocopiers for the purpose of preparing legal documents. A sufficient number of operable typewriters, dedicated word processors, and photocopy machines will be provided for [prisoner] people's use.

(3) Legal clerical supplies, including pens, legal paper and pads shall be made available for purchase by [prisoners] people in custody. Such legal clerical supplies shall be provided to indigent [prisoners] individuals at Department expense.

(4) Unmarked legal forms which are commonly used by [prisoners] people in custody shall be made available. Each [prisoner] person shall be permitted to use or make copies of such forms for [his or her own] the person's use.

(h) *Law library staffing.*

(1) During all hours of operation, each law library shall be staffed with trained civilian legal coordinator(s) to assist [prisoners] people with the preparation of legal materials. Legal

coordinator coverage shall be provided during extended absences of the regularly assigned legal coordinator(s).

(2) Each law library shall be staffed with an adequate number of permanently assigned correction officers knowledgeable of law library procedures.

(3) Spanish-speaking [prisoners] people in custody shall be provided assistance in use of the law library by employees fluent in the Spanish language on an as needed basis.

(i) *Number of legal documents and research materials.*

(1) [Prisoners] People in custody shall be permitted to purchase and receive law books and other legal research materials from any source.

(2) Reasonable regulations governing the keeping of materials in cells and the searching of cells may be adopted, but under no circumstances may [prisoners'] people's legal documents, books, and papers be read or confiscated by correctional personnel without a lawful warrant. Where the space in a cell is limited, an alternative method of safely storing legal materials elsewhere in the facility is required, provided that a [prisoner] person in custody shall have regular access to these materials.

(j) *Limitation of access to law library.*

(1) [A prisoner] People in custody may be removed from the law library if [he or she] they disrupt[s] the orderly functioning of the law library or do[es] not use the law library for its intended purposes. [A person may be excluded from the law library for more than the remainder of one law library period only for a disciplinary infraction occurring within a law library.]

(2) Any determination to limit a [prisoner's] person's right of access to the law library shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within [24 hours] one business day of the determination.

(3) An alternative method of access to legal materials shall be instituted to permit effective legal research for any [prisoner] person excluded from the law library. A legal coordinator shall visit any excluded [prisoner] person to determine his or her law library needs upon request.

(4) Any person affected by a determination made pursuant to this subdivision (j) may appeal such determination to the Board.

(i) The person affected by a determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) The Board or its designee shall issue a written decision upon the appeal within five (5) business days after receiving notice of the requested review.

§ 7. Section 1-09 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-09 Visiting.

(a) *Policy.* All [inmates] people in custody are entitled to receive personal visits of sufficient length and number. Maintaining personal connections with social and family networks and support systems is critical to improving outcomes both during confinement and upon reentry. Visitation with friends and family plays an instrumental role in a [n inmate's] person's ability to maintain these connections and should therefore be encouraged and facilitated by the Department. Additionally, the Board recognizes that a[n inmate's] person's family may not be limited to those related to the [inmate] individual by blood or by legally-recognized bonds, such as marriage or adoption. Therefore, the term "family" as it is used in this subdivision should be construed broadly to reflect the diversity of familial structures and the wide variety of relationships that may closely connect a[n inmate] person in custody to others. This should include, for example, but may not be limited to: romantic partners; godparents and godchildren; current and former step-parents, children, and siblings; and those connected to the [inmate] individual through current or former domestic partnerships, foster arrangements, civil unions, or cohabitation.

(b) *Visiting and waiting areas.*

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

(2) The visiting area shall be designed so as to allow physical contact between [prisoners] people in custody and their visitors as required by subdivision (f) of this section.

(3) The Department shall make every effort to minimize the waiting time prior to a visit. Visitors shall not be required to wait outside a facility unless adequate shelter is provided and the requirements of paragraph (b)(4) of this section are met.

(4) All waiting and visiting areas shall provide for at least minimal comforts for visitors, including but not limited to:

(i) sufficient seats for all visitors;

(ii) access to bathroom facilities and drinking water throughout the waiting and visiting periods;

(iii) access to vending machines for beverages and foodstuffs at some point during the waiting or visiting period; and

(iv) access to a Spanish-speaking employee or volunteer at some point during the waiting or visiting period. All visiting rules, regulations, and hours shall be clearly posted in English and Spanish in the waiting and visiting areas at each facility.

(5) The Department shall make every effort to utilize outdoor areas for visits during the warm weather months.

(c) *Visiting schedule.*

(1) Visiting hours may be varied to fit the schedules of individual facilities but must meet the following minimum requirements for [detainees] people awaiting trial:

(i) Monday through Friday. Visiting shall be permitted on at least three (3) days for at least three (3) consecutive hours between 9 a.m. and 5 p.m. Visiting shall be permitted on at least two (2) evenings for at least three (3) consecutive hours between 6 p.m. and 10 p.m.

(ii) Saturday and Sunday. Visiting shall be permitted on both days for at least five (5) consecutive hours between 9 a.m. and 8 p.m.

(2) Visiting hours may be varied to fit the schedules of individual facilities but must meet the following minimum requirements for sentenced [prisoners] individuals:

(i) Monday through Friday. Visiting shall be permitted on at least one (1) evening for at least three (3) consecutive hours between 6 p.m. and 10 p.m.

(ii) Saturday and Sunday. Visiting shall be permitted on both days for at least five (5) consecutive hours between 9 a.m. and 8 p.m.

(3) The visiting schedule of each facility shall be available by contacting either the central office of the Department or the facility.

(4) Visits shall last at least one (1) hour. This time period shall not begin until the [prisoner] person in custody and visitor meet in the visiting room.

(5) Sentenced [prisoners] individuals are entitled to at least two (2) visits per week with at least one (1) on an evening or the weekend, as the sentenced [prisoner] individual wishes. [Detainees] People awaiting trial are entitled to at least three (3) visits per week with at least one (1) on an evening or the weekend, as the [detainee] person wishes. Visits by properly identified persons providing services or assistance, including lawyers, doctors, religious advisors, public officials, therapists, counselors, and media representatives, shall not count against this number.

(6) There shall be no limit to the number of visits by a particular visitor or category of visitors.

(7) In addition to the minimum number of visits required by paragraphs (1), (2) and (5) of this subdivision, additional visitation shall be provided in cases involving special necessity, including but not limited to, emergency situations and situations involving lengthy travel time.

(8) [Prisoners] People in custody shall be permitted to visit with at least three (3) visitors at the same time, with the maximum number to be determined by the facility.

(9) Visitors shall be permitted to visit with at least two (2) [prisoners] people in custody at the same time, with the maximum number to be determined by the facility.

(10) If necessitated by lack of space, a facility may limit the total number of persons in any group of visitors and [prisoners] people in custody to four (4). Such a limitation shall be waived in cases involving special necessity, including but not limited to, emergency situations and situations involving lengthy travel time.

(d) *Initial visit.*

(1) [Each detainee] People awaiting trial shall be entitled to receive a non-contact visit within twenty-four (24) hours of [his or her] their admission to the facility.

(2) If a visiting period scheduled pursuant to paragraph (c)(1) of this section is not available within twenty-four (24) hours after a [detainee's] person awaiting trial's admission, arrangements shall be made to ensure that the initial visit required by this subdivision is made available.

(e) *Visitor identification and registration.*

(1) Consistent with the requirements of this subdivision, any properly identified person shall, with the [prisoner's] individual in custody's consent, be permitted to visit [the prisoner] that individual.

(i) Prior to a visit, a [prisoner] person in custody shall be informed of the identity of the prospective visitor.

(ii) A refusal by a [prisoner] person in custody to meet with a particular visitor shall not affect [the prisoner's] that person's right to meet with any other visitor during that period, nor [the prisoner's] that person's right to meet with the refused visitor during subsequent periods.

(2) [Each visitor] Visitors shall be required to enter in the facility visitors log:

(i) [his or her] their name;

(ii) [his or her] their address;

(iii) the date;

(iv) the time of entry;

(v) the name of the [prisoner or prisoners] individual or individuals to be visited; and

(vi) the time of exit.

(3) Any prospective visitors who [is] under sixteen (16) years of age shall be required to enter, or have entered [for him or her] on their behalf, in the facility visitors log:

(i) the information required by paragraph (2) of this subdivision;

(ii) [his or her] their age; and

(iii) the name, address, and telephone number of [his or her] their parent or legal guardian.

(4) The visitors log shall be confidential, and information contained therein shall not be read by or revealed to non-Department staff except as provided by the City Charter or pursuant to a specific request by an official law enforcement agency. The Department shall maintain a record of all such requests with detailed and complete descriptions.

(5) Prior to visiting a [prisoner] person in custody, a prospective visitor under sixteen (16) years of age may be required to be accompanied by a person eighteen (18) years of age or older, and to produce oral or written permission from a parent or legal guardian approving such visit.

(6) The Department may adopt alternative procedures for visiting by persons under sixteen (16) years of age. Such procedures must be consistent with the policy of paragraph (e)(5) of this subdivision and shall be submitted to the Board for approval.

(f) *Contact visits.* Physical contact shall be permitted between [every inmate] all people in custody and all of [the inmate's] their visitors. Permitted physical contact shall include a brief embrace and kiss between the [inmate] person in custody and visitor at both the beginning and end of the visitation period. [Inmates] People in custody shall be permitted to hold children in [the inmate's] their family who are ages fourteen (14) and younger throughout the visitation period, provided that the Department may limit a [n inmate's] person in custody to holding [of children to] one child at a time. Additionally, [inmates] people in custody shall be permitted to hold hands with their visitors throughout the visitation period, which the Department may limit to holding hands over a partition that is no greater than six (6) inches. The provisions of this subdivision are inapplicable to [inmates] individuals housed for medical reasons in the contagious disease units. The Department may impose certain limitations on contact visits for [inmates] people confined in [enhanced supervision] RMAS housing in accordance with the procedures and guidelines set forth in 40 RCNY § [1-16] 6-17(f)**.**

(g) *Visiting security and supervision.*

(1) All [prisoners] people in custody, prior and subsequent to each visit, may be searched solely to ensure that they do not possess [no] any contraband.

(2) All prospective visitors may be searched prior to a visit solely to ensure that they do not possess [no] any contraband.

(3) Any body search of a prospective visitor made pursuant to paragraph (2) of this subdivision shall be conducted only through the use of electronic detection devices. Nothing contained herein shall affect any authority possessed by correctional personnel pursuant to statute.

(4) Objects possessed by a prospective visitor, including but not limited to, handbags or packages, may be searched or checked. Personal effects, including wedding rings and religious medals and clothing, may be worn by visitors during a visit. The Department may require a prospective visitor to secure in a lockable locker his or her personal property, including but not limited to bags, outerwear and electronic devices. A visit may not be delayed or denied because an operable, lockable locker is not available.

(5) Supervision shall be provided during visits solely to ensure that the safety or security of the facility is maintained.

(6) Visits shall not be listened to or monitored unless a lawful warrant is obtained, although visual supervision should be maintained.

(h) *Restrictions on visitation rights.*

(1) The visitation rights of [an inmate] a person in custody with a particular visitor may be denied, revoked or limited only when it is determined that the exercise of those rights constitutes a serious threat to the safety or security of a facility, provided that visitation rights with a particular visitor may be denied only if revoking the right to contact visits would not suffice to reduce the serious threat.

This determination must be based on specific acts committed by the visitor during a prior visit to a facility that demonstrate the visitor's threat to the safety and security of a facility, or on specific information received and verified that the visitor plans to engage in acts during the next visit that will be a threat to the safety or security of the facility. Prior to any determination, the visitor must be provided with written notification of the specific charges and the names and statements of the charging parties and be afforded an opportunity to respond. The name of an informant may be withheld if necessary to protect the informant's safety.

