

The NYC Jails Action Coalition & the #HALTsolitary Campaign present

Proposed Changes to the Board of Corrections Minimum Standards, in Order to End Solitary Confinement in NYC Jails

October 2019



Introduction

The Jails Action Coalition and the #HALTsolitary Campaign have previously released a [Blueprint for Ending Solitary Confinement in NYC Jails](#). The Blueprint provides an overall framework and key principles for how New York City can and must completely eliminate solitary confinement in all its forms for all people, and instead promote alternatives that take an opposite approach to the isolation and deprivation of solitary and are actually effective for promoting safety and reducing violence, both inside jails and when people return to the outside community. The below proposed rules provide the specific rule changes that the Board of Correction can and must make to [its existing minimum standards](#) to effectuate the Blueprint and in turn the abolition of solitary in the city jails. The strikethroughs are text in the Board's current minimum standards proposed to be deleted; bolded text is text proposed to be added. Specifically, the proposed rule changes are written to implement the Blueprint's plan to:

1. Ensure that the Board of Correction minimum standards for out-of-cell time of at least 14 hours per day apply to all people in city jails, by removing exceptions to those standards for punitive segregation and Enhanced Supervision Housing (ESH) units;
2. Create minimum standards for emergency individual lock-ins and emergency lockdowns;
3. End punitive segregation and make ESH and any other alternative units actually about safety, rehabilitation, and prevention of violence;
4. Adopt specific mechanisms and time limits for getting out of ESH and any other alternatives units; and
5. Dramatically limit use of restraints with a strong presumption against their use.

The Board of Correction has the authority to implement the below proposed rule changes and must act immediately to adopt these rules to end solitary confinement in all its forms.

Proposed BOC Rule for Ending Solitary Confinement in NYC Jails

1. and 2. Remove Lock-in Exceptions to Ensure All People Have Access to At Least 14 Hours Out-of-Cell Per Day, and Restrict Emergency Lock-ins and Emergency Lockdowns

§ 1-05 Lock-in.

(a) Policy. The time spent by **persons in custody** ~~prisoners~~ 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 or~~ **persons in custody** confined for medical reasons in the contagious disease units.

(b) Involuntary lock-in. No **person in custody** ~~prisoner~~ shall be required to remain confined to his or her cell 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 **people** ~~prisoners~~ 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.

(3) EMERGENCY LOCK-IN. In an emergency situation as a last resort, a person may be locked-in, not to exceed the time periods in § 1-05 (b)(4) only if (a) they have engaged in behavior that constitutes a serious and evident danger to themselves or others in a way that has already resulted in injury or makes injury imminent, (b) less intensive interventions and all appropriate de-escalation techniques have been exhausted, are inappropriate, or have been or are likely to be ineffective, and have not abated the behavior that constitutes a serious and evident danger; (c) staff have advised the person of the potential for lock-in, the behavior necessary to avoid lock-in, and have given the person an opportunity to stop the behavior that constitutes a serious and evident danger to themselves or others; and (d) security staff at the level of captain or higher is informed and the relevant Correctional Health Authority has reviewed the situation.

(4) TIME LIMITS AND PROCEDURES FOR EMERGENCY LOCK-IN. A person may not remain locked-in for emergencies for longer than two (2) hours during the day without further authorization from the Chief of Department or designee and without a mental health provider of the relevant Correctional Health Authority being notified. If after two (2) hours the person is still exhibiting behavior that constitutes a serious, evident, and imminent danger to themselves or others, the relevant Correctional Health Authority must be notified and the Chief of Department or designee may authorize an extension of the room confinement for no more than two (2) additional hours. If a person is approaching the fourth hour of lock-in, the Chief of Department themselves must determine how to end the lock-in. If after four (4) hours the person is still exhibiting behavior that constitutes a serious, evident, and imminent danger to themselves or others, the relevant Correctional Health Authority must be notified and the Chief of Department may re-authorize an extension of the lock-in for no more than two (2) additional hours. If the Chief of Department extends the lock-in beyond four (4) hours, the Chief must report the lock-in, the details of their review, and the basis for their decision to extend the lock-in immediately to the Board. For young people aged 25 and younger and elderly people aged 55 and over, the total lock-in period shall never exceed six (6) daytime hours in one day. For people of all other ages, if after six (6) hours the person is still exhibiting behavior that constitutes a serious, evident, and imminent danger to themselves or others, the relevant Correctional Health Authority must be notified and the Chief of Department may re-authorize an extension of the lock-in for no more than two (2) additional hours. If the Chief of Department extends the lock-in beyond six (6) hours, the Chief must report the lock-in, the details of their review, and the basis for their decision to extend the lock-in immediately to the Board. The lock-in time shall never exceed eight (8) daytime hours for people of other ages. During all hours of lock-in, staff must check on the person's safety at intervals of at least every 15 minutes, clearly document such checks, and continue their best efforts to de-escalate the person and remove them from lock-in. Mental health staff must meet with a person within one hour of being placed in lock-in,

and at least once every hour during lock-in. The department shall document each mental health staff meeting, and mental health staff must be allowed full access to provide proper assessments and care.

