

Proposed Text of Rule

TITLE 7 NYCRR

Chapter I, Part I, Section 1.5

Subdivision (u) is amended as follows:

(u) *Special populations* means any person: (1) who is pregnant, or in the first eight weeks of post-partum recovery period regardless of how the pregnancy ended, or caring for a child in a correctional institution pursuant to subdivision two or three of section six hundred eleven of the Correction Law; (2) who suffers from a disability as defined in paragraph (a) of subdivision twenty-one of section two hundred ninety-two of the Executive Law [and said disability impairs the individual's ability to provide self-care within the environment of a correctional facility]; (3) twenty-one years of age or younger; or (4) fifty-five years of age or older.

Subchapter A

Subchapter A title, amended as follows:

Procedures for Implementing the Standards of [Inmate]Incarcerated Individual Behavior

Add new Section 250.2 as follows:

250.2 General policies on discipline of incarcerated individuals.

(a) It is the policy of the department to eliminate, mitigate, and respond to disparities so as to ensure a fair and equitable distribution of benefits and burdens in the placement of incarcerated individuals in housing unit assignments, institutional work assignments, and programs; and the proper post release supervision of parolees to include, but not be limited to, supervision level, violation processes, and early discharge/merit terminations. Moreover, it is the department's policy that any administrative processes associated with any incarcerated individual or parolee who may be subject to discipline and grievances are conducted fairly to ensure that decisions are not influenced by stereotypes or biases based on age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or domestic violence victim status. To do so, the department shall provide ongoing staff training, monitoring, and auditing systems to ensure compliance with all provisions of this policy. The department shall develop programs to help incarcerated individuals work and live together regardless of their identity and backgrounds.

Amend Part 251 Title as follows:

Part 251 Cases of [Inmate]Incarcerated Individual Misbehavior

Amend Subpart 251-1 Title as follows:

Subpart 251-1 Initial Actions in Cases of [Inmate]Incarcerated Individual Misbehavior

Add new Section 251-1.5 as follows:

251-1.5 Minor infractions.

(a) An employee should deal with minor infractions, or other violations of rules and policies governing incarcerated individual behavior, that do not involve danger to life, health, security or property by counseling, warning, and/or reprimanding the incarcerated individual, and the employee need not report such minor incidents.

Section 251-5.2 subdivision (a) is amended as follows:

(a) Where an incarcerated individual is placed in, or pending possible placement in, segregated confinement pending a disciplinary hearing or superintendent's hearing, such incarcerated individual shall be permitted to be represented by:

New Section 251-5.2 subdivision (b) is added as follows:

(b) Attorneys can attend hearings by telephone or in-person.

Section 253.7 clause (a)(1)(ii)(a) is repealed, clauses (b), (c), and (d) re-lettered (a), (b), (c) as follows:

(ii) any non-confinement sanction in accordance with departmental directive 4932.

[(a) A loss of visiting privileges may be imposed under this subparagraph for any confirmed charge;

A loss of visiting privileges with a specified visitor or visitors may be imposed where the misconduct involved only the incarcerated individual and the specified visitor or visitors. Where the misconduct was not limited to the specified visitor or visitors a loss of visiting privileges with all visitors may be imposed. Misconduct involving Unacceptable Physical Conduct during which other visitors were subjected to exposure is misconduct which is not limited to only the inmate and the specified visitor or visitors. Misconduct involving an attempt to introduce money, alcohol, marijuana, narcotic and other dangerous drugs, any item which is readily capable of being used to cause death or serious injury, or any item which may be used to aid in escape is misconduct which is not limited to only the incarcerated individual and the specified visitor or visitors;

A loss of visiting privileges may be imposed under subparagraph (ii) only for the length of time stated in departmental directive 4932 and

The hearing officer may, within his or her discretion, limit an incarcerated individual to noncontact visiting in lieu of suspending all visiting privileges;]

[(b)a] Restitution may be imposed for loss or intentional damage to property [up] to be made from an incarcerated individual's existing and future funds;

[(c)b] The imposition of one work task per day other than a regular work assignment for a maximum of seven days, excluding Sundays and public holidays, to be performed on the incarcerated individual's housing unit or other designated area. Incarcerated individuals given such disposition who are participating in a regular work assignment shall not be required to work more than 8 hours per day. The eight-hour limitation excludes such non-work assignments as educational or vocational school programming; and

[(d)c] Forfeiture of money confiscated as contraband.