(2) [An inmate's] A person in custody's right to contact visits as provided in subdivision (f) of this section may be denied, revoked, or limited only when it is determined that such visits constitute a serious threat to the safety or security of a facility. Should a determination be made to deny, revoke or limit a [n inmate's] person's right to contact visits in the usual manner, alternative arrangements for affording the [inmate] individual the requisite number of visits shall be made, including, but not limited to, non-contact visits.

This determination must be based on specific acts committed by the [inmate] person while in custody under the present charge or sentence that demonstrate the [inmate's] person's threat to the safety and security of a facility, or on specific information received and verified that the [inmate] individual plans to engage in acts during the next visit that will be a threat to the safety or security of the facility. Prior to any determination, the [inmate] person must be provided with written notification of the specific charges and the names and statements of the charging parties and be afforded an opportunity to respond. The name of an informant may be withheld if necessary to protect the informant's safety.

(3) Restrictions on visitation rights must be tailored to the threat posed by the [inmate] person in custody or prospective visitor and shall go no further than what is necessary to address that threat.

(4) Visitation rights shall not be denied, revoked, limited or interfered with based on [an inmate's] a person in custody's or a prospective visitor's actual or perceived:

(i) sex;

(ii) sexual orientation;

(iii) race;

(iv) age, except as otherwise provided in this section;

(v) nationality;

(vi) political beliefs;

(vii) religion;

(viii) criminal record;

(ix) pending criminal or civil case;

(x) lack of family relationship;

(xi) gender, including gender identity, self-image, appearance, behavior or expression; or

(xii) disability

(5) Any determination to deny, revoke or limit a[n inmate's] person in custody's visitation rights pursuant to paragraphs (1) and (2) of this subdivision shall be in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including a description of the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(i) *Appeal procedure for visitation restrictions.*

(1) Any person affected by the Department's determination to deny, revoke or limit access to visitation may appeal such determination to the Board, in accordance with the following procedures:

(i) The person affected by the determination shall give notice in writing to the Board and the Department of intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) The Board or its designee shall issue a written decision upon the appeal within five (5) business days after receiving notice of the requested review, indicating whether the visitation determination has been affirmed, reversed, or modified.

(iv) Where there exists good cause to extend the time period in which the Board or designee may issue a written decision beyond five (5) business days, the Board or designee may issue a single extension not to exceed ten (10) business days. In such instances, the Board shall immediately notify the Department and any persons affected by the extension.

§ 8. Section 1-11 of Title 40 of the Rules of the City New York is amended to read as follows:

§ 1-11 Correspondence.

(a) *Policy.* [Prisoners] People in custody are entitled to correspond with any person, except when there is a reasonable belief that limitation is necessary to protect public safety or maintain facility order and security. The Department shall establish appropriate procedures to implement this policy. Correspondence shall not be deemed to constitute a threat to safety and security of a facility solely because it criticizes a facility, its staff, or the correctional system, or espouses unpopular ideas, including ideas that facility staff deem not conducive to rehabilitation or correctional treatment. The Department shall provide notice of this policy to all [prisoners] people in custody.

(b) *Number and language.*

(1) There shall be no restriction upon incoming or outgoing [prisoner] correspondence based upon either the amount of correspondence sent or received, or the language in which correspondence is written.

(2) If a [prisoner] person in custody is unable to read or write, he or she may receive assistance with correspondence from other persons, including but not limited to, facility employees and [prisoners] people in custody.

(c) *Outgoing correspondence.*

(1) Each facility shall make available to indigent [prisoners] people in custody at Department expense stationery and postage for all letters to attorneys, courts and public officials, as well as two (2) other letters each week.

(2) Each facility shall make available for purchase by [prisoners] people in custody both stationery and postage.

(3) Outgoing [prisoner] correspondence shall bear the sender's name and either the facility post office box or street address or the sender's home address in the upper left-hand corner of the envelope.

(4) Outgoing [prisoner] correspondence shall be sealed by the [prisoner] sender and deposited in locked mail receptacles.

(5) All outgoing [prisoner] correspondence shall be forwarded to the United States Postal Service at least once each business day.

(6) Outgoing [prisoner] non-privileged correspondence shall not be opened or read except pursuant to a lawful search warrant or the warden's written order articulating a reasonable basis to believe that the correspondence threatens the safety or security of the facility, another person, or the public.

(i) The warden's written order shall state the specific facts and reasons supporting the determination.

(ii) The affected [prisoner] sender shall be given written notification of the determination and the specific facts and reasons supporting it. The warden may delay notifying the [prisoner] sender only for so long as such notification would endanger the safety and security of the facility, after which the warden immediately shall notify the [prisoner] person. [This requirement shall not apply to individuals confined in enhanced supervision housing.]

(iii) A written record of correspondence read pursuant to this paragraph shall be maintained and shall include: the name of the [prisoner] person in custody, the name of the intended recipient, the name of the reader, the date the correspondence was read, and [, with the exception of prisoners confined in enhanced supervision housing,] the date that the [prisoner] person received notification.

(iv) Any action taken pursuant to this paragraph shall be completed within five (5) business days of receipt of the correspondence by the Department.

(7) Outgoing [prisoner] privileged correspondence shall not be opened or read except pursuant to a lawful search warrant.

(d) *Incoming correspondence.*

(1) Incoming correspondence shall be delivered to the intended [prisoner] recipient within forty-eight (48) hours of receipt by the Department unless the [prisoner] recipient is no longer in custody of the Department.

(2) A list of items that may be received in correspondence shall be established by the Department. Upon admission to a facility, [prisoners] people shall be provided a copy of this list or it shall be posted in each housing area.

(e) *Inspection of incoming correspondence.*

(1) Incoming [prisoner] non-privileged correspondence

(a) shall not be opened except in the presence of the intended [prisoner] recipient or pursuant to a lawful search warrant or the warden's written order articulating a reasonable basis

to believe that the correspondence threatens the safety or security of the facility, another person, or the public.

(i) The warden's written order shall state the specific facts and reasons supporting the determination.

(ii) The affected [prisoner] recipient and sender shall be given written notification of the warden's determination and the specific facts and reasons supporting it. The warden may delay notifying the [prisoner] recipient and the sender only for so long as such notification would endanger the safety or security of the facility, after which the warden immediately shall notify the [prisoner] recipient and sender. [This requirement shall not apply to prisoners confined in enhanced supervision housing.]

(iii) A written record of correspondence read pursuant to this subdivision shall be maintained and shall include: the name of the sender, the name of the intended [prisoner] recipient in custody, the name of the reader, the date that the correspondence was received and was read, and[, with the exception of prisoners confined in enhanced supervision housing,] the date that the [prisoner] recipient and sender received notification.

(iv) Any action taken pursuant to this subdivision shall be completed within five (5) business days of receipt of the correspondence by the Department.

(b) shall not be read except pursuant to a lawful search warrant or the warden's written order articulating a reasonable basis to believe that the correspondence threatens the safety or security of the facility, another person, or the public. Procedures for the warden's written order pursuant to this subdivision are set forth in paragraph (1) of this subdivision.

(2) Incoming correspondence may be manipulated or inspected without opening, and subjected to any non-intrusive devices. A letter may be held for an extra twenty-four (24) hours pending resolution of a search warrant application.

(3) Incoming privileged correspondence shall not be opened except in the presence of the recipient [prisoner] in custody or pursuant to a lawful search warrant. Incoming privileged correspondence shall not be read except pursuant to a lawful search warrant.

(f) *Prohibited items in incoming correspondence.*

(1) When an item found in incoming correspondence involves a criminal offense, it may be forwarded to the appropriate authority for possible criminal prosecution. In such situations, the notice required by paragraph (3) of this subdivision may be delayed if necessary to prevent interference with an ongoing criminal investigation.

(2) A prohibited item found in incoming [prisoner] correspondence that does not involve a criminal offense shall be returned to the sender, donated or destroyed, as the [prisoner] recipient wishes.

(3) Within twenty-four (24) hours of the removal of an item, the Board and the intended [prisoner] recipient shall be sent written notification of this action. This written notice shall include:

(i) the name and address of the sender;

(ii) the item removed;

(iii) the reasons for removal;

(iv) the choice provided by paragraph (2) of this subdivision; and

(v) the appeal procedure.

(4) After removal of an item, the incoming correspondence shall be forwarded to the intended [prisoner] recipient.

(g) *Appeal.* Any person affected by the determination to remove an item from [prisoner] correspondence may appeal such determination to the Board.

(1) The person affected by the determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(2) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(3) The Board or its designee shall issue a written decision upon the appeal within 14 business days after receiving notice of the requested review.

§ 9. Title 40 of the Rules of the City of New York is amended by adding a new Chapter 6 to read as follows:

Chapter 6: Restrictive Housing in Correctional Facilities

Subchapter A: Core Principles

§ 6-01 **Purpose.**

(a) These Chapter 6 rules are based upon and promote the following core principles:

(1) Protection of the safety of people in custody and the staff who work in facilities by:

(i) Ensuring that all people in custody and all staff who work in facilities are treated with dignity and respect;

(ii) Prohibiting restrictions that dehumanize or demean people in custody;

(iii) Placing restrictions on people in custody that are limited to those required to achieve the appropriate objectives for which the restrictions are imposed; and

(iv) Confining people in custody to the least restrictive setting and for the least amount of time necessary to address the specific reasons for their placement and to ensure their own safety as well as the safety of staff, other people in custody, and the public.

(2) Placement of people in custody into restrictive housing in accordance with due process and procedural and restorative justice principles by:

(i) Explaining disciplinary rules and the sanctions for violating them when people are first admitted to Department custody;

(ii) Imposing sanctions that are proportionate to the offenses committed;

(iii) Applying disciplinary rules and imposing sanctions fairly and consistently; and

(iv) Ensuring that people in custody understand the basis for their placement into restrictive housing, and that they understand the basis for any individual restrictions imposed in conjunction with their placement in such housing.

(3) Promotion of the rehabilitation of people in custody and their reintegration into the community by:

(i) Incentivizing good behavior;

(ii) Allowing people placed into restricting housing as much out-of-cell time and programming participation as practicable, consistent with safety and security; and

(iii) Providing necessary programming and resources.

(4) Monitoring and tracking compliance with these Chapter 6 rules and the core principles on which they are based by:

(i) Developing performance measures; and

(ii) Regularly reporting performance outcomes to the public.

Subchapter B: Definitions

§ 6-02 **General Definitions.**

For the purposes of this Chapter, the following terms have the following meanings:

(a) "Board" means the New York City Board of Correction.

(b) "CHA" means the Correctional Health Authority designated by the City of New York as the agency responsible for health and mental health services for people in the care and custody of the Department.

(c) "Department" means the New York City Department of Correction.

(d) "Facility" means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) used by the Department for confinement of individuals.

(e) "Health staff" means a medical health or mental health professional employed by CHA who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice.

(f) "Person in custody" means any person confined in a facility.

(g) "Security staff" means Department employees primarily responsible for the supervision and control of people in custody in housing units, recreational areas, dining areas, and other program areas of the facility.

§ 6-03 **Definition of Restrictive Housing and Related Terms.**

(a) For the purposes of this Chapter, "restrictive housing" means units where the Department houses people in custody separately from people housed in the general population, and:

(1) The out-of-cell time offered per day in the unit is less than fourteen (14) hours; or

(2) People in the unit are subject to one or more of the following conditions:

(i) Services mandated under other Chapters of the Minimum Standards are provided in a more restricted manner than they are provided to people housed in the general population. This would include, for example, the provision of law library services other than in a facility law library or religious services other than in a facility chapel.

(ii) A person is housed alone in the unit.

(iii) The physical design of the unit cannot accommodate more than four (4) people in custody congregating in a dayroom.