(5) **Limit on Consecutive Days of Lock-In.** Other than for medical reasons in contagious disease units, a person may not be locked-in under any circumstances for more than a total of eight (8) daytime hours combined over two (2) consecutive calendar days without a written court order, and may not be locked-in under any circumstances for more than a total of 20 day-time hours combined over seven (7) consecutive calendar days.

(6) The department must ensure timely and effective medical and mental health care during any lock-in, including by providing all emergency, time-urgent, or necessary medical and mental health care during lock-in and by providing any delayed or missed services as quickly as possible following a lock-in. The department must document all engagement by medical or mental health staff, and document the reasons for any delayed or missed services.

(c) **Lockdowns.**

(1) In an emergency situation involving one or more of the following acts, as a last resort when it is the least restrictive means necessary, and only for purposes to either investigate or de-escalate a situation in which one or more individuals carried out the following acts and there is either an ongoing threat of imminent violence involving multiple other people or it is still unknown who carried out the acts, the department may place multiple people on lockdown:

(i) causing or attempting to cause serious physical injury or death or an imminent threat of such violence or death,

(ii) compelling or attempting to compel sexual acts by force or threat of force,

(iii) leading, organizing, inciting, attempting to cause a riot or violent insurrection,

(iv) procuring deadly weapons or other similarly dangerous contraband that poses a threat,

(v) escaping or attempting an escape, or

(vi) other comparable extremely serious conduct of the same magnitude that involves specific and serious harm to another person.

(2) The department may only place people on lockdown if there are no less restrictive mechanisms to effectuate the necessary investigation or de-escalation, including placing the individuals known to be involved in lock-in. The department may never utilize a lockdown for purposes of punishment or administrative convenience.

(3) The scope of any lockdown shall be as limited as absolutely necessary to effectuate the investigation or de-escalation, including with respect to the number of people affected and the jail areas affected.

(4) Any lockdown should be for the shortest duration possible, and shall not exceed two (2) hours during the day without further authorization from the Chief of Department or designee and without a mental health provider of the relevant Correctional Health Authority being notified. If after two (2) hours a lockdown is still necessary to prevent a serious, evident, and imminent danger of harm to incarcerated persons or staff, the relevant Correctional Health Authority must be notified and the Chief of Department or designee may authorize an extension of the lockdown for no more than two (2) additional hours. If a lockdown is approaching the fourth hour, the Chief of Department themselves must determine how to end the lockdown and work toward ending it. If after four (4) hours a lockdown is still necessary to prevent a serious, evident, and imminent danger of harm to incarcerated persons or staff, the relevant Correctional Health Authority must be notified and the Chief of Department may re-authorize an extension of the lockdown for no more than two (2) additional hours. If the Chief of Department extends the lockdown beyond four (4) hours, the Chief must report the lockdown, the details of their review, and the basis for their decision to extend the lockdown immediately to the Board. The total lockdown period shall never exceed six (6) daytime hours in one day. During all hours of lockdown, staff must check on all people subjected to the lockdown at intervals of at least every 15 minutes, clearly document such checks, and continue their best efforts to investigate and de-escalate the situation and end the lockdown.

(5) Limit on Consecutive Days of Lockdown. A lockdown may not under any circumstances last for more than a total of eight (8) daytime hours combined over two consecutive calendar days without a written court order, and may not under any circumstances last for more than a total of 20 daytime hours combined over seven (7) consecutive calendar days.

(6) The department must ensure timely and effective medical and mental health care during any lockdowns, including by providing all emergency, time-urgent, or necessary medical and mental health care during lockdowns and by providing any delayed or missed services as quickly as possible following a lockdown. The department must document all engagement by medical or mental health staff, and document the reasons for any delayed or missed services.

(7) The department must publicly report all lockdowns, including providing immediate public information about any restrictions on visits or phone calls on its website, as well as publicly reporting on its website reasons for any lockdown, the areas affected and why, any medical and mental health services affected, any programs affected, all activities taken during the lockdown to resolve and address the lockdown, and the number of staff diverted for the lockdown.

(d) Reports on lock-ins and lockdowns.