Section 253.7 subdivision (b) is amended as follows:

(b) *Mandatory disciplinary surcharge.* Upon the conclusion of a disciplinary hearing wherein the incarcerated individual admits the charges, or where the hearing officer affirms one or more charges, a mandatory disciplinary surcharge in the amount of \$5[accordance with departmental directive 4932] shall be assessed automatically against the incarcerated individual.

Section 254.7 subdivision (b) is amended as follows:

(b) *Mandatory disciplinary surcharge.* Upon the conclusion of a superintendent's hearing wherein the incarcerated individual admits the charges, or where the hearing officer affirms one or more charges, a mandatory disciplinary surcharge in the amount of \$5[accordance with departmental directive 4932] shall be assessed automatically against the incarcerated individual.

Chapter VI, Part 301

Section 301.2 paragraph (2) of subdivision (a) is amended as follows:

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

New Section 301.4 is added as follows:

301.4 Administrative segregation admissions.

(a) This section applies to the involuntary removal of an incarcerated individual from general confinement and placement in a special housing unit or residential rehabilitation unit based upon a determination that the individual's continued presence in general population would pose an unreasonable and demonstrable risk to the safety and security of staff, incarcerated individuals, or the facility, or would present an unreasonable risk of escape. Such determination shall be made by the facility superintendent, the deputy commissioner for correctional facilities or their designee.

(b) Within seven days after the initial determination and placement within administrative segregation housing, a hearing shall be conducted pursuant to Part 254 of this Title to consider the specific reasons for administrative segregation, leading to a final determination either to retain or release the incarcerated individual from administrative segregation. An initial written determination of the findings shall be reviewed by the deputy commissioner for correctional facilities or their designee who shall issue a final written determination to the incarcerated individual within seven days of receipt of the initial determination.

(c) An incarcerated individual in administrative segregation status shall have such status reviewed every seven days for the first two months and at least every 30 days thereafter to determine whether such individual's release to general population would pose an unreasonable and demonstrable risk to the safety and security of staff, incarcerated individuals, or the facility, or present an unreasonable risk of escape. The review shall be performed in accordance with the following procedure:

(1) A three-member committee consisting of a representative of the facility executive staff, a security supervisor, and a member of the guidance and counseling staff shall examine the incarcerated individual's institutional record and prepare and submit to the deputy commissioner for correctional facilities or their designee a report setting forth the following:

(i) reasons why the individual was initially determined to be appropriate for administrative segregation;

(ii) information on the individual's subsequent behavior and attitude; and

(iii) any other factors that they believe may favor retaining the individual in or releasing the individual from administrative segregation.

(2) Upon receipt of the report and any written statement received from the incarcerated individual, the deputy commissioner for correctional facilities or their designee shall forward these documents to a three-member central office committee consisting of a representative from the office of facility operations, a member of the department's office of special investigations, and an attorney from the office of counsel. The central office committee shall then complete its review and forward the paperwork along with its recommendation to the deputy commissioner for correctional facilities. Upon receipt of the materials from the central office committee, including any written statement received from the incarcerated individual, the deputy commissioner for correctional facilities or their designee shall document in writing whether such determination shall continue or such individual shall be released from administrative segregation, and shall state the specific facts and reasons underlying the continuance or release.

(3) As part of every review, whenever a determination is made to continue the incarcerated individual in administrative segregation, the deputy commissioner for correctional facilities or their designee shall provide a notice to the individual that states the reason(s) for the determination and includes the following statement:

“A determination has been made to continue your administrative segregation status for the reason(s) stated in this notice. Prior to your next review, you may write to the deputy commissioner for correctional facilities or designee to make a statement regarding the need for continued administrative segregation. The reason(s) stated in this notice, any written statement that you submit, as well as your overall custodial adjustment will be considered during the next scheduled review.”