(b) For the purposes of this Chapter, the following terms related to restrictive housing have the following meanings:

(1) "Disciplinary hearing" means a hearing on an infraction with which a person in custody has been charged.

(2) "General population" or "general population housing" means all housing units that are not restrictive housing units, specialized medical units, or specialized mental health units as defined in this section

(3) "Grade I, II or III offense" means the degree of offense defined in 39 RCNY § 1-03, the Department of Correction Inmate Rule Book. Grade I is the most serious grade of offense.

(4) "Hearing Adjudicator" is a Department employee of the rank of Captain or above who presides at disciplinary hearings or placement review hearings of people in custody.

(5) "Housing area" or "housing unit" means facility housing, including common areas, used to house people in custody.

(6) "Infraction" means a violation of Department rules.

(7) "Intake" or "intake area" is an area designated by a facility to temporarily secure a person in custody while awaiting further assessment of the person for appropriate housing placement.

(8) "Legal Representative" is an attorney or layperson who works under the supervision of an attorney.

(9) "'M"' Designation" is a designation assigned pursuant to a settlement in *Brad H. v. City of New York*, if a person, during one incarceration event, has engaged with the mental health system at least three (3) times, has been prescribed certain classes of medication, or has otherwise been assessed by the Health Authority as needing further mental health treatment.

(10) "Mandated services" means services the Department is obligated to provide under the Board's Minimum Standards.

(11) "Pre-hearing detention" means the placement of a person in custody in RMAS Level 1 pending the investigation or adjudication of the person's disciplinary infraction.

(12) "PSEG" or "punitive segregation" means the placement of a person in custody in isolation for extended periods of time, separate and apart from the general population, pursuant to a disciplinary sanction imposed after a disciplinary hearing.

(13) "Restraints" mean any of the following devices: handcuffs, flex cuffs, waist restraint systems (consisting of a belt or chain around the waist to which the person hands may be chained or handcuffed); leg restraints (shackles applied on the ankle area); handcuff safety covers (protective devices that cover the locking mechanism of handcuffs to prevent tampering); protective mittens (protective tube-like mittens which cover the hands and are secured with handcuffs); gurneys (wheeled stretchers); four-point restraints (restraint that secure both arms and legs); five-point restraints (four-point restraint plus the application of an additional restraint across the chest, such as restraint chairs and the WRAP restraint device); and restraint desks (school-type desk surface and chair with ankle restraints).

(14) "Restorative Rehabilitation Unit" or "RRU," pursuant to 40 RCNY § 6-27, is a general population housing area of 15 or less people that offers enhanced programming, security, and therapeutic support for people stepping down from RMAS.

(15) "Restrictive status" means a status the Department assigns to people in custody who the Department determines require heightened identification, tracking, and/or monitoring for safety and security purposes.

(16) "Risk Management Accountability System" or "RMAS," pursuant to 40 RCNY § 6-08 through § 6-26, is a progression model that separates people from general population in response to their commission of an offense and holds them accountable through a swift, certain, fair, and transparent process. RMAS promotes prosocial behavior and progression through positive incentives as well as case management services, behavior support plans, and evidence-informed programming, tailored to the person's individual needs. RMAS includes Levels 1 and2, with Level 1 being the most restrictive.

(17) "Specialized medical housing" are housing units for persons with medical conditions, including but not limited to infirmaries and contagious disease units (CDUs). Entry and discharge for specialized medical housing are determined by CHA according to clinical criteria.

(18) "Specialized mental health housing" are housing units for persons with serious mental illness, including but not limited to Program for Accelerating Clinical

Effectiveness (PACE) units, and Clinical Alternatives to Punitive Segregation (CAPS) units. Entry and discharge are determined by CHA according to clinical criteria. Mental Observation (MO) units are not specialized mental health housing for purposes of this rule.

(19) "Steady" staff are officers that are regularly assigned to the same post.

(20) "Young adults" mean people in custody ages eighteen (18) through twenty-one (21).

Subchapter C: Immediate Placement Responses to Violence

§ 6-04 **Pre-Hearing Detention.**

(a) The Department may place a person in custody in pre-hearing detention in RMAS Level 1 if the person is under investigation for or charged with an infraction and meets the following criteria:

(1) The person is reasonably believed by the Department to have committed a Grade I violent offense within the past one (1) business day; and

(2) The person's removal from general population is necessary to:

(i) Protect the safety of any person, including staff or other people in custody, prior to the person's hearing; or

(ii) Prevent the person from intimidating or coercing other people in custody to give false testimony or to refuse to testify at the person's infraction hearing.

(b) A person in custody who qualifies for and is placed in pre-hearing detention shall be afforded a disciplinary hearing no later than seven (7) business days after the person's placement in pre-hearing detention. Time spent in such detention prior to the hearing shall count toward the person's sentence to RMAS Level 1.

(c) If the Department does not hold an infraction hearing within seven (7) business days, the Department must release the person from pre-hearing detention.

(d) If the Department determines that the person's retention in pre-hearing detention is not necessary for the safety or security of that person or others, including staff and other people in custody, the Department must release the person from pre-hearing detention.

(e) The Department shall provide the Board with a semiannual report with information related to its use of prehearing detention including but not limited to: (1) the number of people placed in prehearing detention, (2) their placement infractions, (3) time from placement to hearing, (4) whether people placed in pre-hearing detention were adjudicated for continued placement in RMAS Level 1, and (5) any other information the Department or the Board deems relevant to the Board's assessment of pre-hearing detention. The report shall include data disaggregated by month.

(f) The Board and the Department shall jointly develop reporting templates for the report required by 40 RCNY § 6-04(e) for approval by the Board.

§ 6-05 **Confinement for De-Escalation Purposes.**

(a) The Department may only confine a person in custody for de-escalation purposes to:

(1) Aid a person in calming behavior that poses an immediate threat to the safety of the person or others or significantly disrupts Department activities in progress. The Department may only resort to confinement for this purpose after other less restrictive measures have been exhausted or have been or are likely to be ineffective.

(2) Temporarily place a person in custody for the person's own safety after the person has been assaulted or otherwise victimized by another person in custody.

(3) Facilitate the decontamination of people in custody following exposure to chemical spray.

(b) The Department shall immediately notify CHA of a person in custody's placement in de-escalation confinement, including the initial and any subsequent locations of such confinement, so that the person's access to medical and mental health services and medication is not interrupted.

(c) The Department shall conduct visual and aural observation of every person in de-escalation confinement every fifteen (15) minutes.

(d) The Department shall only utilize individual cells for the purpose of de-escalation confinement. Such cells may not be located in intake areas.

(e) Cells used for de-escalation confinement must have the features specified in and be maintained in accordance with the personal hygiene and space requirements set forth in 40 RCNY § 1-03 and § 1-04.

(f) The Department must serve meals and snacks to people in custody while in de-escalation confinement at or about the same time as, and be of the same quality and quantity of, the meals served to people in the general population.

(g) The Department shall not hold someone in de-escalation confinement for longer than the minimum amount of time required for the Department to conduct an assessment and determine the person's subsequent placement. In addition, the following time limitations apply:

(1) The Department may not place a person in de-escalation confinement for more than six (6) hours. The Department shall document every placement on a form designed for this purpose, which shall specify the reasons for the placement.

(2) After holding a person in de-escalation confinement for three (3) hours, the Department must reauthorize the confinement through written approval up the Department's security chain of command. The reauthorization approval shall consider the reasons therefor, including what attempts were made by the Department to transfer the person in custody out of de-escalation confinement after three (3) hours.

(3) Whenever the Department keeps a person in de-escalation confinement for more than the six (6) hour maximum, it must declare an emergency variance pursuant to 40 RCNY § 1-15(b)(3). Such declaration shall include how long someone was kept in de-escalation confinement in total, and the reasons why the person was not placed elsewhere. The Department shall include in this declaration the initial authorization and reauthorization forms and approvals specified in 40 RCNY §§ 6-05(g)(1) and (2).

(4) For the purposes of compliance with the time limitations in this section, the length of a person in custody's de-escalation confinement shall be calculated from the time of initial placement in the de-escalation confinement cell or area until the individual is transported to a newly assigned housing area. This shall include the time the person spends in any other subsequent de-escalation confinement cell or area prior to rehousing.

(h) The Department shall maintain an updated list of the specific areas designated to be used for de-escalation purposes at each facility. The Department shall share this list with the Board and update the Board as soon as changes are made.

(i) The Department shall provide the Board with a quarterly public report with information related to its use of de-escalation confinement for each month in the reporting period, including but not limited to (1) the number of placements in de-escalation confinement, overall and by reason for placement (2) the number whose placement lasted more than three hours, (3) the number whose placement lasted more than six hours, (4) the minimum, maximum, mean, and median time spent in de-escalation confinement, overall

and by reason for placement, (5) the facility and locations of any units used for de-escalation confinement, and (6) any other information the Department or the Board deems relevant to the Board's assessment of the use of de-escalation confinement in Department facilities. Metrics in the public report shall be reported in total and by facility, and disaggregated by month. The data used to produce the report shall be tracked at the individual placement level and provided to the Board in a manner that may be analyzed electronically by the Board.

(j) The Board and the Department shall jointly develop the reporting templates for the report required by 40 RCNY § 6-05(i), for approval by the Board.

(k) The Department shall commence using individual cells outside of intake areas as required by 40 RCNY § 6-05(d) within six (6) months of the Effective Date. Pending such implementation:

(1) The Department shall operate intake areas used for de-escalation confinement in accordance with all other requirements set forth in this section.

(2) De-escalation confinement in an intake area must have an adequate number of working flush toilets, wash basins with drinking water, including hot and cold water, and appropriate furnishings for seating and reclining to accommodate the number of people in custody confined there. Such areas must be maintained in a clean and sanitized manner.

§ 6-06 **Emergency Lock-Ins.**

(a) Emergency lock-ins shall never be in effect longer than necessary to allow staff to investigate or avoid a serious incident, conduct searches, or restore order or safety.

(b) The Department shall limit the scope of emergency lock-ins so that only those housing areas that must be locked down are affected.

(c) The Department must immediately notify the Board and CHA as soon as an emergency lock-in begins, a lock-in is extended beyond a regularly scheduled lock-in period, or a lock-in extends beyond 6 hours. This notification shall be in writing and include information regarding the facilities and specific housing area locations and number of people impacted. The Department may make this notification through the Department's Incident Reporting System, or a similar system that is in place for real-time, operational reporting.

(d) As soon as the Department anticipates that an emergency lock-in will require the cancellation or delay of visits, the Department shall notify the public on its website or by other means with specific information about how visits will be affected.

(e) The Department shall document the locations and reason(s) for each emergency lock-in (e.g., fight, slashing, use of force, missing razor) and the objectives to be accomplished

during the lock-in related to those reasons (e.g., investigate use of force, conduct searches to recover contraband) in a manner that may be analyzed electronically by the Board.

(f) When authorizing an extension of an emergency lock-in beyond a regularly scheduled lock-in period, the Department shall re-evaluate the stated reasons and objectives for the lock-in and shall document reasons as to why the lock-in must be continued (e.g., search still underway, not enough staff on post to lock out housing area).

(g) In all housing areas where emergency lock-ins have continued for more than six (6) consecutive hours, CHA staff shall complete clinical rounds to assess medical and mental health. DOC shall ensure timely access to medical and mental health care — particularly emergency or time-urgent medical and mental health care — during any lock-in, and must provide for other delayed or missed services as quickly as possible following an emergency lock-in.

(h) For lock-ins continuing for twenty-four (24) hours or more, the Department shall notify the Board in writing of the steps taken to address the emergency and lift the lock-in.

