

BOARD OF CORRECTION

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Board of Correction is considering promulgating a rule which would allow certain changes to the Department of Correction's (the Department) visitation and packages policies, as well as amend certain due process requirements for the Enhanced Supervision Housing Unit and allow certain exceptions to current limitations on the use of punitive segregation. The rule would additionally make permanent a number of long-standing variances that the Department has repeatedly sought and received from the Board.

When and where is the Hearing? The Board will hold a public hearing, at which the public and interested parties are invited to submit comments and testimony on the proposed rule, at 1 p.m. on October 16, 2015. This hearing will be held at 455 1st Avenue, New York, NY 10016 - Auditorium on Ground Floor.

How do I comment on the proposed rule? Anyone can comment on the proposed rule by:

- Mail. You can mail comments to the Board of Correction, at 1 Centre Street, Room 2213, New York, NY 10007.
- Fax. You can fax comments to the Board of Correction at 212-669-7980.
- Email. You can email comments to BOC@BOC.nyc.gov.
- Website. You can submit comments to the Board of Correction through the NYC rules Web site at www.nyc.gov/nycrules.
- By Speaking at the Hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-669-7900. You can also sign up in the hearing room before the session begins at 1 p.m. on October 16, 2015.

Is there a deadline to submit comments? Yes, you must submit comments by the close of business on October 16, 2015.

Do you need assistance to participate in the Hearing? You must tell the Board of Correction if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-788-7845. You must tell us by October 9, 2015.

Can I review the comments made on the proposed rule? One week after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the office of the Board of Correction.

What authorizes the Board of Correction to propose this rule? Sections 626 and 1043 of the New York City Charter authorize the Board of Correction to propose this rule. This proposed rule was not included in the Board's regulatory agenda for this Fiscal Year because the need for it was not contemplated when the Board completed the agenda.

Where can I find the Board's rules? The Board's rules are in Title 40 of the Rules of the City of New York.

What requirements govern the rulemaking process? The Board of Correction must meet the requirements of Section 1043 of the New York City Charter when promulgating or amending rules. This notice is made according to the requirements of Section 1043(b) of the New York City Charter.

Statement of Basis and Purpose

These proposed rule revisions would amend the Minimum Standards adopted by the Board of Correction ("the Board") relating to correctional facilities, set forth in Chapter 1 of Title 40 of the Rules of the City of New York. Specifically, the revisions would:

- amend the Minimum Standards set forth in Chapter 1, Sections 1-09 (Visiting), 1-12 (Packages), 1-16 (Enhanced Supervision Housing), and 1-17 (Punitive Segregation), and
- make permanent a number of continuing variances that the Department of Correction ("the Department") has repeatedly sought and received from the Board relating to Sections 1-02 (Classification of Prisoners) and 1-06 (Recreation).

These changes were requested by Commissioner Joseph Ponte in a petition for rulemaking submitted by the Department on May 26, 2015. In the petition, Commissioner Ponte suggested specific rule changes that would allow the Department to more effectively address an increase in

violence in City jails, including an increase in slashings and stabbings, which the Department believes is linked to the proliferation of dangerous contraband, including small, hand-to-hand weapons, such as scalpels and razor blades. The Board accepted this petition at its July 14, 2015 meeting, but has since made a number of revisions to the text of the rule attached to the Department's petition.

To accomplish the goal of reducing violence, the proposed rule would redefine the scope of physical contact that the Department is required to permit during contact visits and allow the Department to establish broader criteria for limitations on visitation rights. These changes would be consistent with the requirements established by New York State standards governing visitation and largely consistent with standards in place in other jurisdictions, but would additionally allow visitors and inmates to hold hands throughout a visit and would allow inmates to hold children under the age of 9 in their families throughout a visit. These proposed changes are intended to limit the opportunities to pass weapon and drug contraband during visits, while continuing to ensure that important contact between inmates and visitors may still occur.

