

Proposed Text of Rule TITLE 7

Chapter I, Part 1

Revise Section 1.5 as follows:

1.5 Definitions.

When used in this Title, other than Chapter XXX, unless otherwise expressly stated or the context or subject matter otherwise requires, the following terms have the following meanings:

- (a) *Department* means the State Department of [Correctional Services] Corrections and Community Supervision.
- (b) *Commissioner* means the State Commissioner of [Correctional Services] Corrections and Community Supervision.
- (c) *Chair[man]person* means the chair[man]person of the board of parole.
- (d) *Board* means the board of parole.
- (e) *Superintendent* means the chief administrative officer of a correctional facility.
- (f) *Correctional facility* means any place operated by the department and designated by the commissioner as a place for the confinement of persons under sentence of imprisonment or persons committed for failure to pay a fine. [The term *correctional facility* shall not include any place operated by the department for the care and confinement of persons who have been found to be mentally defective or mentally ill by a court and who are confined in such a place pursuant to an order of a court based upon such a finding.]
- (g) *Institution* means a correctional facility and any other place operated by the department as a place for the confinement of persons.
- (h) *Reception center* means a correctional facility for reception, classification and program-planning for purposes of confinement, treatment and transfer.
- (i) *Detention center* means a correctional facility for the temporary detention of persons taken into custody upon violation of parole or upon violation of a condition of release, or of persons being transferred from other correctional facilities, or of persons who are assigned to other correctional facilities for confinement but whose presence is required in court or for some other purpose at a location that is distant from the institution of confinement.
- (j) *Diagnostic and treatment center* means a correctional facility operated for the purpose of providing intensive physical, mental and sociological diagnostic and treatment services including pre-parole diagnostic evaluation, where requested by the board of parole, and scientific study of the social and mental aspects of the causes of crime.
- (k) *General confinement facility* means a correctional facility for confinement and treatment of persons under institutional programs oriented to education, vocational training and industry.
- (l) *Correctional camp* means a correctional facility consisting of a camp maintained for the purpose of including conservation work in the program of inmates.
- (m) *Residential treatment facility* means a correctional facility consisting of a community-based residence in or near a community where employment, educational and training opportunities are readily available for persons who are on parole or conditional release and for persons who are or who will soon be eligible for release on parole who intend to reside in or near that community when released.

(n) *Work release facility* means a facility designated by the commissioner as an institution that may conduct a work release program.

(o) *Alcohol and substance abuse treatment correctional annex* means a medium security correctional facility consisting of one or more residential dormitories which provide intensive alcohol and substance abuse treatment services to inmates otherwise eligible for temporary release.

(p) *Alcohol and substance abuse treatment facility* means a correctional facility designed to house medium security inmates and operated for the purpose of providing intensive alcohol and substance abuse treatment services.

(q) *Hub* means a regional cluster of facilities that share administrative, support, and program services. The hub consists of a “core facility” and “satellite facilities”.

(r) *Shock incarceration facility* means a correctional facility designated by the commissioner as an institution which may conduct the shock incarceration program for selected inmates.

(s) *Supervising superintendent* means the chief administrative officer of a hub.

(t) *Drug treatment campus* means a facility operated by the department to provide a program of intensive drug treatment services to individuals sentenced to parole supervision sentences pursuant to section 410.91 of the Criminal Procedure Law or for certain parole violators.

(u) *Adolescent offender* is an incarcerated individual who has been sentenced and committed to the New York State Department of Corrections and Community Supervision pursuant to section 70.20 of the Penal Law.

(v) *Adolescent offender facility* is a facility used for the general confinement of adolescent offenders and other incarcerated individuals who are 16 or 17 years of age at the time of admission. Incarcerated individuals who have been sentenced and committed to an adolescent offender facility pursuant to section 70.20 of the Penal Law will be transferred to a non-adolescent offender facility after completing two years in an adolescent offender facility, unless they are within four months of completing the imprisonment portion of their sentence and the department determines, in its discretion, on a case-by-case basis that the incarcerated individual should be permitted to remain in such facility for the additional short period of time necessary to enable them to complete their sentence. In making such determination, the factors the department may consider include, but are not limited to, the age of the youth, the amount of time remaining on the youth’s sentence of imprisonment, the level of the youth’s participation in the program, the youth’s educational and vocational progress, the opportunities available to the youth through the department, and the length of any applicable post-release supervision sentence. An incarcerated individual shall not remain at an adolescent offender facility beyond his or her 23rd birthday.