(i) For the following services, the Department shall track and record, in a manner that may be analyzed electronically by the Board, whether services were impacted (i.e., cancelled, delayed, or not affected) due to an emergency lock-in and the number of housing areas and people affected:
   (1) Recreation
   (2) Law library
   (3) Visits
   (4) Religious services
   (5) Educational services
   (6) Sick call
   (7) Other Clinic services
   (8) Medication/pharmacy
   (9) Scheduled Medical and Mental Health appointments (including on- and off- Island specialty appointments)
   (10) Clinical rounds
   (11) Programming

(j) If services were delayed or otherwise affected, the Department shall track and report the time each service was afforded for each housing area impacted by the emergency lock-in.

(k) The Department shall provide the Board with direct access to all documentation related to emergency lock-ins and lock-in extensions.

(l) The Department and CHA shall issue a written directive to staff regarding the requirements of this section. The directive shall include protocols for communication and coordination

between the Department and CHA during and after emergency lock-ins to facilitate the triage of necessary care by CHA, minimize disruptions to patient care, and ensure the rescheduling of medical/mental health appointments.

(m) CHA shall provide the Board with a quarterly report including, but not limited to, the following data on reported emergency lock-ins and lock-in extensions occurring during the reporting period, disaggregated by month:

(1) Number of emergency lock-ins and lock-in extensions reported to CHA by the Department, in total and disaggregated by facility;
(2) Number of clinic closures during an emergency lock-in and reason for closure (e.g., clinic attending to staff injuries, no facility movement permitted), in total and disaggregated by facility;
(3) Number of previously scheduled appointments missed and number of previously scheduled appointments required to be rescheduled due to an emergency lock-in, in total and disaggregated by facility and service type;
(4) Number of non-scheduled CHA services (wound care, etc.) missed or delayed as a result of an emergency lock-in, in total and disaggregated by facility and service type;
(5) Number of required clinical rounds missed, in total and disaggregated by facility and restrictive housing units affected;
(6) Number of patients requesting sick call but not afforded sick call when requested, in total and disaggregated by facility;
(7) Number of patients whose medication services were missed or delayed as a result of an emergency lock-in, in total and disaggregated by facility; and
(8) Number of rounds conducted in housing areas with more than six (6) hours of non-scheduled continuous emergency lock-in, in total and disaggregated by facility.
(9) Any other information the CHA or the Board deems relevant to the Board's assessment of emergency lock-ins and their impact on access to health and mental health care.

(n) The Board and CHA shall jointly develop the reporting template for the report required by 40 RCNY § 6-06(m), for approval by the Board.

(o) On at least a quarterly basis, the Department shall provide the Board all emergency lock-in and lock-in extension incident-level data tracked by the Department. The Board and the Department shall jointly develop a reporting template for transmission of this data for approval by the Board.

Subchapter D: Prohibition On The Use Of Punitive Segregation

§ 6-07 **Policy.**

(a) Punitive segregation, also known as PSEG or solitary confinement, imposes significant risks of psychological and physical harm on people in custody. These risks are intensified for those with pre-existing mental illness or medical conditions and young adults. The risk of self-harm and potentially fatal self-harm is also strongly associated with solitary confinement. The hallmarks of solitary confinement — social deprivation and enforced idleness — create these serious health risks and are antithetical to the goals of social integration and positive behavioral change.

(b) By November 1, 2021, the use of all forms of punitive segregation as defined in 40 RCNY § 6-03(b)(12), shall be prohibited in all existing and future DOC facilities.

(c) Upon the Department's elimination of punitive segregation and commencing November 1, 2021, the only form of restrictive housing the Department is permitted to operate will be RMAS housing pursuant to 40 RCNY § 6-08 through § 6-26.

Subchapter E: Risk Management and Accountability System (RMAS)

§ 6-08 **Purpose.**

(a) The purpose of RMAS is to:

(1) Separate from the general population a person in custody in response to the person's recent commission of an offense, which significantly threatens the safety and security of other people in custody and staff.

(2) Hold incarcerated individuals accountable for their misconduct through swift, certain, fair, and transparent processes.

(3) Promote prosocial behavior and progression back to general population through utilization of positive incentives, case management services, individual behavior support plans, and individualized evidence-based programming.

(4) Provide people in custody with meaningful opportunities to socially engage with others and pursue productive activities.

§ 6-09 **Exclusions.**

(a) The following categories of people in custody shall be excluded from RMAS:

(1) People with a mental disorder that qualifies as a serious mental illness;

(2) People diagnosed with an intellectual disability;

(3) Pregnant persons, persons within eight (8) weeks of pregnancy outcome, and persons caring for a child in the Department nursery program;

(b) CHA shall determine if a person in custody meets one or more of the above exclusionary criteria in 40 RCNY § 6-09(a)(1) through (3).

(c) CHA has the authority to determine if any person, after being placed in RMAS, should be removed to a specialized medical or mental health housing unit because the person meets a criterion in 40 RCNY § 6-09(a)(1) through (3) or because the housing is medically contraindicated.

(d) People excluded from RMAS Level 1 or Level 2 at the time of an infraction due to health status pursuant to 40 RCNY § 6-09(a)(1) through (3) shall not be placed in RMAS Level 1 or Level 2 for the same infraction at a later date, regardless of whether their health status has changed.

§ 6-10 **Placement Criteria.**

(a) Except for pre-hearing detention as set forth in 40 RCNY § 6-04, the Department may only confine a person to RMAS Level 1 after a finding within the past thirty (30) days that the person is guilty of having committed a Grade I violent offense.

(b) The Department may only confine a person to RMAS Level 2 if:

(1) The person has just exited Level 1; or

(2) After a finding within the past thirty (30) days that the person is guilty of having committed a Grade I non-violent offense or a Grade II offense.

(c) If a person has been found guilty of an offense at a disciplinary hearing, their sentence must be proportional to the infraction charge.

(d) Within 3 months of the Effective Date of the Rule, the Department shall provide the Board with a written penalty grid:

(1) Describing each Grade I violent offense that would render a person eligible for placement in RMAS Level 1;

(2) Describing each Grade I non-violent offense and Grade II offense that would render a person eligible for placement in RMAS Level 2;

(3) The sentence range for each offense.

(e) The Department shall immediately notify the Board, in writing, of any material changes to the penalty grid.

§ 6-11 **Case Management.**

(a) The Department shall assign a case manager to each person in custody upon the person's placement into RMAS. To the extent practicable, the assigned case manager shall remain the person's case manager throughout the person's stay in RMAS and when they step down to a RRU.

(b) The Department shall employ case managers with some combination of:

(1) Experience in providing case management, counseling, or community services, preferably in a human services or health discipline, and/or preferably to individuals involved in the criminal justice system; and/or

(2) Knowledge acquired through education, training, and/or field work, preferably in a correctional setting, of:

(i) human behavior and performance;

(ii) individual differences in ability, personality, and interest, learning and motivation;

(iii) assessment and treatment of behavioral disorders; and

(iv) group behavior and dynamics and societal trends and influences; and/or

(3) Demonstrated skills in active listening, conveying information effectively, and engaging empathetically with individuals in a correctional setting, collaborating with them in developing and monitoring treatment or behavioral support plans, and/or providing programming or support services to them.

§ 6-12 **Individual Behavior Support Plans.**

(a) The Department shall develop, in writing, an individual behavior support plan (IBSP) for each person in custody who is placed in RMAS.

(1) The plan shall be informed by an evidence-informed assessment and describe specific services and measurable, achievable goals for the person while in RMAS to facilitate the person's reintegration into housing in the general population.

(2) The plan's goals shall be tailored to the person's age, literacy, education level, and capacity to complete programming.

(3) The plan shall be current, reflecting behavior close-in-time to the periodic review required under 40 RCNY § 6-14.

(4) The plan shall include:

(i) A detailed assessment of what led the person to engage in the violent or disruptive behavior;

(ii) Whether the person will be receiving mental health services;

(iii) What programming and/or services shall be provided to address the reasons for the person's violent or disruptive behavior;

(iv) Whether the Department will arrange for special staffing to manage the person's behavior; and

(v) Whether the Department will involve family members, criminal defense counsel, and community resources to assist the person in meeting the goals of the person's IBSP.

(b) Within seventy-two (72) hours of a person's placement in RMAS, a case manager must review the IBSP with the person. At every periodic review, as required in 40 RCNY § 6-14, in the Department must review and update the person's IBSP and afford the person an opportunity to participate in the review.

(c) The Department must record in writing the date of initial and subsequent periodic reviews with a person in custody. It must also document in writing all changes to the person's IBSP.

(d) If a person in custody commits and is found guilty of a Grade I infraction while in RMAS

(1) The Department shall review the person's IBSP and update the plan to include the strategies the Department shall employ to prevent the person from engaging in further violent or disruptive behavior. The Department shall conduct this review and update the plan accordingly within two business days of the person's being found guilty of a Grade I infraction while in RMAS.

(2) The Department shall submit the person's updated IBSP to the Chief of Department for the Chief's approval The Chief of Department shall approve or disapprove within one business day of receipt of the plan.

(3) Any IBSP that has been updated with the Chief of Department's approval shall be transmitted to CHS, the Board, and the affected person within one business day of its approval by the Chief of Department.

(4) After an IBSP has been updated with the Chief of Department's approval, the person's case manager shall meet with the person at least five days a week to review the person's progress toward meeting the goals of the person's updated IBSP and further update the plan if necessary. Within twenty-four (24) hours of being updated, the Department must share the IBSP with the affected person.

§ 6-13 **Progression.**

(a) All persons in Level 1 must progress to Level 2 after fifteen (15) days unless the facility head and the Chief of Department each approve a limited extension pursuant to the criteria set forth in 40 RCNY § 6-15.

(b) All persons in RMAS must step down to a Restorative Rehabilitation Unit (RRU) after they have been in RMAS for a total of thirty (30) days, unless the facility head and the Chief of the Department each approve a limited extension in Level 2 pursuant to 40 RCNY § 6-15.

§ 6-14 **Periodic Review of Individual Behavior Support Plans**

(a) The Department shall review the individual behavior support plans of a person in custody confined in RMAS at least every fifteen (15) days.

(b) The Department must give written notice of an upcoming periodic review to the person in custody at least twenty-four (24) hours prior to such periodic review. The notice must advise the person of their right to submit a written statement for consideration, and their right to participate in the review. The Department must provide necessary assistance to any person who is unable to read or understand such notice or prepare a written statement.

(c) Periodic review of a person's individual behavior support plan shall be conducted by a multidisciplinary team, including but not limited to Department program staff and the person's case manager, and shall consider the following:

(1) The continued appropriateness of each individual restriction on privileges and whether any such individual restrictions on privileges should be relaxed or lifted;

(2) Information regarding the person's subsequent behavior and attitude since placement in RMAS began;

(3) Any written statement the person submitted for consideration or any oral statement the person made at their periodic review;

(4) Any actions or behavioral changes that the person might undertake to further rehabilitative goals and facilitate the lifting of individual restrictions; and

(5) Whether the programming and therapeutic options currently offered to the person are having a positive behavioral impact, and if not, what other available programming and therapeutic options might be more successful in helping the person to further the goals of their individual behavior support plan.

(d) The conclusions reached in the multidisciplinary team's periodic review, including recommendations about individualized programming and therapeutic options, shall be recorded in a written report. A copy of the report shall be provided to the person in custody within one business day of the review.

§ 6-15 **Extensions**

(a) The Department may not hold someone in RMAS Level 1 or Level 2 for more than the time specified in 40 RCNY § 6-13 unless the facility head and the Chief of the Department each determine in writing, prior to the presumed end of the person's time in that level, that there is specific, documented intelligence or information that the person poses a serious threat to safety if they were to leave that level. Such extension determinations may only be made for seven (7) days at a time.

(b) If the facility head determines to extend a person's time in Level 1 or Level 2 pursuant to the criteria in 40 RCNY § 6-15(a), the facility head must send that determination to the Chief of Department within one business day.