The proposed changes also seek to improve the Department's ability to identify visitors and inmates whose purpose is to engage in dangerous activity during a visit. Specifically, the proposed rule would permit the Department to consider, in evaluating the potential risk of a visit, factors such as criminal records, visit patterns and trends, and visitor and inmate contraband history. However, while the changes would permit the Department to consider these new factors when determining whether to limit visitation rights, the proposed rules establish strict limitations governing how these criteria are to be properly applied.

Similarly, the proposed changes are aimed at preventing the introduction of dangerous contraband through packages. Under the proposed changes, starting on January 1, 2016, the Department would be permitted to establish a list of pre-approved vendors from whom inmates may receive packages, provided that the Department provides all inmates with uniforms. Additionally, the Department would now have 3 business days, rather than 48 hours, to search packages. However, the proposed rule would preserve more accommodating standards for packages containing only court clothing.

In addition to the amendments aimed at reducing contraband, the proposed changes would allow exceptions to current rules related to the use of punitive segregation, which were adopted by the Board earlier this year. The Department has asked for amendments to Minimum Standard Section 1-17 (Punitive Segregation) to allow inmates infractioned and sentenced for a serious assault on staff – i.e., those resulting in serious injury – to receive a higher maximum sentence in punitive segregation. This change is intended to serve as a deterrent to dangerous behavior.

The proposed changes to the punitive segregation section would also establish exceptions to the general rule that inmates who have served 30 consecutive days in punitive segregation must receive a required 7-day period out of punitive segregation. This exception could be applied to a limited number of exceptionally violent and dangerous inmates. The Department reports that, while most inmates released from punitive segregation have been returned to general population housing and remain there without incident, a small number of inmates have been involved in violent incidents that have endangered the safety of inmates and staff immediately following their release from punitive segregation. Under the proposed rule changes, if an inmate commits a violent act within the seven days after they are released from punitive segregation, the Department would have the flexibility, in limited circumstances, to remove that individual from a general population setting in order to maintain safety. Similarly, if an inmate commits such an infraction while in punitive segregation, the Department would have the flexibility, again in limited circumstances, to keep the inmate in punitive segregation beyond 30 consecutive days. In the proposed rule, the Board has included provisions that limit and narrowly define the circumstances in which the Department may waive an inmate's 7-day break from punitive segregation, as well as require specific reporting requirements on the use of such waivers.

The proposed changes to the punitive segregation section would additionally clarify confusion surrounding the meaning of the 60-day limit on punitive segregation within any 6-month period and impose more specific reporting requirements when an inmate is held beyond the 60-day limit. Finally, the Department would be required to issue a report by November 1, 2016 detailing its efforts to reduce violence in punitive segregation housing without resorting to waivers of the time limitations on punitive segregation.

The proposed rule also modifies Minimum Standard Section 1-16 (Enhanced Supervision Housing ("ESH")), which was adopted by the Board earlier this year. These changes would establish an exception to the ESH due process requirements for those who are removed from ESH and then returned to ESH within 45 days. This is intended to provide the Department with flexibility to determine appropriate housing placement and provide incentives for good behavior by allowing inmates to transition out of ESH using short trial periods in progressively less restrictive housing. In this proposed rule, the Board has additionally required that inmates receive notice containing the reasons for the return to ESH.

Finally, the proposed rule changes amend BOC Minimum Standards Sections 1-02 (Classification of Prisoners) and 1-06 (Recreation) to make permanent certain continuing variances that the Department has repeatedly sought and received from the Board.

Set forth below is a section-by-section description of the proposed rule amendments.

Section 1-02 (“Classification of Prisoners”)

This proposed revision would amend paragraph (1) of subdivision (b) to make permanent a long-standing variance that enables the Department to comingle city-sentenced inmates and detainees within the following housing areas: (1) adolescent cell housing areas, (2) housing areas designated for inmates ages 18 to 21, and (3) housing areas for pregnant inmates. It additionally replaces close custody housing with enhanced supervision housing on the list of housing types in which such comingling is permissible, as the Department no longer uses close custody housing and recently implemented the new enhanced supervision housing unit.