(1) No later than sixty (60) days after enactment of this provision and every thirty (30) days thereafter, the Department shall submit to the Board information related to

implementation of required changes. This information shall include, but shall not be limited to:

- (i) the number of people held in lock-in and the number of people held in lock-down;
- (ii) data related to the length of lock-ins and lockdowns and the frequency of the types of conduct resulting in lock-in and lockdown (separately);
- (iii) the number of lock-ins and lockdowns (separately) of: up to two (2) hours in duration, between two (2) and four (4) hours, between four (4) and six (6) hours, between six (6) and eight (8) hours - broken down by age of those held in lock-in and lockdown, and exceeding eight (8) hours;
- (iv) the number, and length, of lock-ins and lockdowns (separately) that: occurred on consecutive days, occurred multiple times within a seven-day period, lasted up to eight (8) hours total in a two-day period, exceeded eight (8) hours total in a two-day period, lasted up to 20 hours in a seven-day period, and exceeded 20 hours in a seven-day period;
- (v) the number of lock-ins the Chief of Department or a designee reviewed and the number of instances where, as a result of this review, a person was kept in lock-in or a lockdown continued (separately), and the number of instances, where as a result of this review a person was removed from lock-in or the lockdown ended (separately);
- (vi) the number of people who received two (2) or more placements in lock-in or lockdown, and the total number of hours and days each of these people were held in lock-in or lockdown (separately).

3a. ENDING PUNITIVE SEGREGATION

Bookmark§ 1-17 Limitations **Prohibition** on the Use of Punitive Segregation.

(a) Policy. As implemented by the Department, punitive segregation is a severe penalty that should not be used under **any** certain circumstances in the Department's facilities. **Throughout the city jails, in all units, de-escalation and meaningful use of positive incentives shall be the primary methods for responding to people who engage in difficult behavior. Within sixty (60) days of the enactment of this provision, all punitive segregation shall be ended in city jails.**

~~In particular, punitive segregation represents a serious threat to the physical and psychological health of adolescents, with respect to whom it should not be imposed. Moreover, punitive segregation is intended to address a particular offense committed in the course of an inmate's incarceration and should not be imposed in connection with an offense committed by the same inmate during a separate and previous incarceration.~~

~~—(b) Exclusions:~~

~~—(1) The following categories of inmates shall be excluded from punitive segregation:~~

~~—(i) inmates under the age of 18;~~

~~—(ii) as of January 1, 2016, inmates ages 18 through 21, provided that sufficient resources are made available to the Department for necessary staffing and implementation of necessary alternative programming; and~~

~~— (iii) inmates with serious mental or serious physical disabilities or conditions.~~

~~— (2) Consistent with these regulations, when assignment to punitive segregation would pose a serious threat to an inmate's physical or mental health, medical staff shall have the authority to determine that the inmate shall be barred from punitive segregation placement or shall be moved from punitive segregation to a more appropriate housing unit.~~

~~— (3) An inmate who is excluded from punitive segregation at the time of an infraction due to age or health status shall not be placed in punitive segregation for the same infraction at a later date, regardless of whether the inmate's age or health status has since changed.~~

~~— (4) Inmates shall not be confined to punitive segregation as punishment for grade 3 offenses.~~

~~— (c) Due Process.~~

~~— (1) Prior to the infraction hearing provided for in paragraph (2) of this subdivision, the inmate shall receive written notice detailing the charges against the inmate and a description of the inmate's behavior that gave rise to the charges. Inmates who are unable to read or understand such notice shall be provided with necessary assistance. Notice shall be served no later than twenty-four (24) hours prior to commencement of the infraction hearing unless the inmate consents to a shorter time period in writing.~~

~~— (2) All inmates, except those who qualify for and are placed in pre-hearing detention (PHD), shall be afforded an infraction hearing prior to placement in punitive segregation housing. Inmates 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 prior to the infraction hearing shall count toward the inmate's punitive segregation sentence.~~

~~— (3) Inmates shall be permitted to appear in person, make statements, present material evidence, and call witnesses at infraction hearings.~~

~~— (4) In the following circumstances, an 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.~~

~~— (5) The Department has the burden of proof in all inmate disciplinary proceedings. An inmate's guilt must be shown by a preponderance of the evidence to justify punitive segregation placement.~~

~~— (d) Time limitations on punitive segregation.~~

~~— (1) Except where an inmate has committed a serious assault on staff as described in paragraph (4) of this subdivision, no inmate may be sentenced to punitive segregation for more than thirty (30) days for any single infraction.~~

~~— (2) Except where an inmate is serving a punitive segregation sentence for a serious assault on staff as described in paragraph (4) of this subdivision, in no event may an inmate be held in punitive segregation longer than thirty (30) consecutive days. Except where an inmate is serving a punitive segregation sentence for a serious assault on staff as described in paragraph (4) of this subdivision, an inmate who has served thirty (30) consecutive days in punitive~~

segregation shall be released from punitive segregation for at least seven (7) days before that inmate may be returned to punitive segregation.