(w) *Special populations* means any person: (a) who is housed in an adolescent offender facility, (b) who is pregnant, or in the first eight weeks of post-partum recovery period after giving birth, or caring for a child in a correctional institution pursuant to subdivision two or three of section six hundred eleven of the Correction Law; or (c) 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.

(x) *Segregated confinement* means the disciplinary confinement of an incarcerated individual in a special housing unit or in a separate keeplock unit. Special housing units and separate

keeplock units are housing units that consist of cells grouped so as to provide separation from the general population and may be used to house incarcerated individuals confined pursuant to the disciplinary procedures described in this Title.

(y) *Administrative segregation* means the involuntary removal of an incarcerated individual from general confinement and placement in a special housing unit, residential rehabilitation unit, or in the case of an adolescent offender, placement in an adolescent offender separation 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, the facility or would present an unreasonable risk of escape.

(z) *Keeplock confinement* means disciplinary confinement that restricts an incarcerated individual to a general population cell or dorm.

Revise Section 250.2 as follows:

Add new subsection (a) and (e), and renumber existing subsections accordingly.

250.2 General policies on discipline of [inmates]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 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 bias 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.

[(a)b] Disciplinary action is one of many essential elements in correctional treatment. When applied reasonably and with fairness it not only assists in protection of the health, safety and security of all persons within a correctional facility, but also is a positive factor in rehabilitation of [inmates]incarcerated individuals and the morale of the facility.

[(b)c] Just as the sentencing of [inmates]incarcerated individuals by courts, and the techniques used for correctional treatment, must be appropriately varied to fit a complex matrix of individual circumstances and individual conditions, the disciplinary techniques within a correctional facility must be appropriately varied to fit such factors as:

- (1) the particular circumstances involved;
- (2) the overall behavior pattern of the [inmate]incarcerated individual; and
- (3) the problems in and the present atmosphere of the facility. Consequently, persons vested with responsibility for disciplinary measures in facilities of the department should not establish rigid structures for disciplinary sanctions, but should consider each situation individually.

[(c)d] Disciplinary action shall be taken only in such measures and degree as is necessary to:

- (1) regulate an [inmate's]incarcerated individual's behavior within acceptable limits;
- (2) assist in achieving compliance by the entire [inmate]incarcerated individual population with required standards of behavior; and
- (3) preserve the confidence of all concerned (*i.e.*, the [inmate]incarcerated individual population and the staff) in the administration's sincere belief in and determination to maintain the required standards of behavior.

(e) An incarcerated individual shall only be placed in segregated confinement for behavior that violates institutional rules and regulations involving conduct that poses an unreasonable risk to the health, safety or security of staff, incarcerated individuals, or security of the facility by: (i) causing or attempting to cause injury or death to another person or making a credible threat of such injury or death; (ii) engaging in a sexual act, or compelling or attempting to compel another person to engage in a sexual act; (iii) coercing another, by force or threat of force, to violate any rule; (iv) leading, organizing, inciting, or attempting to cause a riot, insurrection, strike, or other serious disturbance that may result in physical harm to another person, significant property damage or significant interference with facility operations; (v) procuring, possessing, brandishing or using a weapon that poses a threat to the health, safety, or security of staff, incarcerated individuals, or security of the facility; (vi) procuring, possessing, using or distributing dangerous contraband that poses a threat to the health, safety, or security of staff, incarcerated individuals, or security of the facility; (vii) escaping, attempting to escape or facilitating an escape from a facility, or absconding or attempting to abscond outside of the facility; or (viii) engaging in conduct constituting a felony under the penal law.

([d]f) All control of [inmate]incarcerated individual activities, including disciplinary action, must be administered in a completely fair, impersonal and impartial manner and must be as consistent as possible (given the need for individualized decisions).

([e]g) Disciplinary measures should not be overly severe. A sound disciplinary program relies upon certainty and promptness of action rather than upon severity.

([f]h) Disciplinary action must never be arbitrary or capricious, or administered for the purpose of retaliation or revenge.

([g]i) Corporal punishment is absolutely forbidden for any purpose and under all circumstances.

([h]j) Mechanical means of physical restraint must never be used for disciplinary purposes. Mechanical means of physical restraint may be used only when necessary while transporting [inmates]incarcerated individuals within or outside of the facility, or on orders of the facility superintendent, and/or a physician when either deems it necessary to prevent injury to the [inmate]incarcerated individual or to others.