Section 1-06 (“Recreation”)

The proposed revision would amend subdivision (f) to make permanent a long-standing variance that enables the Department to provide in-cell recreation to inmates confined for medical reasons in the contagious disease units and would require the Department to provide such inmates with various recreation materials in the most prevalent languages among the inmate population.

Section 1-09 (“Visiting”)

This proposed revision would amend subsection (a) to state explicitly the Board’s strong belief in the great value of visitation, and, specifically, contact visitation, and would note that the term “family” should be understood to reflect the diversity of familial structures for the purposes of the Department’s implementation of visitation rules. The proposed revision would also amend subdivision (f) to redefine the scope of the type of physical contact that the Department must allow during contact visits by conforming the Board’s definition of “permitted contact” to the definition provided under New York State law. However, the revision would expand the State law definition of permissible contact to additionally provide that inmates must be permitted to hold children under the age of 9 in the inmates’ families throughout visits and hold visitors’ hands throughout visits.

This proposed revision would also amend subdivision (h) to conform the Board’s rules to New York State rules regarding how and when visitation may be limited. In addition, the change would establish broader criteria for limitations on visitation by allowing the Department to consider factors such as criminal record and relationship between the inmate and the visitor, but additionally provide strict limitations on how the Department is permitted to consider such factors in a new paragraph (2). Finally, the change would reform the procedures by which visitation limitations are imposed and by which inmates and visitors may appeal such limitations.

Section 1-12 (“Packages”)

This proposed revision would amend subdivisions (a), (c) and (d) to allow the Department, beginning January 1, 2016, to set stricter limitations on the content and sources of inmate packages by allowing the Department to limit incoming packages to those sent by pre-approved vendors, provided that the Department provides all inmates with uniforms. However, the revision preserves more accommodating rules for packages containing only court clothing and sets limits on when the Department can confiscate items that were not sent by pre-approved vendors. The revision would additionally extend the amount of time in which the Department is permitted to deliver packages to inmates.

Section 1-16 (“Enhanced Supervision Housing”)

This proposed revision would amend subdivision (g) to provide the Department with increased flexibility to move inmates out of ESH to alternative placements for brief periods of time where appropriate. The proposed revision would also allow the Department to establish incentives for good behavior among ESH inmates, as it would provide the Department with the flexibility to remove inmates from ESH for a short period of time without being required to hold a new Due Process hearing in situations where the inmate must be returned to ESH, as long as the inmate is returned to ESH within 45 days. This new procedure will only be permitted where the Department reviews the inmate’s ESH placement under the normal periodic review procedure and timeline once the inmate is returned and requires that the Department provide the inmate with written notice of why the inmate was returned to ESH.

Section 1-17 (“Punitive Segregation”)

The proposed revision would amend paragraph (1) of subdivision (d) and add a new paragraph (8) to subdivision (d) to allow the Department to sentence inmates who have committed a serious assault on staff to sixty days in punitive segregation.

The proposed revision would also amend paragraphs (1) and (2) and add a new paragraph (3) to allow the Department, in certain highly exceptional circumstances presenting safety and security concerns, to waive the requirement that inmates be immediately released from punitive segregation for seven days after they have been held in punitive segregation for thirty consecutive days. The change would further allow the Department to retain inmates in punitive segregation after thirty consecutive days if they were sentenced for a serious assault on staff. New paragraphs (4) and (5) impose a number of restrictions on when the Department may waive an inmate’s 7-day break from punitive segregation, including a narrow definition of the infractions for which such waivers may be issued and a limit on how many may be issued within a discrete time period. A new paragraph (7) would require that inmates held longer than thirty

consecutive days in punitive segregation be provided with documented, daily mental health rounds.