—(3) 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 of or throughout the sixty (60) day period, the inmate has continued to engage in persistent, serious acts of violence, other than self-harm, such that any placement other than punitive segregation would endanger inmates or staff.

—(i) In such instances, the Department shall not be required to release the inmate from punitive segregation after sixty (60) days have elapsed.

—(ii) The Chief of Department must approve such extensions of punitive segregation placement in writing and state: (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.

—(iii) The Department must immediately provide the Board and the relevant Correctional Health Authority with a copy of the Chief of Department's written approval.

—(4) 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, may receive a punitive segregation sentence of up to sixty (60) days for that single infraction.

—(i) The Chief of Department or a designee must approve or disapprove in writing any punitive segregation sentence for a serious assault on staff that exceeds thirty (30) days. The written approval or disapproval shall be sent immediately to the inmate, the Board, and the relevant Correctional Health Authority.

—(ii) While an inmate is serving a punitive segregation sentence for a serious assault on staff that exceeds thirty (30) days, the Department shall not be required to release the inmate from punitive segregation housing after thirty (30) consecutive days.

—(iii) Where an inmate's punitive segregation sentence for a serious assault on staff exceeds forty-five (45) days, the Chief of Department or a designee shall complete a review of the sentence forty-five (45) days after its commencement to determine whether the inmate could safely be placed in an available alternative housing unit for the remainder of the sentence. The decision, and the reasoning supporting it, shall be stated in writing and immediately sent to the inmate, the Board, and the relevant Correctional Health Authority.

—(5) In instances not covered by subparagraph (iii) of paragraph (4) of this subdivision, whenever forty-five (45) consecutive days of an inmate's time served in punitive segregation have elapsed, the Chief of Department or a designee shall complete a review of the inmate's time served on the forty-fifth (45th) day to determine whether the inmate can safely be placed in an alternative housing unit for the remainder of the sentence the inmate is serving. The decision, and the reasoning supporting it, shall be stated in writing and immediately sent to the inmate, the Board and the relevant Correctional Health Authority.

—(6) Daily mental health rounds must be provided to inmates housed in punitive segregation who have been held there longer than thirty (30) consecutive days or have served more than sixty (60) days within a six (6) month period. Such rounds must be documented in writing. Beginning August 1, 2016, the Department shall additionally offer such inmates cognitive

behavioral therapy or a similar evidence-based intervention aimed at addressing the root causes of the behavior that led to the inmates' extended stays in punitive segregation. Such programming shall be developed in consultation with the relevant Correctional Health Authority.

~~—(e) Required out-of-cell time. Inmates confined to punitive segregation as punishment for non-violent or grade 2 offenses must be permitted at least seven (7) out-of-cell hours per day.~~

~~—(f) Staffing:~~

~~—(1) Correction officers assigned to punitive segregation housing shall receive forty (40) hours of special training designed to address the unique characteristics of punitive segregation and its inmates. Such training shall include, but shall not be limited to, recognition and understanding of mental illness and distress, effective communication skills, and conflict de-escalation techniques.~~

~~—(2) At least twenty-five (25) percent of correction staff assigned to punitive segregation housing shall be assigned to steady posts.~~

(g) Time in punitive segregation owed from a previous incarceration **or a current incarceration**. As of the effective date of this section, no **person inmate** shall be assigned to or held in punitive segregation for any time from a separate and previous incarceration for which such **person inmate** was sentenced to but did not serve in punitive segregation. **In addition, any sentence to punitive segregation (until it is eliminated) shall commence immediately after such sentence; if a person is not placed in punitive segregation immediately after a sentence to punitive segregation, the Department may not ever place the person in punitive segregation for that sentence.**

(h) Reports on punitive segregation.

(1) No later than **thirty sixty (630)** days after **enactment** implementation of enhanced supervision housing provided for in ~~40 RCNY § 1-16~~ of this chapter and **thirty sixty (630)** days thereafter **until punitive segregation is fully ended in city jails**, 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 people ~~inmates~~ held in punitive segregation and the number of **people inmate** waiting to be held in punitive segregation **along with the length of time since their sentence to 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 and any other efforts to reduce the use of and length of stay in punitive segregation;~~

(iv) the status of implementation of the Department's planned policy to **require end all** that an inmate be released from punitive segregation for a minimum of seven (7) days before returning to punitive segregation;

(v) the number of punitive segregation sentences of thirty-one (31) to forty-five (45) days in duration given to **persons in custody inmates** for a serious assault on staff, disaggregated by whether the sentence was approved or disapproved by the Chief of Department or a designee;

(vi) the number of punitive segregation sentences exceeding forty-five (45) days in duration given to **persons in custody inmates** for a serious assault on staff, disaggregated by whether the sentence was approved or disapproved by the Chief of Department or a designee;