(d) At any time, an incarcerated individual may be evaluated and recommended for return to general population at the current facility or transferred to another facility where it is determined the incarcerated individual may be programmed into general population. Nothing in this subdivision shall be construed to terminate the administrative segregation status of an incarcerated individual upon the individual’s transfer to another facility, absent written authorization from the deputy commissioner for correctional facilities or their designee.

(e) Incarcerated individuals in administrative segregation shall maintain normal property and privileges unless the specific item or privilege would cause a threat to the safety and security of the incarcerated individual, other incarcerated individuals, staff, or the facility.

(f) Incarcerated individuals in administrative segregation shall either be released from segregated confinement or diverted to a residential rehabilitation unit, or a step-down unit no later than the time limitations set forth in section 301.1 of this Title.

(g) Incarcerated individuals in special populations as defined in section 1.5 of this Title shall not be placed in administrative segregation for any length of time.

(h) Incarcerated individuals in administrative segregation will not be cell-confined more than seventeen hours per day, other than for a facility wide emergency or the purpose of providing medical or mental health treatment.

Chapter VI, Part 316

Section 316.3 paragraph (1) of subdivision (b) is amended as follows:

(1) at least [five] seven hours [of]out-of-cell [programming, activities, or recreation four days per week, excluding holidays, and at least two hours of recreation on the remaining days] on a daily basis; and

Chapter VI, Part 320

The Title of Part 320 is amended as follows:

Part 320 Residential Mental Health [Treatment] Units

Section 320.1 is amended as follows:

This Part defines the models of residential mental health [treatment] units operated jointly by the department and the Office of Mental Health.

The conditions and services provided in the residential mental health units shall be at least comparable to those in all residential rehabilitation units, and all residential mental health

units shall be in compliance with the provisions of paragraphs (i), (j), (k) and (l) of subdivision (6) of section 137 of the Correction Law. Residential mental health units that are either residential mental health unit models or behavior health unit models shall also be in compliance with all provision of paragraph (m) of subdivision (6) of section 137 of the Correction Law.

Section 320.2 is amended as follows:

320.2 Residential [m]Mental [h]Health [u]Unit [model].

A residential mental health unit (RMHU) is a program that includes a separate housing location within a correctional facility designed to address the corrections-based therapeutic treatment of [inmates] incarcerated individuals currently diagnosed with a serious mental illness who, due to their behavior, [would otherwise be] are serving a confinement sanction [in a special housing unit (SHU) or separate keeplock housing unit]. These [inmates] incarcerated individuals often present with a complex interplay of antisocial behaviors and psychological factors. The unit is designed to meet the therapeutic needs of [the inmates] these incarcerated individuals, while maintaining appropriate safety and security on the unit. Although an RMHU is not operated as a disciplinary housing unit, in light of the security concerns associated with the behaviors that resulted in their confinement and other sanctions, [inmates on the unit are] incarcerated individuals that pose a significant and unreasonable risk to the safety and security of incarcerated persons, staff, or the facility may be subject to limitations on the quantity and type of property they are permitted to have [in their cells and are afforded access to programs that are more restrictive than those afforded general population inmates], in order to maintain security and order on the unit. [After a brief orientation period and absent exceptional circumstances, in addition to exercise, inmates are] All incarcerated individuals will be offered four hours of structured out-of-cell therapeutic programming and/or mental health treatment along with three hours out-of-cell congregate programming, services, treatment, recreation, activities, and/or meals, with an additional one hour of recreation, for a total of seven hours out-of-cell on a daily basis[, except on weekends and holidays].