Additionally, the proposed revision would amend former paragraph (3), which would be a new paragraph (6), to clarify the meaning of the provision that allows the Department to keep inmates in punitive segregation for longer than sixty cumulative days within a six month period. The revisions also impose more specific reporting requirements when the Department takes such action.

Finally, a new paragraph (2) would be added to subdivision (h) to require the Department to consider solutions to the persistent violence in punitive segregation that do not extend inmates' punitive segregation confinement, and to issue a report by November 2016 on this subject. The change would further require the Board to consider whether the Department should continue to be allowed to extend punitive segregation confinement for violent inmates beyond thirty consecutive days, or sixty cumulative days within a six months period.

Proposed Rule

“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.

New material is underlined.

[Material inside brackets indicates deleted material.]

Section 1. Paragraph (1) of subdivision (b) of section 1-02 of Title 40 of the Rules of the City of New York is amended and new subparagraphs (vi) and (vii) are added, to read as follows:

(1) [Prisoners] Inmates serving sentences shall be housed separate and apart from [prisoners] inmates 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) [close custody housing areas] enhanced supervision housing; [and]
- (v) nursery[.];

- (vi) adolescent housing areas, provided that sentenced inmates housed in such areas shall be treated as inmates awaiting trial or examination for all purposes other than housing;
- (vii) housing areas designated for inmates ages 18 to 21 inclusive; and
- (viii) housing areas for pregnant inmates.

§2. Subdivision (f) of section 1-06 of Title 40 of the Rules of the City of New York is amended to read as follows:

(f) Recreation for prisoners in the contagious disease units.

[The Department shall not be required to provide an indoor recreation area for use during inclement weather by prisoners confined for medical reasons in the contagious disease units] In place of out-of-cell recreation, the Department, in consultation with medical providers, may provide inmates 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 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 population.

§3. Subdivision (a) of section 1-09 of Title 40 of the Rules of the City of New York is amended to read as follows:

(a) Policy.

[Prisoners] All inmates are entitled to receive periodic personal visits [of sufficient length and number]. Maintaining personal connections with positive 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 an inmate's ability to maintain these positive social connections and should therefore be encouraged and facilitated by the Department. Additionally, the Board recognizes that an inmate's family may not be limited to those related to the inmate 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 positive social relationships that may closely connect an inmate to others.

§4. Subdivision (f) of section 1-09 of Title 40 of the Rules of the City of New York is amended to read as follows:

(f) Contact visits.

Physical contact shall be permitted between every [prisoner] inmate and all of [his or her] the inmate's visitors [throughout the visiting period, including holding hands, holding young children, and kissing]. Permitted physical contact shall include a brief embrace and kiss between the inmate and visitor at both the beginning and end of the visitation period and holding children ages nine (9) and younger in the inmate's family throughout the visitation period. Additionally, inmates 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 [prisoners] inmates housed for medical reasons in the contagious disease units. The Department may impose certain limitations on contact visits for inmates confined in enhanced supervision housing in accordance with the procedures and guidelines set forth in section 1-16 of this chapter.

§5. Paragraph (1) of subdivision (h) of section 1-09 of Title 40 of the Rules of the City of New York is amended, paragraphs (2), (3), (4) and (5) are renumbered as paragraphs (3), (4), (5) and (6) and amended, and a new paragraph (2) is added, to read as follows:

(1) [Visiting] Visitation rights shall not be denied, revoked, limited or interfered with based upon [a prisoner's] an inmate's or a prospective visitor's:

- (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, except as provided by paragraph (2) of this subdivision;
- (ix) pending criminal or civil case, except as provided by paragraph (2) of this subdivision;
- (x) lack of family relationship, except as provided by paragraph (2) of this subdivision;
- (xi) gender; or
- (xii) disability.