Revise Section 254.1 as follows:

254.1 Hearing officer.

The person appointed to conduct the superintendent's hearing shall be either the superintendent, a deputy superintendent, captain or commissioner's hearing officer employed by the department's central office, but the superintendent may, in his or her discretion, designate some other employee to conduct the proceeding. The following persons shall not be appointed to conduct the proceeding: a person who actually witnessed the incident; a person who was directly involved in the incident; the review officer who reviewed the misbehavior report, or a person who has investigated the incident. Prior to presiding over a superintendent's hearing, the hearing officer shall receive training on relevant topics, including implicit bias and procedural due process rights.

Revise Chapter V, Subchapter A, add new Part 255 as follows:

PART 255 MISCELLANEOUS PROVISIONS

Add new Section 255.01 Time-Cuts as follows:

255.01 Time-Cuts.

Incarcerated individuals serving a disciplinary sanction resulting in placement within segregated confinement or keeplock confinement shall be eligible for a reduction in sanction duration so long as the infraction does not involve the following disciplinary infractions: escape, possession of escape items, assault, forcible touching, weapons, fighting, rioting, possession of explosives, arson, an unhygienic act, commission of a sex offense or violent conduct. For purposes of this section, the term unhygienic act shall mean causing or attempting to cause another person to come into contact with saliva, blood, seminal fluid, urine, feces, or the contents of a toilet bowl, by throwing, tossing, or expelling such fluid or material:

(a) Incarcerated individuals who receive segregated confinement sanctions less than ninety days, which are served in segregated confinement or a residential rehabilitation unit, in the absence of a subsequently issued tier II or III misbehavior report, earn a reduction of seven days from the original sanction after serving thirty days of the sanction and an additional seven-day reduction after serving sixty days; and

(b) Incarcerated individuals who receive segregated confinement sanctions of ninety days or more, which are served in segregated confinement or a residential rehabilitation unit, in the absence of a subsequently substantiated tier II or III misbehavior report, will be presumptively awarded a reduction of twenty-five percent of the original sanction after the individual has served one-half of their sanction. Nothing in this section shall restrict the superintendent of the facility at which the incarcerated individual resides from exceeding the reduction, up to and including release from segregated confinement.

(c) Incarcerated individuals who receive keeplock confinement sanctions, in the absence of a subsequently substantiated tier II or III misbehavior report, will be presumptively awarded a reduction of twenty-five percent of the original sanction after the individual has served one-half of their sanction. Nothing in this section shall restrict the superintendent of the facility at which the incarcerated individual resides from exceeding the reduction, up to and including release from keeplock confinement. If it is necessary for a keeplock confinement sanction to be served in segregated confinement or a residential rehabilitation unit, service of the sanction will be credited at the rate of three days for every two days served.

Add new Section 255.02 Release from Units and Suspension of Sanctions as follows:

255.02 Release from Units and Suspension of Sanctions.

Incarcerated individuals placed in a residential rehabilitation unit, a step-down unit, or an adolescent offender separation unit shall be released to general confinement no later than the expiration of the sanction imposed or upon successful completion of a residential rehabilitation unit, step-down unit, or adolescent offender separation unit program, whichever is earlier. The remainder of the incarcerated individual's sanction, if any, will be suspended upon the incarcerated individual's release from the residential rehabilitation unit, step-down unit or adolescent offender separation unit program. If the incarcerated individual does not engage in any sanctionable conduct during the duration of the suspended sanction, that disciplinary sanction will expire on the earlier of the sanction end-date or six months from the date of release to general confinement. Service of suspended penalties may be imposed as a sanction, based on an individualized assessment, only for serious misbehavior or for committing the same or similar violation as that leading to the suspended sanction.

Add new Section 255.03 Progressive Inmate Movement System as follows:

255.03 Progressive Inmate Movement System.

The Progressive Inmate Movement System (PIMS) is a uniform behavioral incentive program for all incarcerated individuals assigned to special housing units, residential rehabilitation units and adolescent offender separation units. PIMS provides these incarcerated individuals with the opportunity to earn greater benefits and privileges based upon their positive adjustment and behavior.

Add new Section 255.04 Additional Misbehavior as follows:

255.04 Additional Misbehavior.

If an individual housed in a special housing unit, residential rehabilitation unit, step-down unit or adolescent offender separation unit engages in further misbehavior, staff assigned to the unit shall use de-escalation, intervention, informational reports and/or withdrawal of incentives in the Progressive Inmate Movement System as the preferred methods of responding to misbehavior unless the department determines that non-disciplinary interventions have failed or shall be unsuccessful. Formal misbehavior reports shall only be used where the individual is accused of a serious offense, the alleged behavior demonstrates a threat to safety, or the individual has engaged in repeated disruptive behavior.