(vii) the number of punitive segregation sentences the Chief of Department or a designee reviewed forty-five (45) days after commencement and the number of instances where, as a result of this review, a **person inmate** was placed in an alternative housing unit for the remainder of the sentence;

(viii) the number of requests submitted to the Chief of Department to hold a **person inmate** in punitive segregation for more than a total of sixty (60) days within a six (6) month period, disaggregated by whether the request was approved or disapproved by the Chief of Department;

(ix) the number of **people inmates** who received two (2) or more placements in punitive segregation pursuant to 40 RCNY § 1-17(d)(3);

(x) the number of **people inmates** currently in Department custody who have, during their current incarceration, been housed in punitive segregation a total of: one (1) to thirty (30) days, thirty-one (31) to sixty (60) days, sixty-one (61) to ninety (90) days, ninety-one (91) to one-hundred-twenty (120) days, and more than one-hundred-twenty (120) days;

(xi) the number of **people inmates** currently housed in punitive segregation, who have been held there, consecutively, for: one (1) to thirty (30) days, thirty-one (31) to sixty (60) days, sixty-one (61) to ninety (90) days, ninety-one (91) to one-hundred-twenty (120) days, and more than one-hundred-twenty (120) days;

(xii) a plan and timeline detailing steps necessary to ~~reduce and the length of~~ punitive segregation ~~sentences and to reduce the number of inmates housed in punitive segregation~~;

(xiii) data related to the amount of recreation and out-of-cell time provided to **people inmates** housed in punitive segregation; and

(xiv) 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 **thirty (30) days after the enactment of this provision** ~~June 1, 2016~~, the Department shall submit to the Board a report analyzing and recommending options to reduce persistent violence committed by **individuals 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 **persons in custody 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, including programming and housing, 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) include a description of research conducted by the Department on effective disciplinary systems and alternatives to punitive segregation and the progress of Department efforts to identify viable alternative programs and locations to safely house and treat **people who engage in violence** ~~violent offenders~~.

(Amended City Record 12/24/2015, eff. 1/23/2016)

3b. and 4. MAKING ESH and ANY ALTERNATIVES ACTUALLY ABOUT SAFETY and REHABILITATION and RELEASE FROM ESH and ANY ALTERNATIVES

§ 1-16 Enhanced Supervision Housing.

(a) *Purpose.* The primary objective of enhanced supervision housing (ESH) is to protect the safety and security of **persons in custody inmates** and facilities, while promoting rehabilitation, good behavior, and the psychological and physical well-being of **persons in custody inmates**. To accomplish these objectives, ESH is designed to separate from the general population those **people inmates** who pose the greatest threats to the safety and security of staff and other **persons in custody inmates**. It additionally seeks to promote the rehabilitation of individuals in ESH ~~inmates~~ by incentivizing good behavior and by providing necessary programs and therapeutic resources.

(b) *Policy.* A **person in custody inmate** may be confined in ESH if the **person inmate** presents a significant threat to the safety and security of the facility if housed elsewhere. Such a determination shall only be supported by a finding that one of the following has occurred **contemporaneously at the time placement is sought while the person is in the Department's custody during this current incarceration:**

(1) the **person inmate** has been identified as a leader of a gang and has demonstrated active involvement in the organization or perpetration of violent or dangerous gang-related activity;

(2) the **person inmate** has demonstrated active involvement as an organizer or perpetrator of a gang-related assault;

(3) the **person inmate** has committed a slashing or stabbing, has committed repeated assaults, has seriously injured another **person in custody inmate**, visitor, or employee, or has rioted or actively participated in ~~inmate~~ disturbances initiated by persons in custody ~~while in Department custody or otherwise incarcerated;~~

(4) the **person inmate** has been found in possession of a scalpel or a weapon that poses a level of danger similar to or greater than that of a scalpel ~~while in Department custody or otherwise incarcerated~~ **and used or attempted to use that scalpel or weapon to injure another person;**

(5) the **person inmate** has engaged in serious or persistent violence; or

(6) the **person inmate**, while in Department custody ~~or otherwise incarcerated~~, has engaged in repeated activity or behavior of a gravity and degree of danger similar to the acts described in paragraphs (1) through (5) of this subdivision, **has again at the time placement is sought engaged in that grave and dangerous behavior**, and such activity or behavior has a

direct, identifiable and adverse impact on the safety and security of the facility, such as repeated acts of arson.