(2) When making a determination to deny, revoke or limit an inmate's or a prospective visitor's visitation rights pursuant to paragraphs (3) and (4) of this subdivision, the Department may consider the following factors, provided that such factors alone shall not form the sole basis for the Department's final determination:

- (i) The lack of a family relationship or otherwise close or intimate relationship between the inmate and the prospective visitor;
- (ii) The prospective visitor's current probation or parole status;
- (iii) The nature of the inmate's or the prospective visitor's felony convictions or persistent narcotics- or weapons-related misdemeanor convictions, if any, within the past seven (7) years;
- (iv) The nature of any conviction for which the prospective visitor has been released from incarceration within the past year; and
- (v) The inmate's or the prospective visitor's pending criminal charges involving narcotics, weapons, gang activity, or violations of correction facility rules, if any.

2. (3) The [visiting] visitation rights of [a prisoner] an inmate with a particular visitor may be denied, revoked or limited only when it is determined that [the exercise of those rights constitutes] such visitation would cause a [serious] threat to the safety [or], security, or good order of [a] the facility, [provided that visiting rights with a particular visitor may be denied only if revoking the right to contact visits would not suffice to reduce the serious threat] or the safety, security or health of inmates.

[This determination must be based on specific acts committed by the visitor during a prior visit to a facility that demonstrate his or her 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 his or her safety.]

3. (4) [A prisoner's] An inmate'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 or good order of a facility. Should a determination be made to deny, revoke or limit [a prisoner's right to] an inmate's contact visits [in the usual manner], alternative arrangements for affording the [prisoner the requisite number of] inmate visits shall be made, including, but not limited to, non-contact visits.

[This determination must be based on specific acts committed by the prisoner while in custody under the present charge or sentence that demonstrate his or her threat to the safety and security of a facility, or on specific information received and verified that the prisoner 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 prisoner 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 his or her safety.]

4. (5) Any determination to deny, revoke or limit [a prisoner's visiting] an inmate's visitation rights pursuant to paragraphs [(2)] (3) and [(3)] (4) of this subdivision shall be 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.
5. (6) Any person affected by a determination made pursuant to paragraphs [(2)] (3) and [(3)] (4) of this subdivision may appeal such determination to the [Board] Department and, subsequently, to the Board. The Department shall issue a written decision upon the appeal within fourteen (14) business days. A copy of the Department's appeal decision, including the procedure for appealing the Department's appeal decision to the Board, shall be sent to the Board and to any person affected by the Department's visitation determination. Upon receipt of the Department's written appeal decision or fourteen (14) business days after submission of the initial appeal to the Department, any person affected by the Department's visitation determination 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 intent to appeal the determination, both

upon appeal of the Department's initial determination and, if applicable, upon any subsequent appeal of the determination to the Board.

- (ii) [The] Where a visitation determination is appealed to the Board, 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] Where a visitation determination is appealed to the Board, the Board or its designee shall issue a written decision upon the appeal within [five] fourteen (14) business days after receiving notice of the requested review. Where there exists good cause to extend the time period in which the Board or designee may issue a written decision beyond fourteen (14) business days, the Board or designee may issue an 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.

§6. Subdivision (a) of section 1-12 of Title 40 of the Rules of the City of New York is amended to read as follows:

(a) Policy.

[Prisoners shall be permitted to receive packages from, and send packages to, any person, except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security] Consistent with the requirements of this section, inmates shall be permitted to send and receive packages.

§7. Subdivision (c) of section 1-12 of Title 40 of the Rules of the City of New York is amended to read as follows:

(c) Outgoing packages.

Inmates shall be permitted to send packages to any person, except when there is a reasonable belief that limitation is necessary to protect public safety or maintain facility order and security. The costs incurred in sending outgoing packages shall be borne by the [prisoner] inmate.

§8. Paragraph (1) of subdivision (d) of section 1-12 of Title 40 of the Rules of the City of New York is amended, paragraph (2) is repealed, paragraph (3) is renumbered as paragraph (2) and amended, and new paragraphs (3), (4), and (5) are added, to read as follows:

(1) Incoming packages shall be delivered within [48 hours] three (3) business days of receipt by the Department, unless the intended [prisoner] inmate is no longer in custody of the Department.