Add new Section 255.05 Training as follows:

255.05 Training.

All staff assigned to special housing units, residential rehabilitation units, step-down units or adolescent offender separation units shall receive specialized training in dealing with incarcerated individuals assigned to those units including interpersonal communications skills, de-escalation techniques, implicit bias, non-punitive therapeutic environment, trauma-informed care, and dispute resolution.

Add new Section 255.06 Reporting as follows:

255.06 Reporting.

The department shall conspicuously publish monthly reports on its website of the total number of incarcerated individuals who are in segregated confinement, the total number of incarcerated individuals who are in a residential rehabilitation unit and the total number of incarcerated individuals in a step-down unit, and the total number of incarcerated individuals in an adolescent offender separation unit on the first day of each month. The department shall publish an annual cumulative report of the total number of incarcerated individuals who were in segregated confinement, the total number of incarcerated individuals who were in a residential rehabilitation unit and the total number of incarcerated individuals who were in a step-down unit for the preceding year. The annual report shall include the average length of stay in each of the units.

Add new Section 255.07 Designation of Units as follows:

255.07 Designation of Units.

Whenever the department seeks to establish or designate a unit or housing location for the placement of an incarcerated individual following a disciplinary hearing or an administrative segregation proceeding, such unit shall either be a special housing unit, a residential mental health treatment unit, a residential rehabilitation unit, a step-down unit, an adolescent offender separation unit, a keeplock unit or an I-ASAT unit as defined in this Title. The duration of the placement of the incarcerated individual into one of these units, and the conditions within each unit and the requirements for out-of-cell programming, treatment, services and exercise, shall be governed by the applicable provisions of this Title.

Revise Chapter V, Subchapter A, add new Part 256 as follows:

PART 256 ALTERNATIVE DISCIPLINARY RESOLUTION

Add new Section 256.1 Alternative Disciplinary Resolution as follows:

The department may institute an Alternative Disciplinary Resolution (ADR) pilot program for incarcerated individuals who are awaiting a Tier II disciplinary hearing (Part 253) or a Tier III superintendent's hearing (Part 254) for non-serious offenses. Pursuant to the ADR program, an incarcerated individual may have an opportunity to waive his or her right to a hearing and the appeal process in exchange for pleading guilty to one or more charges and/or penalties using the department's disciplinary sanction guidelines as referenced in section 270.2. The potential offer shall be discussed with the incarcerated individual by a designated member of the facility executive team. If an agreement is reached, it shall become final and binding and documented in a written instrument. An incarcerated individual's participation in the program shall be voluntary and he or she can reject an offer and proceed to a hearing. The ADR offer and the incarcerated individual's statements or admissions made in connection with the ADR process shall not be admissible at the hearing and no staff member involved in the ADR process shall be a participant in the hearing.

Revise Section 260.4 as follows:

(a) An [inmate]incarcerated individual shall not automatically forfeit or automatically be disallowed any good behavior allowance by reason of the fact that he [has been confined to his cell or room or in a special housing unit for a period of time]or she has been confined after being found guilty at a superintendent's hearing for committing a Tier III offense. If such an individual receives a disciplinary sanction which includes a recommended loss of good time and is placed in a special housing unit, residential rehabilitation unit, step-down unit, or adolescent offender separation unit and successfully completes his or her rehabilitative programming, there shall be a presumption that any recommended loss of good time shall be restored subject to committee review and in accordance with the other provisions and requirements set forth in this Subchapter.

(b) A disposition involving loss of a specified period of good behavior allowance made in a superintendent's hearing under Part 254 of this Title shall be deemed to be tentative until such time as it actually affects consideration for parole or for conditional or other release, and shall then either be confirmed or be modified by the commissioner or his designee.

Revise Section 270.2(B)(1)(v) to read as follows:

270.2(B)(1)(v)

100.14 An inmate shall not practice or instruct others in martial arts (aikido, judo, *I, II, III*)

karate, jujitsu, kung fu, t'ai chi, ch'uan, etc.)

Revise Section 270.2(B)(4)(ii) to read as follows:

270.2(B)(4)(ii)

103.20 An inmate shall not request or solicit goods or services from any business or any person other than an immediate family member without the consent and approval of the facility superintendent or designee.

I, II[, III]

Revise Section 270.2(B)(5)(iv) to read as follows:

270.2(B)(5)(iv)

104.13 An inmate shall not engage in conduct which disturbs the order of any part of the facility. This includes, but is not limited to, loud talking in a mess hall, program area or corridor, talking after the designated facility quiet time, playing a radio, television or tape player without a headphone or through a headphone in a loud or improper manner, or playing a musical instrument in a loud or improper manner.