Provided, however, that, ~~where the Department is permitted to consider an inmate's activity occurring or actions committed at a time when the inmate was incarcerated,~~ such activity or actions must have occurred **while in Department custody during this current incarceration and at least one such act contemporaneously with the time the Department attempts to place the person in Enhanced Supervision Housing** within the preceding five (5). ~~Where the Department is permitted to consider an inmate's activity occurring or actions committed at a time when the inmate was not incarcerated,~~ such activity or actions must have occurred within the preceding two (2) years. **A person should only be placed in ESH if it is necessary to address serious harm of the type listed and only as a response to a current act. If a person is not placed in ESH within 10 days of the time of the conduct in question, they shall not be placed in ESH based on that conduct.**

(c) *Exclusions.*

(1) The following categories of inmates shall be excluded from ESH placement:

(i) **people inmates** under the age of **22 18**; and

~~(ii) as of January 1, 2016, inmates ages 18 through 21, provided that sufficient resources are made available to the Department for necessary staffing and implementation of necessary alternative programming; and~~

(iii) **people inmates** with serious mental or serious physical disabilities or conditions.

(2) Medical staff **must** ~~shall be permitted to~~ review ESH placements and participate in placement review hearings. Consistent with these regulations, when ESH assignment would pose a serious threat to an **individual** inmate's physical or mental health, ~~medical staff shall have the authority to determine that the individual inmate shall be barred from ESH placement or shall be moved from ESH to a more appropriate housing unit.~~ This determination may be made at any time during the **person's** inmate's incarceration.

(3) Any **person** inmate placed in ESH who evidences a mental or emotional disorder shall be seen by mental health services staff prior to or immediately upon ESH placement.

(4) The total number of **people inmates** housed in ESH shall not exceed **100 250** at any time.

(d) *Conditions, Programming and Services.*

(1) ~~To the extent~~ The Department **shall not** ~~imposes~~ restrictions on a person in ESH inmate that deviate from those imposed on **people inmates** in the general population, ~~such restrictions must be limited to those required to address the specific safety and security threat posed by that individual inmate.~~

~~(2) To the extent the Department seeks to limit an ESH inmate's access to contact visits, a hearing shall be held, as required by subdivision (g) of this section, which shall address the criteria set forth in subdivision (h) of 40 RCNY § 1-09 with regard to both the inmate and any individual visitors with whom the Department wishes to limit contact.~~

(3) No later than **thirty (30) after enactment of this provision**~~July 1, 2015~~, the Department shall provide individuals in ESH inmates with both voluntary and involuntary, as well as both in- and out-of-cell, **congregate** programming aimed at facilitating rehabilitation, addressing root causes of violence, and minimizing idleness. **All people in ESH shall be provided daily access to out-of-cell: congregate human interaction, congregate recreation, amenities (including televisions), and at least seven (7) hours of quality congregate programming comparable to congregate interaction and congregate programming in the general population. Such programming shall include opportunities for education, mental health, and substance use treatment. All people in ESH shall also be provided access to additional out-of-cell, trauma-informed therapeutic programming aimed at promoting personal development, addressing underlying causes of problematic behavior resulting in placement in ESH, and helping prepare for discharge from the unit and to the community. Such programming shall include the latest evidence-based restorative justice and anti-violence programming considered to be amongst the best practices in the field and demonstrated to be most effective and successful at reducing violence. Specific activities should include, but not be limited to, group discussions, classes, counseling, meetings with survivors of violence, connections with family and the community, and peer-led initiatives.**

(4) All **people** inmates 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.

(e) *Staffing.*

(1) Correction officers assigned to ESH shall receive forty (40) hours of **annual** special training designed to address the unique characteristics of ESH and **individuals incarcerated therein**~~its inmates~~. Such training shall include, but shall not be limited to, recognition and understanding of mental illness and distress, **including post-traumatic stress disorder and traumatic brain injury**; effective communication skills; **restorative justice**; **alternatives to and limits on use of force**; and conflict de-escalation techniques.

(2) At least ~~fifty-two~~**twenty-five (25)** percent of correction staff assigned to ESH shall be assigned to steady posts.

(3) **At least fifty (50) percent of staff assigned to ESH shall be civilian staff trained in providing the programming described above or correction staff with a master's degree in social work or other related degree.**

(f) *Notice of ESH Placement.*

(1) When it is determined that **a person** ~~an inmate~~ should be confined in ESH, that **person** ~~inmate~~ shall be given written notice of such determination within twenty-four (24) hours of placement. **Individuals** ~~inmates~~ who are unable to read or understand such notice shall be provided with necessary assistance. Such notice shall:

(i) state the grounds relied on and the facts that support the **person's** ~~inmate's~~ ESH placement; (ii) inform the **person** ~~inmate~~ of the purpose of ~~individual restrictions the Department intends to impose during the inmate's~~ ESH confinement **and an overview of the programs and services in ESH;**

(iii) notify the **person** ~~inmate~~ of the upcoming ESH placement review hearing; and

(iv) inform the **person** ~~inmate~~ of the right to review, prior to the placement hearing, the evidence relied upon by the Department, to appear at the hearing in person, **to have representation at the hearing (by any attorney, law student, paralegal or incarcerated person)**, to submit a written statement for consideration, to call witnesses, and to present evidence.