[(2) Packages may be personally delivered to a facility during visiting hours.]

[(3)] (2) Upon admission to a facility, [prisoners] inmates shall be provided with a copy of a list of items that may be received in packages or this list [or it] shall be posted in each housing area.

(3) Until January 1, 2016, inmates shall be permitted to receive packages from any person, except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security. Beginning January 1, 2016, the Department may limit packages received by inmates to those mailed by and containing only items purchased from a pre-approved company whose ordinary business includes sale and shipping of such items. Such limitation on incoming packages may only be imposed by the Department if uniforms are made available to all inmates.

(4) Items, excluding non-court clothing, received by inmates in packages postmarked prior to January 1, 2016 shall not be subject to confiscation by the Department based solely upon the ground that such items were sent in packages that were not mailed by or did not contain only items purchased from a pre-approved company whose ordinary business includes sale and shipping of such items.

(5) Notwithstanding the terms of paragraph (3) of this subdivision, inmates may, subject to a search, receive packages containing only clothing for court appearances, either sent by mail or personally delivered to a facility during visiting hours, from any individual. The contents of such packages shall be made available to the recipient inmate prior to court appearances for trials, pleas, or sentencing, as indicated by the court appearance information provided to the Department.

§9. Paragraph (1) of subdivision (g) of section 1-16 of Title 40 of the Rules of the City of New York is amended, and a new paragraph (7) is added, to read as follows:

- (1) [Within three (3) business days of service of notice on an inmate of initial ESH placement and related restrictions] Except as provided by paragraph (7) of this subdivision, the Department shall conduct a hearing to adjudicate [the] an inmate's ESH placement and the individual restrictions proposed. Such hearing shall be conducted within three (3) business days of service of notice on the inmate of initial ESH placement and related restrictions. The hearing may not be adjourned except, in extenuating circumstances, by the inmate's documented request and may in no event be adjourned for longer than five (5) days.

- (2) One or more hearing officers shall conduct the placement review hearing. Department staff who initially recommended the inmate for ESH placement or otherwise provided evidence to support the inmate's ESH placement shall not be eligible to serve as hearing officers at the inmate's placement review hearing.

- (3) The placement review hearing shall consist of following:
 - (i) a review of the facts upon which the Department relies to place the inmate in ESH pursuant to subdivision (b) of this section, and a determination of whether such facts exist and whether they support, by a preponderance of the evidence, the conclusion that the inmate presents a current significant threat to the safety and security of the facility such that ESH is appropriate;
 - (ii) consideration of the time that has elapsed since the occurrence of the activity or behavior relied on by the Department to support ESH placement;
 - (iii) a review of the individual restrictions proposed by the Department and a determination of whether each is supported by evidence of the legitimate safety and security concerns related to that individual inmate;
 - (iv) consideration of any relevant information provided by medical staff;
 - (v) consideration of any credible and relevant evidence submitted or statements made by the inmate at the hearing; and
 - (vi) consideration of any other evidence deemed relevant to the ESH status determination or imposition of individual restrictions.

- (4) The inmate shall be permitted to appear at the hearing in person, submit a written statement, call witnesses, and present evidence.
- (5) In the following circumstances, the inmate shall be entitled to the assistance of a hearing facilitator, who shall assist the inmate by clarifying the charges, explaining the hearing process, and assisting the inmate in gathering evidence:
- (i) the inmate is illiterate or otherwise unable to prepare for or understand the hearing process; or
 - (ii) the inmate has otherwise been unable to obtain witnesses or material evidence.
- (6) If it is determined that the ESH placement and each related restriction are supported by a preponderance of the evidence, the placement and each supported restriction may be continued. Written notice shall be provided to the inmate outlining the bases for such determinations. If it is determined that ESH placement or imposition of any individual restrictions is unsupported by a preponderance of the evidence, ESH status or unsupported individual restrictions shall be terminated immediately.
- (7) Where an inmate is removed from ESH and that inmate's ESH status and related restrictions have been approved following a placement review hearing described in paragraphs (1) through (6) of this subdivision, the Department shall not be required to provide an additional placement review hearing upon returning the inmate to ESH, provided that the inmate is returned to ESH within forty-five (45) days of removal. After the inmate is returned to ESH, the Department shall provide written notice to the inmate that includes the basis for the inmate's return to ESH. Additionally, when the inmate is returned to ESH, the inmate's ESH status shall be reviewed in accordance with the requirements of subdivision (h) of this section no later than forty-five (45) days after the inmate's last such status review.