(c) The Chief of Department shall review the facility head's extension determination and approve or reject it within one business day of receipt. The Chief's decision shall be stated in writing along with all supporting materials and physical evidence, and sent to the person in custody, their legal representative, the Board, and CHA within one business day of such decision.

(d) When the Department sends the Chief's decision and supporting written materials to the person in custody and their legal representative, the Department may only withhold or redact the following sensitive information based on security concerns:

(1) Information that could reasonably lead to the identification of a confidential informant or vulnerable witness;

(2) Personally identifying information not material to the decision;

(3) Operational information not known to people in custody that is material to maintaining security.

(e) The Department may not redact or withhold any material or physical evidence under 40 RCNY § 6-15(d)(1) – (3) from the affected person or their legal representative on the grounds that it is a photograph or recording taken inside the facility, or because it identifies witnesses, unless the Department also meets one of the justifications set forth in that section.

(f) Any redactions or withholdings made pursuant to 40 RCNY § 6-15(d)(1) through (3) must be accompanied by a justification log, generally describing the redacted or withheld information and the reasons therefor. A copy of such justification log must be sent to the Board of Correction at the same time it is sent to the affected person and their legal representative.

(g) The affected person will be asked to sign the notice of the Chief's decision as proof of receipt. If the person does not sign the notice, the staff person serving the notice must note the person's refusal on the notice.

(h) The Department may not extend a person's length of stay in RMAS by imposing consecutive lengths of stay regarding multiple offenses for which the person was found guilty at a single hearing.

(i) After a person has been in RMAS for thirty (30) days, they are entitled to file an administrative appeal to the Department's General Counsel any time the Chief of Department renders a decision to extend their time in RMAS pursuant to 40 RCNY § 6-15(c). The Department shall ensure people have access to legal representation for purposes of this administrative appeal, and that notice of the right to appeal is afforded to all persons held in RMAS longer than thirty (30) days.

(j) People in custody seeking to file an administrative appeal under 40 RCNY § 6-15(i) shall have three (3) business days from receipt of the Chief of the Department's decision to file the appeal, and the Department's General Counsel shall render a decision within two (2) business days of receipt of the appeal.

§ 6-16 **Required Out-of-Cell Time.**

All people in custody who are housed in RMAS must be permitted the following out-of-cell hours per day:

(a) People in Level 1 must be permitted at least ten (10) out-of-cell hours per day.

(b) People in Level 2 must be permitted at least twelve (12) out-of-cell hours per day.

§ 6-17 **Other Conditions.**

(a) Security staff shall conduct visual observations of every person housed in RMAS every fifteen minutes (15) when they are locked in their cells. During such observations, security staff must look for and confirm signs of life.

(b) At the beginning of each tour, security staff in RMAS units shall confirm in the housing area logbook that they have checked which persons in the unit have serious medical conditions, as described in 40 RCNY § 6-21(a).

(c) The Department shall provide people housed in RMAS Level 1 with the opportunity to lock out at the same time as at least one other person in custody in a setting where individuals can meaningfully engage both visually and aurally. Such lockout setting must allow for individuals to converse easily without the need to raise their voices to be heard.

(d) The Department shall provide people in custody confined in RMAS Level 2 with the opportunity to lock out at the same time as at least three (3) other people in custody in a setting where individuals can meaningfully engage both visually and aurally. Such lockout setting must allow for individuals to converse easily without the need to raise their voices to be heard. If fewer than four (4) persons are confined in RMAS Level 2 at any given time, the Department must instead guarantee that a person in custody confined in RMAS Level 2 has the opportunity to lock out at the same time as least one other person in custody in a setting where individuals can meaningfully engage both visually and aurally, and converse easily without the need to raise their voices to be heard.

(e) The Department many not impose any individual restrictions on a person confined in RMAS that differs from those imposed on people housed in the general population, unless the individual restriction is necessary to address a specific safety and security threat posed by that person.

(f) To the extent the Department seeks to limit access to contact visits of a person in custody who is confined in RMAS, a hearing shall be held, as required in 40 RCNY § 6-24(d), which shall address the criteria set forth in 40 RCNY § 1-09(h) with regard to both the incarcerated person and any individual visitors with whom the Department wishes to limit contact.

(g) Law library services may be provided in RMAS Level 1 and Level 2 units instead of a law library. If so, the Department must ensure that:

(1) People in each Level 1 and Level 2 unit have access to electronic legal research and typing equipment;

(2) One library coordinator is assigned to every two (2) RMAS units at least five (5) times per week; and

(3) The law library coordinator will provide instruction on available legal research tools and respond to people in custody's requests for law library services.

(h) To the extent the Department offers people confined in RMAS recreation in outdoor recreation pens or in vacant cells, the Department shall equip these pens or cells with exercise equipment such as dip bars, high bars, or pull-up bars.

(i) All RMAS units shall be air conditioned during the heat season.

(j) All cells used to house people in RMAS shall have access to natural light.

§ 6-18 **Staffing.**

(a) *Steady Posts*

The Department shall endeavor to staff RMAS units with as many steady officers as possible during each tour. The Department shall retain records sufficient to show accurate, uniform data on the security staff transferring in and out of RMAS units and the years of experience and training of security staff assigned to and working in these units. The Department shall semi-annually report this information, in writing, to the Board, with the information disaggregated by month.

(b) *Staffing Plans*

The Department shall provide the Board with the Department's staffing plans developed for RMAS and regularly update the Board on any material changes to such plans.

§ 6-19 **Training.**

(a) Security staff assigned to RMAS units shall receive training designed to address the unique characteristics and operations of these units and the people in custody who are housed in these units. Such training shall include, but not be limited to recognition and

understanding of mental illness and distress, effective communication skills, and conflict de-escalation techniques.

(b) Security staff assigned to RMAS units housing young adults shall receive specialized training for managing and understanding young adult populations, including crisis intervention, conflict resolution, and trauma-informed training.

(c) The Department shall provide hearing adjudicators and other staff involved in RMAS placement decisions training on procedural and restorative justice principles and written policies to guide sentencing and placement decisions.

(d) On at least an annual basis, the Department shall provide the Board with information related to the training to be provided, including, but not limited to the length of each type of training required by the Department, training schedules, and curricula.

§ 6-20 **Programming.**

(a) The Department must provide people in RMAS and people who step down from RMAS to a RRU (as set forth in 40 RCNY § 6-27) with programming both inside and outside of the cell. The programing must be informed by research evidence, be age-appropriate, and be tailored to each person's individual behavior support plan. The programming must also be designed to facilitate rehabilitation, address the root causes of violence, and minimize idleness. In addition, the Department must also provide people confined in RMAS with productive activities inside and outside of the cell.

(b) The Department shall make at least five (5) hours of daily programming available to people confined in RMAS, in addition to one (1) hour of daily recreation. Meals, showers, and sick call shall not count towards the five (5) hour daily programming requirement.

(c) Programming offered by the Department may be provided by entities or persons outside the Department

(d) In RMAS Level 1, the Department shall offer each person at least one (1) hour of in-person therapeutic programming per day, led by therapeutic programming staff in a separate shared space not adjacent to a cell.

(e) In RMAS Level 2, the Department shall offer each person least two (2) hours of in-person therapeutic programming per day, led by therapeutic programming staff in a separate shared space not used for regular lock-out.

(f) In-person therapeutic programming shall only be offered in physical spaces that ensure privacy from non-participating staff and others in custody.

(g) For young adults confined in RMAS, the 5-hours of daily programming may include, activities and/or services provided during school hours by entities or persons other than the Department. For young adults in RMAS who are eligible for educational services provided by or through the New York City Department of Education ("DOE") pursuant to N.Y. Education Law 3202(7) and implementing state regulation, the Department shall offer such young adults access to DOE-provided educational services each school day that DOE's school program is in session during the 10-month school year (or extended school year, if set forth on the student's special education plan), provided that the young adult indicates in writing that they wish to attend and demonstrates their eligibility for such services.

(h) The Department shall provide and regularly update the Board with information on program offerings in RMAS and to people who step down from RMAS to the RRU. The Department shall maintain accurate and up-to-date programming schedules in each RMAS and RRU unit.

(i) The Department shall document by date each individual's participation in each program session offered and any refusals to participate in RMAS programming and the reasons therefor.

(j) The Department shall provide the Board with quarterly public reports on RMAS programming and programming to people who have stepped down from RMAS to a RRU, including but not limited to the following information for adults and young adults by RMAS level or RRU status, disaggregated by month:

(1) the name, description, and type of program offered and staff delivering each program offered;

(2) the number of sessions of each program offered;

(3) where and how each program was offered (e.g.,. in-cell or in-dayroom by tablet, out-of-cell in separate programming space led by staff, etc.);

(4) whether each program offered was individual or congregate;

(5) the average number of participants per session and the number of unique individuals in RMAS overall and the number of unique individuals participating in each program during the reporting period;

(6) the number of programming hours received per day (minimum, maximum, mean, median) by individuals in RMAS during the reporting period;

(7) the number of programming hours received per day in a separate programming space not adjacent to cell (minimum, maximum, mean, median) by individuals in RMAS during the reporting period;

(8) Any other information the Department or the Board deems relevant to the assessment of programming in RMAS.

(k) The Department shall provide the Board with the individually identified data used to create the public reports required in this section.

(l) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY §6-20(j), which shall be subject to approval by the Board.

§ 6-21 **Access to Health Services.**

(a) Upon intake and in subsequent clinical encounters, CHA shall identify individuals with serious medical conditions, as defined by CHA. Without disclosing specific diagnoses, CHA shall maintain a current list of all such individuals in DOC custody and make that list available to the Department. The Department shall then ensure that staff in RMAS units are aware of all people in the unit who have been identified by CHA as having a serious medical condition.

(b) CHA shall provide daily clinical rounds to all people in custody in RMAS to assess medical and mental health. Such rounds must be documented in writing.

(c) The Department shall immediately notify CHA of each placement of a person in custody into RMAS. Such notification shall be in writing.

(d) Clinical treatment shall never occur cell-side. The Department shall ensure that every person who is placed into RMAS is brought to the facility clinic for all scheduled appointments they wish to attend. The Department may not use force to compel clinic visits.

(e) Each time CHA determines removal of a person from RMAS to an alternate housing unit is appropriate, CHA shall notify the Board in writing of the circumstances related to the determination (e.g., medical concern, mental health concern, disability);

(f) CHA shall provide the Board with a monthly, public report. The report shall include but not be limited to:

(1) Number of notifications of placement in RMAS received by CHA during the reporting period, in total and disaggregated by type of restrictive housing and facility;

(2) Number of notifications of placement in de-escalation confinement received by CHA during the reporting period, in total and disaggregated by facility;

(3) Number of CHA determinations of removal from RMAS to an alternate housing unit during the reporting period, in total and disaggregated by RMAS level and facility;

(4) Number and percent of scheduled services by service type and outcome for people housed in RMAS during the reporting period, in total and disaggregated by RMAS level and facility; and

(5) Any other information CHA or the Board deems relevant to understanding access to health services in RMAS.

(g) CHA shall provide the Board with the data used to prepare the report required in 40 RCNY § 6-21(f) and any other information CHA or the Board deems relevant to understanding access to health services in RMAS.

(h) The Board and CHA shall jointly develop the reporting templates for the public report required by 40 RCNY § 6-21(f), subject to approval by the Board.

§ 6-22 **Fines.**

The Department shall not automatically assign a monetary fine to all guilty infractions. The Department shall only include a financial penalty as an option for restitution for destruction of property. Any imposition of a fine shall take into account the person's ability to pay.

§ 6-23 **Disciplinary System Plans.**

(a) Within three (3) months of the Effective Date, the Department shall submit to the Board a written plan for a disciplinary process ("plan"), one for young adults and one for adults, that addresses:

(1) Grade III offenses ("violations"), and

(2) People subject to the exclusions in 40 RCNY § 6-09.