Section 320.3 is amended as follows:

320.3 Behavioral [health unit] Health Unit[model].

A behavioral health unit (BHU) is a program that includes a separate housing location within a correctional facility designed to address the corrections-based therapeutic treatment of [inmates] incarcerated individuals currently diagnosed with a serious mental illness who, due to their behavior, [would otherwise be] are serving a confinement sanction [in a SHU or separate keeplock housing unit]. These [inmates] incarcerated individuals have displayed a marked inability to conform their behavior to societal and/or institutional standards of conduct. They present with a complex interplay of antisocial behaviors and psychological factors that have resulted in their not having benefited from habilitation efforts in the community or rehabilitation efforts during a series of institutional placements. The unit is designed to meet the therapeutic needs of [these inmates] seriously mentally ill incarcerated individuals, while maintaining adequate safety and security on the unit. Although a BHU is

not operated as a disciplinary housing unit, in light of the security concerns associated with the behaviors that resulted in their confinement and other sanctions, [inmates on the unit are] incarcerated individuals that pose a significant or unreasonable risk to the safety of incarcerated persons, staff or the facility may be subject to limitations on the quantity and type of property they are permitted to have [in their cells and are afforded access to programs that are more restrictive than those afforded general population inmates], in order to maintain security and order on the unit. [After a brief orientation period and absent exceptional circumstances, in addition to exercise, inmates] All incarcerated individuals housed in a BHU are offered four hours of structured out-of-cell therapeutic programming and/or mental health treatment along with three hours out-of-cell congregate programming, services, treatment, recreation, activities, and/or meals, with an additional one hour of recreation for a total of seven hours out-of-cell on a daily basis[, excluding weekends and holidays; provided, however, the department may maintain housing for 38 BHU inmates who are offered two hours rather than four hours of structured out-of-cell therapeutic programming and/or mental health treatment. The therapeutic behavioral unit (TBU) is the functional equivalent of the BHU for female inmates].

Section 320.4 is amended as follows:

320.4 [Intermediate care program model] Therapeutic Behavioral Unit.

[The intermediate care program (ICP) is a program that includes a separate housing location within a correctional facility designed to address the corrections-based therapeutic treatment of inmates currently diagnosed with what is, generally, a serious mental illness. The ICP is a therapeutic community which provides rehabilitative services to inmates who are unable to function in general population because of their mental illness. The goal of the program is to improve the inmates' ability to function through programming and treatment so that they may return to general population. In addition to inmates with a mental illness who cannot function in a general population setting, inmates with a mental illness who have a relatively short amount of confinement time to serve may be considered for keeplock in an ICP during non-program hours. After a brief orientation period and absent exceptional circumstances, in addition to exercise, inmates are offered at least four hours of structured out-of-cell therapeutic programming and/or mental health treatment on a daily basis, except on weekends and holidays. Selected ICP inmates are permitted to temporarily leave the unit to receive therapeutic and other programming in a general population setting. An ICP is not operated as a disciplinary housing unit.] The therapeutic behavioral unit (TBU) provides services to female incarcerated individuals who are currently diagnosed with a serious mental illness who, due to their behavior, are serving a confinement sanction. The incarcerated individuals are offered seven hours of out-of-cell programming which includes four hours of structured out-of-cell therapeutic programming along with three hours out-of-cell congregate programming, services, treatment, recreation, activities, and/or meals, with an additional one hour of recreation for a total of seven hours out-of-cell on a daily basis.

320.5 is repealed

Chapter VI, Part 330

Amend part 330 Title as follows:

Part 330 Protective Custody Status [~~Inmates~~]Incarcerated Individuals

Section 330.4 subdivision (a) is amended as follows:

(a) *Out-of-cell time*. No incarcerated individual may be held in segregated confinement for protective custody. Any unit used for protective custody must, at a minimum, conform to requirements governing residential rehabilitation units. Incarcerated individuals will be offered at least [~~six~~] seven hours of daily out-of-cell congregate programming, services, treatment, recreation, activities, and/or meals, with an additional hour for recreation, a minimum of one hour out-of-cell time shall be scheduled for outdoor exercise. The additional six hours of out-of-cell time may be used for activities listed in directive(s).