(2) [Reserved.]

(g) *Placement Review Hearing.*

(1) Within three (3) business days of service of notice on **a person** ~~an inmate~~ of initial ESH placement ~~and related restrictions~~, the Department shall conduct a hearing to adjudicate the **individual's** ~~inmate's~~ ESH placement ~~and the individual restrictions proposed~~. The hearing may not be adjourned except, in extenuating circumstances, by the **person's** ~~inmate's~~ documented request and may in no event be adjourned for longer than five (5) days.

(2) ~~One or more hearing officers~~ **A neutral decision-maker** 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 **person's** ~~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 **person** ~~inmate~~ in ESH pursuant to subdivision (b) of this section, and a determination of whether such facts exist and whether they support, **beyond a reasonable doubt** ~~by a preponderance of the evidence~~, the conclusion that the **person** ~~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 **and mental health** staff;

(v) consideration of any credible and relevant evidence submitted or statements made by the **person 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 **person inmate** shall be permitted to appear at the hearing in person, **have representation at the hearing (by any attorney, law student, paralegal or incarcerated person)**, submit a written statement, call witnesses, and present evidence.

(5) In the following circumstances, the **person inmate** shall be entitled to the assistance of a hearing facilitator, who shall assist the **person inmate** by clarifying the charges, explaining the hearing process, and assisting the **person inmate** in gathering evidence:

(i) the **person inmate** is illiterate or otherwise unable to prepare for or understand the hearing process; or

(ii) the **person 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~~ **is supported beyond a reasonable doubt** ~~by a preponderance of the evidence~~, the placement ~~and each supported restriction~~ may be continued. Written notice shall be provided to the **individual inmate** outlining the bases for such determinations. If it is determined that ESH placement ~~or imposition of any individual restrictions~~ is unsupported **beyond a reasonable doubt** ~~by a preponderance of the evidence~~, ESH status ~~or unsupported individual restrictions~~ shall be terminated immediately.

(7) **Any person affected by a determination made pursuant to this subdivision (g) or (h) 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 and the Department shall follow the Board's decision.**

(h) *Periodic Review of Placement.*

(1) **Upon admission to ESH, program and health staff shall administer assessments and develop an individual rehabilitation plan in consultation with the resident, based upon his or her medical, mental health, and programming needs. Such plan shall identify specific goals and programs, treatment, and services to be offered, with projected time frames for completion and discharge from ESH. Such plan shall be realistic in understanding the individual's abilities and needs.**

(2) **If a person substantially completes their rehabilitation plan, they shall have a right to be discharged from ESH upon such completion.**

(3) **The placement of a person an inmate in ESH shall be meaningfully reviewed every fifteen ~~forty-five~~ (15) days to determine whether the person inmate continues to present a significant threat to the safety and security of the facility if housed outside ESH such that continued ESH placement is appropriate. Such review shall be conducted by a multidisciplinary team, including program and health staff.**

(4) **At least twenty-four (24) hours prior to such periodic review, individuals in ESH inmates shall be notified of the pending review in writing and of the right to submit a written statement for consideration. People inmates who are unable to read or understand such notice shall be provided with necessary assistance.**

(5) **Periodic review of a personinmate's ESH status shall consider the following, with conclusions recorded in a written report made available to the person inmate within three ~~seven~~ (3) days of the review:** (i) the justifications for continued ESH placement;

~~— (ii) the continued appropriateness of each individual ESH restriction and whether any such individual restrictions should be relaxed or lifted;~~

(ii) information regarding the **individualinmate's** subsequent behavior and attitude since ESH placement began, including participation in and availability of programming;

(iv) information regarding the effect of ESH placement ~~or of individual ESH restrictions on~~ the **person inmate's** mental and physical health;

(v) any written statement submitted by the **person inmate** for consideration;

(vi) any other factors that may favor retaining the **person inmate** in or releasing the **person inmate** from ESH ~~or any other factors that may favor the lifting of individual ESH restrictions or continuing to impose individual ESH restrictions;~~ and

(vii) if the **personinmate's** ESH placement is to continue, any actions or behavioral changes that the **person inmate** might undertake to further rehabilitative goals and ~~facilitate the lifting of individual ESH restrictions or ESH release.~~

(6) **Following such periodic review, if the person is not discharged from the unit, program and mental health staff shall specify in writing the reasons for the determination and the program, treatment, service, and/or corrective action required**

before discharge. The incarcerated person shall be given access to the programs, treatment and services specified, and shall have a right to be discharged from ESH upon the successful fulfillment of such requirements.