(b) Each plan shall include:

(1) Mechanisms for addressing violations without resort to RMAS placement or limitations on individual movement or social interaction. Such mechanisms may include, e.g., positive behavioral incentives and privileges, targeted programming to address

problematic behavior; and conflict resolution approaches in response to interpersonal conflict within the jails;

(2) Criteria for restricting or affording privileges based on behavior (e.g. commissary);

(3) A process for Department staff to respond to violations swiftly and consistently;

(4) A plan for communicating the rules of conduct, Department responses to rule violations, and due process procedures in a clear and understandable manner to people in custody and to all Department staff, including non-uniformed staff who have routine contact with people in custody.

(5) Training curricula for uniformed and non-uniformed staff on the disciplinary process and procedures.

(6) The assistance the Department shall provide people in custody to understand the disciplinary process and procedures, including their rights thereunder. This shall include the procedures the Department will follow if the person in custody is non-English or limited-English proficient, illiterate, or has a disability including, for example, if the person is deaf or hard of hearing, is blind or has low vision, or has an intellectual, psychiatric, or speech disability.

(7) A process for engaging Department staff in the plans' development.

(8) Potential housing options for people excluded from RMAS.

(c) Upon review of the plans required by this section, the Board and the Department shall jointly develop a public reporting template on the Department's disciplinary systems. The template shall be subject to the Board's approval.

§ 6-24 **Due Process and Procedural Justice.**

(a) *Purpose*

(1) The following minimum standards in this section are intended to ensure that people in custody are placed into RMAS with due process and procedural justice principles.

(2) The requirements in this section apply to people in custody who are charged with violating Department rules and may be placed in RMAS Level 1 or directly into RMAS Level 2, if they are found guilty of violating such rules.

(b) *Investigations*

(1) When the Department conducts investigations into allegations of a person in custody's violation of Department rules, it shall do so promptly, thoroughly, and objectively.

(2) The investigation cannot be conducted by Department personnel who have reported, participated in, or witnessed the conduct, or who are below the rank of Captain.

(3) If the rule violation in question could lead to a subsequent criminal prosecution, the Department must inform the person interviewed that while the Department's investigation is not pursuant to a criminal proceeding, statements made by the person may be used against the person in a subsequent criminal trial. The person must also be informed of the right to remain silent and that silence will not be used against the person.

(4) All investigations shall be documented in written reports that include a description of the physical, testimonial, and documentary evidence as well as investigative facts and findings.

(5) Investigations shall commence within twenty-four (24) hours after the Department is on notice of the incident.

(6) The Department shall only proceed with adjudication of charges against a person in custody upon a determination that there is reasonable cause to believe the person has committed the infraction charged.

(c) *Notice of Infraction*

(1) Prior to the disciplinary hearing provided in 40 RCNY § 6-24(d), people in custody must receive written notice detailing the charges against them. The notice must be legible, detailed, and specific and must include, at a minimum:

(i) Details as to the time and place of the rule violations charged;

(ii) A description of the person's actions and behavior that gave rise to the alleged violations;

(2) The Department must provide necessary assistance to any person in custody who is unable to read or understand the notice.

(3) Whenever the Department places a person into pre-hearing detention, the Department must serve them notice of the infraction within twenty-four (24) hours. If extenuating

circumstances prevent the possibility of service within this time frame, the Department must serve notice as soon as possible and document each reason for delay.

(4) When the Department has charged a person with an infraction and has not placed them in pre-hearing detention, the Department must serve them notice of the infraction as soon as practicable, and no later than two (2) business days prior to the hearing. Failure to do so shall constitute a due process violation warranting dismissal, unless the Department can demonstrate through documentation that extenuating circumstances beyond the Department's control prevented timely service.

(5) Any member of DOC staff may serve the person charged with the notice of infraction, except those who participated in the incident. The person will be asked to sign the notice as proof of receipt and to verbally indicate whether they would like to have a legal representative at their hearing. If the person does not sign the notice, a staff member other than the person serving the notice must note the person's refusal on the notice. Staff members who serve the notice, including staff members who note a person's refusal to sign the notice, shall indicate their name and shield number legibly on the notice.

(6) All refusals to sign a notice of infraction and waivers of legal representation shall be videotaped. In such cases where the Department maintains that someone has refused to sign, the Department must produce the videotaped refusal and make it part of the hearing record. Failure to do so shall constitute a due process violation warranting dismissal.

(d) *Disciplinary Hearing*

(1) *Hearing Adjudicators*

Infraction hearings shall be conducted by DOC staff of the rank of Captain or above. Hearing adjudicators shall not be DOC staff who initially recommended the person for adjudication or otherwise provided evidence to support the person in custody's infraction charge.

(2) *Time of Hearing*

Within three (3) business days of service of the notice of infraction on the person charged, the Department shall commence an adjudication hearing. The only exceptions to the Department's obligation to commence a hearing within three (3) days shall be if the person is absent from the facility for a conflicting court appearance; hospitalization; significant family event; emergency situation; medical appointment; or attorney visit. In such cases, the Department shall commence a hearing immediately after the person returns to the facility.

(3) *Due Process Violations*

Prior to calling the person charged to the hearing, the Hearing Adjudicator shall review the notice of infraction to determine whether there are any due process violations that may require dismissal of the infraction.

(4) *Recording*

All disciplinary hearings must be audibly recorded.

(5) *Refusal to attend or participate*

The refusal of people in custody to attend or participate in their hearing must be videotaped or audiotaped and made a part of the hearing record.

(6) *Rights of the Person Charged*

The Hearing Adjudicator shall advise the person charged of the following rights at the hearing, which must also be set forth in the notice of infraction:

(i) *The right to legal representation*: People charged with any infraction that could result in a placement in RMAS Level 1 or 2 have the right to legal representation at their disciplinary hearing. If a person eligible for legal representation appears at a hearing unrepresented, the Department shall inform the person that they have the right to adjourn the hearing so they can engage a legal representative.

(ii) *The right to appear:* The person charged has the right to appear personally unless the right is waived in writing or the person refused to attend the hearing.

(iii) *The right to make statements*: The person charged has the right to make statements. In cases where the infraction in question could lead to a subsequent criminal prosecution, the Hearing Adjudicator must inform the person that while the proceeding is not a criminal one, the person's statements may be used against the person in a subsequent criminal proceeding. The Adjudicator must also inform the person of the right to remain silent and that silence will not be used against the person at the hearing.

(iv) *The right to present evidence and call witnesses*: The person charged has the right to present evidence and call witnesses.

(v) *The right to review the Department's evidence:*

(A) The person charged and their legal representative have the right to review, the evidence relied upon by the Department prior to the infraction hearing. Specific documented intelligence may be redacted in limited instances where the Department determines that disclosing such information would present a serious safety risk to specific individuals. In such cases, the Department shall inform the person in writing that the information is being redacted due to a specific security risk. The Department shall maintain records of both redacted and unredacted evidence.

(B) Should the Department provide any evidence to the person for the first time at the hearing, the Department shall inform the person or their legal representative at the hearing that they have the right to adjourn the hearing so they can review and prepare their defense.

(vi) *The right to an interpreter.* The Department shall ensure that every person charged is aware they are entitled to request an interpreter in their native language if they do not understand or are not able to communicate in English well enough to conduct the hearing in English.

(vii) *The right to an appeal.* A person who is found guilty at a disciplinary hearing has the right to appeal an adverse decision as provided in § 6-24(h) of this Chapter.

(7) *Burden of Proof*

The Department has the burden of proof in all disciplinary proceedings. A person's guilt must be shown by a preponderance of the evidence to justify RMAS placement.

(8) *Hearing Time Frame*

(i) Once the hearing has begun, the Hearing Adjudicator shall make reasonable efforts to conclude the hearing in one session.

(ii) Adjournments may be granted if the person charged or their legal representative requests additional time to locate witnesses, obtain the assistance of an interpreter, or prepare a defense.

(iii) Hearing Adjudicators may also adjourn a hearing to question additional witnesses not available at the time of the hearing, gather further information, refer the person charged to mental health staff, or if issues are raised that require further investigation or clarification to reach a decision.

(iv) Notwithstanding any adjournments, hearings must be completed within five (5) days, absent extenuating circumstances or unless the person charged waives this time frame in writing or on the record.

(9) *Legal Representation*

People charged with any infraction that could result in a sentence to RMAS Level 1 or 2 shall be permitted to have a legal representative represent them at their disciplinary hearing and any in related appeal. People entitled to such representation shall be permitted to choose their legal representative.

(e) *Determination*

(1) Absent extenuating circumstances, the person charged and their legal representative shall be served with a copy of the determination within two (2) business days of the conclusion of the disciplinary hearing.

(2) The determination shall be in writing, legible, and contain the following:

(i) A finding of "guilty," "not guilty," or "dismissed" on each charge in the infraction;

(ii) A detailed description of the evidence relied upon by the Hearing Adjudicator in reaching such finding;

(iii) The sanction imposed, if any;

(3) A summary of each witness's testimony, including whether the testimony was credited or rejected, with a statement of the reasons therefor. If the witness's testimony contains specific documented intelligence, that intelligence may be redacted on the copy of the determination provided to the person in custody and their representative if the Department determines that disclosing such information would present a serious safety risk to specific individuals. In such cases, the Department shall inform the person and their legal representative in writing that the information is being redacted due to a specific security risk. The Department shall maintain records of both redacted and unredacted determinations.

(4) Records generated pursuant to a disciplinary hearing in which a person is found not guilty of the charges, after either the disciplinary hearing or appeal, shall be kept confidential and shall not be considered in making decisions pertaining to the person's access to programs, services, or in the granting of or withholding of "good time" credit for sentenced people, as defined in 39 RCNY § 1-03.

(f) Hearing adjudicators shall impose sanctions that are fair and proportionate to the infraction of which a person was found guilty.

(g) People in custody must be placed in RMAS within thirty (30) days of adjudication of guilt. If the Department does not place a person into RMAS within this thirty (30)-day period, the Department may not place the person in RMAS for that infraction at a later time.

(h) *Appeals*

(1) A person who is found guilty at a disciplinary hearing has the right to appeal such determinations. The appeal shall be in writing, shall be based on facts already in the record, and shall clearly set forth the basis for the appeal, except the person may raise any newly discovered evidence in the appeal.

(2) People in custody shall have three (3) business days from receipt of a guilty determination to file an appeal, and the Department shall render a decision within two (2) business days of receipt of the appeal.

(3) People charged with infractions that could result in placement in RMAS Levels 1 and 2 are entitled to legal representation for purposes of filing an appeal.

(4) A person may appeal based on the belief that there was a due process violation, insufficient evidence to support a guilty finding, or because the Hearing Adjudicator was not impartial.

(5) The decision on appeal shall be in writing, legible, and state the reasons for granting or denying the appeal. People who are unable to read or understand the decision shall be provided with necessary assistance.

(6) Appeals shall be determined by Department staff of the rank of Captain or above. The appeal must not be determined by:

(i) Staff who reported, witnessed, or investigated the incident underlying a guilty determination;

(ii) Staff who recommended the person's initial placement in restrictive housing;

(iii) Staff who recommended that individual restrictions be imposed on the person;

(iv) Staff who presided as the Hearing Adjudicator at the person's disciplinary hearing.

(i) *Disciplinary Due Process Reporting*

(1) Within one year of the Effective Date, the Department shall develop the system(s) necessary to collect accurate, uniform data on the due process requirements of 40 RCNY §6-24, and to centrally store related documentation, in a manner that may be analyzed electronically by the Board.