§10. Paragraphs (1) and (2) of subdivision (d) of section 1-17 of Title 40 of the Rules of the City of New York are amended, paragraph (3) is renumbered as paragraph (6) and amended, and new paragraphs (3), (4), (5), (7) and (8) are added, to read as follows:

- (1) [No] Except as provided in paragraph (8) of this subdivision, no inmate may be sentenced to punitive segregation for more than thirty (30) days for any single infraction. [In] Except

as provided in paragraphs (3) and (8) of this subdivision, in no event may an inmate be held in punitive segregation longer than thirty (30) consecutive days.

- (2) [An] Except as provided in paragraphs (3) and (8) of this subdivision, an inmate who has served thirty (30) consecutive days in punitive segregation [must] shall be released from punitive segregation for at least seven (7) days before that inmate may be returned to punitive segregation.
- (3) In the highly exceptional circumstances described in subparagraphs (i) and (ii) of this paragraph, the Department may waive the requirement set forth in paragraph (2) of this subdivision, provided that such waiver and its basis shall be recorded in writing and the waiver shall expire thirty (30) days after its issuance.
- (i) The inmate, while confined in punitive segregation, commits a violent infraction or multiple infractions that endanger inmates or staff, as defined by paragraph (4) of this subdivision, such that release from punitive segregation for seven (7) days would endanger inmates or staff; or
 - (ii) The inmate, at any point during the seven (7) days of release from punitive segregation, commits a violent infraction or multiple infractions that endanger inmates or staff, as defined by paragraph (4) of this subdivision, such that continuing to house the inmate outside of punitive segregation for the remainder of the seven (7) days would endanger inmates or staff. In such instances, the inmate may be returned to punitive segregation prior to completion of the seven (7) days, provided that the Department shall not impose additional time on the inmate's punitive segregation sentence for any new infraction without complying with the requirements set forth in subdivision (c) of this section.
 - (iii) In the highly exceptional circumstances detailed in subparagraphs (i) and (ii) above, the Chief of Department must approve the waiver in writing and state why retaining the inmate in punitive segregation is necessary to ensure the safety of inmates or staff. The Department must immediately provide the Board and the relevant Correctional Health Authority with a copy of the Chief of Department's approval.

- (4) Only infractions that would qualify an inmate for pre-hearing detention may be used as the basis for issuing a waiver pursuant to paragraph (3) of this subdivision. Such infractions are limited to those demonstrating that an inmate's removal from the general population is necessary to protect other persons from physical harm, including stabbing or slashing, assault resulting in death or serious injury, sexual assault, and escape or attempted escape.
- (5) When a waiver provided in paragraph (3) of this subdivision expires, the inmate must be released from punitive segregation for at least seven (7) days before the inmate may be returned to punitive segregation, unless a new waiver is issued. The Department shall issue no more than three (3) such waivers for a single inmate within any four (4) month period.
3. (6) An inmate may not be held in punitive segregation for more than a total of sixty (60) days within any six (6) month period, unless, [upon completion] throughout [of] the sixty (60) [days] day period, the inmate [continues] has continued to engage in persistent acts of violence, other than self-harm, such that [placement in enhanced supervision housing, provided for in section 1-16 of this chapter] any placement other than punitive segregation, would endanger inmates or staff. In such instances, the Department shall not be required to release the inmate from punitive segregation after sixty (60) days have elapsed, provided that the Chief of Department must approve extension of the inmate's punitive segregation placement[, and the Department must provide the Board and the Department of Health and Mental Hygiene with immediate notification containing an explanation of the security concerns presented by the inmate] in writing and state the following in such approval: (1) the reasons why placement in a less restrictive setting has been deemed inappropriate or unavailable, and (2) why retaining the inmate in punitive segregation is necessary to ensure the safety of inmates or staff. The Department must immediately provide the Board and the relevant Correctional Health Authority with a copy of the Chief of Department's approval.
- (7) Daily mental health rounds must be provided to inmates who [serve] have been held in punitive segregation longer than thirty (30) consecutive days or have served more than sixty (60) days within a six (6) month period[, and such]. Such rounds must be documented in writing.