(7) At any time when deemed appropriate, **a person** ~~an inmate~~ may be evaluated and recommended for placement in a more appropriate housing unit outside ESH.

(8) If a person has not been discharged from ESH within four (4) months of initial admission, the person shall have a right to be discharged from ESH unless they committed a new act defined in § 1-16(b)(2) within the previous thirty (30) days and the Chief of Department determines that their discharge would pose a significant and unreasonable risk to the safety or security of incarcerated persons or staff.

(i) *Board Review of ESH Implementation.*

(1) No later than sixty (60) days after ESH implementation and every sixty (60) days thereafter, the Department shall submit to the Board information related to implementation of ESH and the **people** ~~inmates~~ housed there. This information shall include, but shall not be limited to:

(i) the number of **people** ~~inmates~~ housed in ESH, both currently and since implementation;

(ii) the frequency with which each of the criteria set forth in subdivision (b) of this section is used to support ESH placement;

(iii) rates of violence in both ESH and the general population since implementation of ESH and rates of violence for comparable time periods prior to ESH implementation;

(iv) rates of use of force in both ESH and the general population since implementation of ESH;

(v) programming and mental health resources available to individuals in ESH ~~inmates~~ and the extent of ~~inmate~~ participation in each program and resource;

(vi) training received by correction officers assigned to ESH, ~~and~~ the number of steady posts created in ESH, **and the number of civilian staff broken down by each ESH unit;**

(vii) the number of **people** ~~inmates~~ initially assigned to ESH but whose ESH status was terminated in a placement review hearing;

(viii) the number of **people** ~~inmates~~ released from ESH into the general population through periodic review, ~~or other ESH status review mechanisms~~ **or the maximum time limit;** and

(ix) any other data the Department or the Board deems relevant to the Board's assessment of ESH.

(2) The Board shall review the information provided by the Department and any other information it deems relevant to the assessment of ESH. Eighteen (18) months after implementation of ESH and no later than two (2) years after implementation of ESH, the Board shall meet to discuss the effectiveness and continued appropriateness of ESH.

3c. ENSURING ALL PLACEMENTS HAVE COMPARABLE PROGRAMMING ACCESS

New § 1-16(j) Human Engagement and Programming in All Units

- (1) There shall be no units in the city jails that are restrictive housing apart from, to the extent it is restrictive in any way, Enhanced Supervision Housing, which itself should not be more restrictive than the general population.**
- (2) All people in all units in the city jails shall be provided access to meaningful out-of-cell congregate human interaction and congregate programming comparable to congregate interaction and congregate programming in the ordinary general population, and any alternative units must at least comport to all of the standards for Enhanced Supervision Housing.**
- (3) If an individual is in any form of housing that they believe is more restrictive than other general population housing, they shall have a right to a hearing comparable to 1-16(g) to determine: (i) if they have more restricted access to congregate human interaction and congregate programming than other general population housing, and if that is so found: (ii) if they should be provided greater access to congregate human interaction and congregate programming within their unit; and/or (iii) if they should be transferred to another general population housing unit. At such hearings, people shall have all of the rights afforded under § 1-16 (g).**

5. LIMITING USE OF RESTRAINTS

New § 1-19 Limiting Use of Restraints

- (a) Restraints shall not be used when incarcerated persons are participating in out-of-cell activities unless an individualized determination is made that as a last resort restraints are necessary because of an immediate risk of self-injury or injury to other incarcerated persons or staff.**
- (b) When restraints are determined to be necessary, the least restrictive forms of restraints that are necessary shall be used and restraints shall only be used as long as the need exists and not for a pre-determined period of time.**
- (c) If the department believes that restraints are needed for out-of-cell congregate activities for more than the initial occasion that was immediately determined to be necessary at the time, there must be a due process hearing with all of the protections afforded under § 1-16 (g) to determine if restraints can be used for more than the initial occasion and to what degree, including the availability of**

appealing any such decision to the Board. Any use of restraints that is extended pursuant to such a hearing shall be reviewed at least daily and the use of restraints shall be discontinued once there is no longer an immediate risk of self-injury or injury to another incarcerated person or staff. Staff must work with the person who has restraints to de-escalate and work toward the removal of the restraints. If restraints have been used for more than seven (7) days, there must be a new due process hearing with all of the protections afforded under § 1-16 (g) to determine if restraints can continue, and a new hearing must occur at least every seven (7) days if restraints continue to be used. Restraints can not continue to be used beyond fourteen (14) days without a written court order permitting the use of restraints, and a new court order must be obtained at least every seven (7) days thereafter if restraints continue to be used.

- (d) Whenever an individual is restrained, they shall not be commingled with other incarcerated persons who are not restrained, but shall continue to have access to participate in congregate programming.**