(2) The Department shall provide the Board with a public semiannual report on Disciplinary Due Process for the Adult and Young Adult population, including but not limited to information disaggregated by month on:

(i) Notices of Infraction, including the number and percent of Infraction notices, by Grade of top infraction charge (e.g., Grade I violent, Grade I non-violent, Grade II, Grade III), by whether the person charged signed or refused to sign the Infraction Notice and whether refusal was recorded ; and by whether the person charged requested assistance in reading or understanding the person's infraction notice and whether the person was provided such assistance.

(ii) (ii) Hearings and hearing determinations, including the number and percent of infractions served, by top infraction charge (i.e., Grade I violent, Grade I non-violent, Grade II, Grade III) by whether a hearing occurred, whether a person had a legal representative at the hearing, and by hearing outcome (Guilty, Not Guilty, Dismissed, e.g. due process violation).

(iii) Rights of people charged, including the number and percent of hearings by top infraction charge Grade (i.e., Grade I violent, Grade I non-violent, Grade II, Grade III), by whether the person charged refused to attend their hearing and whether the refusal is documented on video; and by whether the person charged requested a legal representative and/or interpreter and whether such request was granted.

(iv) Disciplinary sanctions, including the number and percent of guilty determinations by top infraction charge Grade (i.e., Grade I violent, Grade I non-violent, Grade II, Grade III), by whether the individual was placed in restrictive housing, including RMAS, and by the reasons not placed (e.g., discharged from custody, excluded due to health contraindication, or placement did not occur within 30 days of adjudication).

(v) Appeals, including the number and percent of guilty determinations appealed by top infraction charge Grade (i.e., Grade I violent, Grade I non-violent, Grade II, Grade III), by whether the person had a legal representative for their appeal, and by outcome of appeal (e.g., determination upheld, determination reversed, remanded to redraw charges to address due process violation, dismissed due to discharge from custody).

(vi) Any other information the Department or the Board deems relevant to assessment of RMAS Due Process.

(3) The Department shall provide the Board with the individually identified data used to create the public reports required in this section and all due process documentation.

(4) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY § 6-24(i)(2), which shall be subject to the Board's approval.

§ 6-25 **RMAS Data Collection and Review**.

(a) The Department shall maintain and update as necessary a list of the type and specific location of all RMAS units. The list shall include the opening and closing dates of all such units. The Department shall provide this list to the Board on at least a monthly basis and notify the Board in writing when any new RMAS units open, close, or change level.

(b) The Department shall maintain and develop the system(s) necessary to collect accurate, uniform data on RMAS and the requirements of 40 RCNY Subchapter E, and to centrally store related documentation, in a manner that may be analyzed electronically by the Board.

(c) The Department shall provide the Board with a monthly public report with information on RMAS, including but not limited to the following information for the Adult and Young adult populations, overall and by each RMAS Level:

(1) Number of sentences to RMAS by top offense (Rule Violation Grade Level, Rule Number, Rule Description) and length of sentence;

(2) The mean, median, minimum, and maximum time from qualifying incident or violation to placement and from adjudication to placement for all placements in RMAS in the reporting period;

(3) The total number of placements and unique people placed during the reporting period; the number and percent of people placed by age, race, ethnicity, gender, and "M" designation status, Security Risk Group, Red ID, and Enhanced Restraint status at time of placement; the average daily population; and the number of adults and young adults currently housed in RMAS as of the last day of the reporting period;

(4) Number of determinations to extend a person's time in RMAS Level 1 or Level 2 pursuant to 40 RCNY § 6-15(a) during the reporting period by whether the extension was approved and whether it was appealed, and number of people for whom

extensions and appeals were granted, in total and by number of extensions and appeals received;

(5) Number of exits of people from RMAS during the reporting period and their cumulative and consecutive days in RMAS during current incarceration (i.e., minimum, maximum, mean, median days) and, for each exit, the date of exit, the reason for exit (e.g. time served, discharged from custody, medical transfer, mental health transfer, etc.), and the facility, housing unit, and housing category in which the person was housed prior to and upon exit;

(6) Number of people in RMAS as of the last day of the reporting period and their cumulative and consecutive days in RMAS (i.e., minimum, maximum, mean, median days);

(7) The number of periodic reviews required and conducted by whether people attended their review, and whether any modifications were made to a person's individual behavior support plan.

(8) Average number of out-of-cell hours received per day; and average rate of participation in daily recreation.

(9) Numbers and rates of: person-in-custody on person-in-custody fights, slashings/stabbings, assaults on staff, and uses of force, compared to the comparable age group in the general population;

(10) Facility and housing unit locations for each RMAS unit, indicating RMAS level and whether the unit houses young adults or adults;

(11) Any other information the Department or the Board deems relevant to understanding the Department's use of RMAS.

(d) The Department shall produce monthly public reports of time spent out of cell; times spent in separate programming space that is not adjacent to cell or in regular lock-out space; access to law library; access to showers; participation in recreation; and time spent participating in programming for each individual in RMAS. Reports shall include the number, length of, and reasons for late lockouts in RMAS units and recommendations or corrective action(s) taken to address report findings related to improving access to and participation in mandated services. Reports shall indicate whether access to each type of mandated service or programming required a routine strip search. Information gathering to prepare this report shall not be conducted by staff regularly assigned to the facilities or units. At least four (4) dates per month shall be selected at random and shall not be previously disclosed to staff with responsibilities related to the units reviewed.

(e) On a monthly basis, the Department shall provide the Board with the individually identified data used to create the public reports required by 40 RCNY §§ 6-25(c) and (d) and all supporting documentation including but not limited to RMAS placement, review, and IBSP documentation.

(f) The Board and the Department shall jointly develop the reporting templates for the public reports required by 40 RCNY §§ 6-25(c) and (d). Such templates shall be subject to the Board's approval. Upon submission and review of the Department's disciplinary system plan submitted pursuant to 40 RCNY § 6-23, the reporting provisions outlined in 40 RCNY § 6-25(c) and associated templates shall be reviewed and revised as necessary.

(g) The Board shall review the information provided by the Department and any other information it deems relevant to the assessment of RMAS. No later than eighteen months (18) after implementation of RMAS, the Board shall meet to discuss the effectiveness of RMAS. The Board's discussion shall address but not be limited to findings regarding the conditions of confinement in RMAS, the impact on the mental health of people housed therein, and the quality and effectiveness of programming provided in RMAS.

§ 6-26 **Transition.**

(a) The Department shall provide the Board with the architectural renderings for RMAS housing units prior to their submission to the New York State Commission of Correction (SCOC). The Department shall provide the Board with the architectural renderings for such units as approved by SCOC within two (2) business days of SCOC's approval.

(b) Within one (1) month of the Effective Date, the Department shall provide a comprehensive transition plan, in writing to the Board, which shall include the following documents and information concerning the elimination of punitive segregation and the implementation of RMAS:

(1) A list of written policies to implement RMAS;

(2) Specific plans related to implementation of RMAS for women in custody;

(3) Staffing plans for uniform and non-uniform staff who will work in RMAS;

(4) Training curricula for uniform and non-uniform staff who will work in RMAS;

(5) Programming to be provided to people housed in RMAS, and how, where, and by whom such programming will be afforded;

(6) Youth-specific staffing and programming plans for young adult RMAS units;

(7) Plans for conducting a process and outcome evaluation with proposed metrics to determine success of the RMAS model.

(c) Starting the first business day of August 2021 and of each month thereafter until RMAS implementation is complete, the Department shall submit to the Board, on a monthly basis and in writing, a public progress report for the previous month, which shall include the Department's progress toward achieving:

(1) Progress in reducing the PSEG population (i.e., PSEG I/Central Punitive Segregation Unit (CPSU), PSEG II, Restrictive Housing Unit (RHU));

(2) Progress in reducing the population housed in other restrictive housing units, including Enhanced Supervision Housing (ESH) and Secure;

(3) Construction, opening, and use of new RMAS housing units, including when plans are submitted to and approved by SCOC and explanations for unanticipated delays;

(4) Development of Department policies governing the operation of RMAS disaggregated by the stage of their development, as follows:

(i) Commenced drafting;

(ii) Signed by DOC and posted on DOC's public website;

(iii) Integrated into training of DOC staff.

(5) Implementation of training on RMAS, including:

(i) Status of curriculum development;

(ii) Number of staff scheduled to be trained disaggregated by uniform and non-uniform status;

(iii) Number of staff who have been trained, disaggregated by uniform and non-uniform status.

(6) Implementation of programming in RMAS.

(7) The provision of services such as recreation, visits, and privileges in the general population which exceed the requirements of the Minimum Standards outlined in Chapter 1 of Title 40 of the Rules of the City of New York;

(8) Any deviations from the detailed timelines and benchmarks set forth in the plan required by 40 RCNY § 6-26(b);

(9) Any other information the Department or the Board deems relevant to understanding progress toward the elimination of punitive segregation and implementation of the RMAS model.

Subchapter F: Step-Down from RMAS

§ 6-27 Restorative Rehabilitation Units (RRUs)

(a) Purpose.

The purpose of the RRU is to enable the Department to operate a general population setting with enhanced security, programming, and therapeutic support for people in custody who have been identified as posing an increased safety risk in a standard general population housing unit. This includes, but is not limited to, people being discharged from RMAS.

(b) Case Management, Individual Support Plans, and Periodic Reviews

(1) People stepping down to a RRU from RMAS shall, to the extent practicable, retain the same case manager assigned to them in RMAS.

(2) People stepping down to a RRU from RMAS shall continue with the same individual behavior support plan designed for them in RMAS, and their assigned multidisciplinary team shall continue to conduct periodic reviews as set forth in 40 RCNY § 6-14 every fifteen (15) days to assess progress with the plan, make any necessary adjustments to the plan, or modify programming recommendations.

(3) Following a periodic review, the multidisciplinary team can recommend to the facility head that someone be moved out of a RRU to a regular general population housing area if such transfer would be advisable.

(4) The Department may not transfer someone out of the RRU who has stepped down from RMAS unless the multidisciplinary team has approved of such transfer following a periodic review.

(c) Conditions

(1) RRUs must afford identical services and out-of-cell time as are afforded to the rest of the general population.

(2) RRUs must be located in cell housing units that share the same physical characteristics as standard general population cell housing areas (e.g., a congregate dayroom).

(3) To promote enhanced safety and supervision, an RRU shall not house more than fifteen (15) people at one time.

(d) Staffing and Training

(1) The Department shall endeavor to staff the RRUs with as many steady officers as possible. The Department shall also strive for a significantly higher staff-to-person-in-custody ratio in the RRUs than in standard general population units.

(2) Security staff assigned to RRUs shall receive training designed to address the unique characteristics and operations of these units and the people in custody who are housed in these units. Such training shall include, but not be limited to recognition and understanding of mental illness and distress, effective communication skills, and conflict de-escalation techniques.

(3) Security staff assigned to RRUs housing young adults shall receive specialized training for managing and understanding young adult populations, including crisis intervention, conflict resolution, and trauma-informed training.

(e) Programming

(1) The Department shall offer at least six (6) hours of daily programming to people who step down to the RRU from RMAS, in addition to one (1) hour of daily recreation. Meals, showers, and sick call shall not count towards the six (6) hour daily programming requirement.

(2) At least three (3) of the six (6) hours of daily programming required under § 6-27(e)(1) must be offered in a congregate setting and shall be led by therapeutic or programming staff.

(f) Data Collection and Review

(1) The Department shall maintain and update as necessary a list of the type and specific location of all RRU units, including which RRUs contain individuals who have stepped down from RMAS. The list shall include the opening and closing dates of all such units. The Department shall provide this list to the Board on at least a monthly basis and notify the Board in writing when any new RRU units open or close.

(2) The Department shall maintain and develop the system(s) necessary to collect accurate, uniform data on RRUs and the requirements of 40 RCNY Subchapter F and

to centrally store related documentation, in a manner that may be analyzed electronically by the Board.