(8) The requirements set forth in paragraphs (1) and (2) of this subdivision shall not apply to inmates sentenced to punitive segregation for an assault on staff that causes staff to suffer one or more serious injuries, as listed under the Department's definition of "A" Use of Force Incidents. When an inmate is sentenced for such an assault, the inmate may receive a punitive segregation sentence of up to sixty (60) days for that single infraction. While the inmate is serving a punitive segregation sentence for such an infraction, the Department shall not be required to release the inmate from punitive segregation housing after thirty (30) consecutive days.

§11. Subdivision (h) of section 1-17 of Title 40 of the Rules of the City of New York is amended, and new paragraphs (1) and (2) are added, to read as follows:

(h) *Reports on punitive segregation.*

(1) No later than sixty (60) days after implementation of enhanced supervision housing provided for in section 1-16 of this chapter and every sixty (60) days thereafter, the Department shall submit to the Board information related to implementation of required changes to punitive segregation. This information shall include, but shall not be limited to:

- (i) the number of inmates held in punitive segregation and the number of inmates waiting to be held in punitive segregation;
- (ii) data related to the length of punitive segregation sentences and the frequency of the types of offences resulting in punitive segregation sentences;
- (iii) the status of the reduction of punitive segregation sentences from ninety (90) to thirty (30) days;
- (iv) the status of implementation of the Department's planned policy to require that an inmate be released from punitive segregation for a minimum of seven (7) days before returning to punitive segregation;
- (v) a plan and timeline detailing steps necessary to reduce the length of punitive segregation sentences and to reduce the number of inmates housed in punitive segregation;
- (vi) data related to the amount of recreation and out-of-cell time provided to inmates housed in punitive segregation; and
- (vii) any other information the Department or the Board deems relevant to the Board's assessment of punitive segregation in Department facilities.

(2) No later than November 1, 2016, the Department shall submit to the Board a report analyzing and recommending options to reduce persistent violence committed by inmates housed in or released from punitive segregation that use means other than extending punitive segregation confinement. The report shall:

- (i) detail how its recommended solutions would support the goals of protecting the safety and wellbeing of staff and inmates, promoting the security of Department facilities, and facilitating successful reentry of inmates;
- (ii) describe the measures the Department has already implemented or plans to implement, as well as other measures it has considered;
- (iii) include an assessment of the pros and cons of each option, and the various potential impacts of implementing each option, including any resources that may be needed; and
- (iv) provide recommendations to the Board based on the report's analysis, including whether the Minimum Standards should continue to permit the Department to waive the various time limitations on punitive segregation as a means of reducing violence.

Based upon the information contained in the Department's report, the Board shall consider whether the waiver procedures for time limitations on punitive segregation remain necessary to ensure the safety of the facility or whether other options exist to address persistent violence without extending stays in punitive segregation beyond thirty (30) consecutive days and sixty (60) cumulative days in six (6) months.

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**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Certain Minimum Standards for City Correctional Facilities

REFERENCE NUMBER: 2015 RG 096

RULEMAKING AGENCY: Board of Correction

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: September 8, 2015