(3) The Department shall provide the Board with a monthly public report with information on RRUs, including but not limited to the following information for the Adult and Young adult populations:

(i) Facility and housing unit locations for each RRU unit;
(ii) Number of placements and unique people placed in RRU by reason for placement (e.g., RMAS stepdown, other therapeutic reason, etc.);
(iii) The average daily population, and the number of adults and young adults currently housed in RRU as of the last day of the reporting period;
(iv) Average staff-to-person in custody ratios in each RRU unit operating during the reporting period;
(v) Number of exits of people from RRU during the reporting period and their cumulative and consecutive days in RRU during current incarceration (i.e., minimum, maximum, mean, median days) and for each exit;
(vi) Number of people in RRU as of the last day of the reporting period and their cumulative and consecutive days in the RRU (i.e., minimum, maximum, mean, median days);
(vii) The number of periodic reviews required and conducted by whether people attended their review, and whether any modifications were made to a person's individual behavior support plan;
(viii) Any other information the Department or the Board deems relevant to understanding the Department's use of RRU for people stepping down from RMAS.

(g) On a monthly basis, the Department shall provide the Board with the individually identified data used to create the monthly public report required by 40 RCNY § 6-27(f)(3) and all supporting documentation including but not limited to RRU placement, review, and IBSP documentation.

(h) The Board and the Department shall jointly develop the reporting templates for the public report required by 40 RCNY § 6-27(f)(3).

Subchapter G: Restraints and Canines

§ 6-28 **Restraints.**

(a) Nothing in this section shall prohibit:

(1) The use of restraints that are reasonable and necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, prevent escape, control a person in custody, or protect staff, other people in custody, and others from injury;

(2) The immediate use of restraints to prevent a person in custody from self-harm or harming others or causing serious property damage;

(3) The routine use of restraints for movement, escort, and transportation purposes.

(b) Restraints shall only be imposed when no lesser form of control would be effective in addressing the risks posed by unrestricted movement.

(c) The method of restraint shall be the least intrusive method necessary and reasonably available to control a person in custody's movement based on the level and nature of the risks imposed.

(d) Restraints shall be removed as soon as possible after the risks posed by unrestricted movement are no longer present.

(e) As of November 1, 2021, the Department shall eliminate the non-individualized use of restraints – including restraint desks – during lockout in all facility housing units. Non-individualized use means placing any person or group of people in a restraint desk or other restraint as a condition of lockout, or solely based on their transfer to a restrictive housing unit.

(f) From the Effective Date of the Rule until the prohibition on non-individualized restraints takes effect on November 1, 2021, the Department shall not subject any person or group of people to routine restraints during lockout periods, unless the person or people have recently participated in an actual or attempted slashing or stabbing, or engaged in activity that caused serious injury to a staff member or another person. In such cases, the use of a restraint desk or other restraint must be the least restrictive option necessary for the safety of others.

(g) From the Effective Date of the Rule and until the prohibition on non-individualized restraints takes effect on November 1, 2021, the Department shall review the placement of people in custody in non-individualized restraint during lockout every seven (7) days.

(1) At least twenty-four (24) hours prior to such periodic review, the Department shall provide written notice to people in custody of the pending review and of the person's right to submit a written statement for consideration and to participate in the review. People in custody who are unable to read or understand such notice shall be provided with necessary assistance.

(2) Periodic review of a person's placement in non-individualized restraint during lockout shall consider the following, with conclusions recorded in a written report made available to the person within two (2) days of the review:

(A) The justifications for continued placement of the person in non-individualized restraints during lockout;

(B) The continued appropriateness of the person in a form of non-individualized restraint during lockout;

(C) Information regarding the person's subsequent behavior and attitude since placement of the person in non-individualized restraints during lockout;

(D) Any written statement the person submitted for consideration or any oral statement the person made at the person's periodic review;

(E) Any other factors that may favor retaining the person or removing the person from non-individualized restraints during lockout; and

(F) If the person's placement in non-individualized restraints during lockout is to continue, any actions or behavioral changes that the person might undertake to further rehabilitative goals and facilitate the lifting of non-individualized restraints during lockout.

(3) At each periodic review, the Department shall advance a person out of non-individualized restraints during lockout unless:

(A) The person has engaged in violent behavior in the previous seven (7) days; or

(B) There is credible intelligence that the person may engage in violence in a less restrictive level or housing unit.

(4) The Department shall determine whether the person shall advance out of restraint desks or other form of non-individualized restraint within twenty-four (24) hours of the person's periodic review. If the Department determines that a person in custody should be moved out of restraint desks or other form of non-individualized restraint during lockout, the use of restraints shall cease within forty-eight (48) hours of such determination. If the use of restraints does not cease within forty-eight (48) hours, the Department shall notify the Board, in writing, within forty-eight (48) hours of its decision. The notification shall include the reason the Department did not move the person out of restraint desk or other form of non-individualized restraint.

(h) Restraints shall never be:

(1) Applied as punishment or retaliation;

(2) Applied to the head or neck or in a manner that may restrict blood circulation or breathing;

(3) Used to pull or lead a person in custody;

(4) Used to cause unnecessary physical pain or discomfort;

(5) Used inside of a cell unless the cell is being used to hold more than one person in custody and restraints are the only way to ensure the safety of those held in the cell.

(i) CHA shall notify the Department in writing of people in custody who have functional needs or impairments that contraindicate the imposition of one or more permitted restraints. The Department shall consider this information before such individuals are escorted in restraints, transported in restraints, or otherwise subject to restraints.

(j) A person in a wheelchair or a visually impaired person may be handcuffed only in front.

(k) People who are deaf, hearing impaired, or have impaired speech and communicate with hand gestures may only be restrained under controlled conditions, and when it is determined safe to do so, in a manner that allows for communication without jeopardizing safety.

(l) Four- and five-point restraints shall not be used other than pursuant to 40 RCNY § 2-06, governing the physical restraint of persons in custody being observed or treated for mental or emotional disorders.

(m) The Department shall provide the Board with a semiannual public report on the Department's use of restrictive statuses. The report shall include but not be limited to the following information for each restrictive status (i.e., Enhanced Restraint, Red ID, CMC), disaggregated by month:
(1) Number and percent of recommendations for placement in the restrictive status by age, race, ethnicity, gender, and "M" designation status of the person for which the restrictive status was recommended;
(2) Number and percent of people excluded from placement in such status due to a medical or mental health contraindication;
(3) Number of unique individuals placed in the restrictive status during the reporting period and the number of people currently classified in the restrictive status as of the last date of the reporting period;
(4) Number and percent of periodic reviews conducted, in total and disaggregated by outcome of review (i.e., continued or removed);
(5) Number and percent of appeals of placement into restrictive statuses, in total and disaggregated by outcome of appeal;

(6) Any other information the Department or the Board deems relevant to the understanding the Department's use of restrictive statuses.

(n) The Board and the Department shall jointly develop reporting templates for the public report required by 40 RCNY § 6-28(m), for approval by the Board.

§ 6-29 **Canines.**

(a) The Department may only use canines inside the secure perimeter of a facility only for searches.

(b) The Department may never use canines as a use of force, including to extract people in custody from their cells.

(c) Canines may never be used to harass, threaten or otherwise control people in custody.

(d) Canines may not be stationed in RMAS.

Subchapter H: Variances

§ 6-30 **Variances.**

The Department or CHA may apply for a variance from a specific subdivision or section of these Chapter 6 rules in accordance with the procedures and criteria set forth in 40 RCNY § 1-15.

§ 10 **Effective Dates.**

The policies, procedures, criteria, programs, plans, reports, and forms required by this rule shall be developed, approved and implemented by the dates specified below. Unless otherwise stated, all time periods are computed from the effective date of these rules. Any provisions not specifically referenced below shall take effect as of the effective date of the rule.

SECTION	IMPLEMENTATION

SECTION	IMPLEMENTATION
§ 1-16 and 1-17, repealed	November 1
§ 6-04: Pre-Hearing Detention (a)Use RMAS Level 1 for PHD (e) (Semiannual report on Prehearing Detention)	November 1 Starting July 1 and every 6 months thereafter
§ 6-05: De-escalation Confinement (g) (time in de-escalation (6 hours), re-authorization (3 hours), notice to the Board if confinement exceeds 6 hours) (c) (visual and aural observation of people in de-escalation confinement every 15 minutes) (i) (Quarterly report on De-escalation)	Within 6 months of Effective Date Within 3 months of Effective Date Within 8 months of Effective Date
§ 6-06: Emergency Lock-Ins (e) (documentation of reasons for and objectives to be accomplished during emergency lock-ins) (g) (CHS medical and mental health rounding in housing areas where emergency lock-ins have been in effect for more than 6 hours) (i) and (j) (tracking of services impacted by emergency lock-ins) (l) (DOC and CHS Directives regarding compliance with the requirements of this section) (m) (CHS Quarterly report re: emergency lock-ins) (o) (DOC data reporting on Emergency lock-ins)	Within 3 months of Effective Date Within 6 months of Effective Date
§ 6-07: Prohibition on the Use of Punitive Segregation (a) The use of all forms of punitive segregation as defined in 40 RCNY § 6-03(b)(12) shall be prohibited in all existing and future DOC facilities.	November 1, 2021

SECTION	IMPLEMENTATION
(b) Upon the Department's elimination of punitive segregation, the only form of restrictive housing permitted in DOC facilities will be RMAS housing pursuant to 40 RCNY § 6-08 through § 6-26.	November 1, 2021
§ 6-10: Placement Criteria (e) Written penalty grid.	By October 1, 2021
§ 6-15: Extensions	November 1, 2021
§ 6-18: Staffing (a)(Semiannual report on staffing in restrictive housing) (b) (Staffing plans)	 May 1, 2022 and every six months thereafter October 1, 2021
§ 6-19: Training (c) (training for hearing adjudicators and staff involved in sentencing and placement decisions) (d) (information to the Board re: Training)	October 1, 2021
§ 6-20: Programming (j) (Quarterly public reports)	February 1, 2022
§ 6-21 Access to Health Services (f) CHS monthly public reports	Starting January 1, 2022
§ 6-23: Disciplinary System Plans	October 1, 2021
§ 6-24 Due Process and Procedural Justice (c)(6) (videotaping of refusals to sign notice of infraction) (d)(5) (recording of refusal to attend hearing)	November 1, 2021

SECTION	IMPLEMENTATION
(i)(1) system to track due process requirements and documentation	Within 1 year of Effective Date
(i)(2) Semiannual public report	Within 1 year of Effective Date, and every 6 months thereafter
§ 6-25: RMAS Data Collection and Review	
(b) (system to track RMAS placements and RMAS documentation)	Within 1 year of Effective Date
(c) (monthly public data reports)	January 1, 2022
(d) (monthly public reports)	
§ 6-26: Transition	
(b) (comprehensive transition plan)	Within 1 month of Effective Date
(c) (monthly public progress reports)	August 1, 2021
§ 6-27: Restorative Rehabilitation Units	
(f)(3) (monthly public reports)	Starting January 1, 2022
(f)(4) (monthly public data reports)	
§ 6-28: Restraints	
(m) (Semiannual public report)	Within 1 year of Effective Date and every 6 months thereafter

Margaret Egan
Executive Director
New York City Board of Correction

Re: Amendment of Minimum Standards Governing Restrictive Housing

No. 2019 RG 087

Dear Executive Director Egan:

Pursuant to New York City Charter § 1043 subd. c, the above-referenced rule has been reviewed and determined to be within the authority delegated by law to your agency.

Sincerely,

/s/ *Steven L. Goulden*

STEVEN GOULDEN
Senior Counsel
Division of Legal Counsel

cc: Kate McMahon

Francisco Navarro