I, II[, III]of

Revise Section 270.2(B)(6)(ii) to read as follows:

270.2(B)(6)(ii)

105.11 An inmate shall not conduct a religious service or make a speech or address without authorization by the superintendent or designee.

I, II[, III]

Revise Section 270.2(B)(7)(ii) to read as follows:

270.2(B)(7)(ii)

106.11 An inmate shall promptly obey an order by Department personnel to provide a DNA sample.

II[, III]

Revise Section 270.2(B)(8)(iii) to read as follows:

270.2(B)(8)(iii)

107.20 An inmate shall not lie or provide an incomplete, misleading and/or false statement or information .

I, II[, III]

Revise Section 270.2(B)(8)(iv) to read as follows:

270.2(B)(8)(iv)

107.21 An inmate shall not file or record any document or instrument of any description which purports to create a lien or record a security interest of any kind against the person or property of any officer or employee of the Department, the State of New York or the United States absent prior written authorization from the superintendent or a court order authorizing such filing.

II[, III]

Revise Section 270.2(B)(9)(ii) to read as follows:

270.2(B)(9)(ii)

108.11 An inmate shall not exceed the authorized limits of travel on any work release or furlough-type program.

II[, III]

Revise Section 270.2(B)(9)(iii) to read as follows:

270.2(B)(9)(iii)
108.12 An inmate shall not exceed any time limit imposed on any work release or furlough-type program. II[, III]

Revise Section 270.2(B)(9)(v) to read as follows:

270.2(B)(9)(v)
108.14 An inmate shall comply with temporary release programming rules and regulations. I, II[, III]

Revise Section 270.2(B)(10)(ii) to read as follows:

270.2(B)(10)(ii)
109.11 An inmate shall not leave an assigned area without authorization. I, II[, III]

Revise Section 270.2(B)(10)(iii) to read as follows:

270.2(B)(10)(iii)
109.12 An inmate shall follow all facility regulations and staff directions relating to movement within the facility. This includes, but is not limited to, seating, lock-in, lock-out, call slip procedures, and all activities of a similar nature. I, II[, III]

Revise Section 270.2(B)(10)(iv) to read as follows:

270.2(B)(10)(iv)
109.13 An inmate who is on an outside work assignment, such as a community service project or outside ground detail, shall not leave his or her assigned area or communicate with members of the public without authorization. I, II[, III]

Revise Section 270.2(B)(11)(iii) to read as follows:

270.2(B)(11)(iii)
110.21 An inmate shall not be in possession of any type of an identification card or identification paper other than those authorized. I, II[, III]

Revise Section 270.2(B)(14)(v) to read as follows:

270.2(B)(14)(v)
113.15 An inmate shall not purchase, sell, loan, give or exchange a personally owned article without authorization. I, II[, III]

Revise Section 270.2(B)(14)(xi) to read as follows:

270.2(B)(14)(xi)
113.21 An inmate shall not possess literature or any other material which has been disapproved by the Media Review Committee. I, II[, III]

Revise Section 270.2(B)(14)(xii) to read as follows:

270.2(B)(14)(xii)
113.22 An inmate shall not use or possess an article in an area where its use or possession is prohibited. I, II[, III]

Revise Section 270.2(B)(14)(xvii) to read as follows:

270.2(B)(14)(xvii)

113.27 An inmate shall not solicit, possess or exchange any disciplinary or grievance document pertaining to another inmate, or any document which contains crime and sentence information pertaining to another inmate who is not a codefendant, without authorization from the superintendent.

II[, III]

Revise Section 270.2(B)(14)(xix) to read as follows:

270.2(B)(14)(xix)

113.29 An inmate shall not possess poppy seeds or any product containing poppy seeds.

I, II[, III]

Revise Section 270.2(B)(14)(xx) to read as follows:

270.2(B)(14)(xx)

113.30 An inmate shall not possess any Uniform Commercial Code (UCC) article 9 form, including but not limited to any financing statement (UCC1, UCC1Ad, UCC1AP, UCC3, UCC3Ad, UCC3AP, UCC1CAAd), correction statement (UCC5) or information request (UCC11), whether printed, copied, typed or hand written, or any document concerning a scheme involving an inmate's "strawmen," "House Joint Resolution 192 of 1933," the "Redemptive Process," "Acceptance for Value" presentments or document indicating copyright or attempted copyright of an inmate's name absent prior written authorization from the superintendent.

II[, III]

Revise Section 270.2(B)(19)(ii) to read as follows:

270.2(B)(19)(ii)

118.20 An inmate shall not tattoo or otherwise permanently mark his or her or another's body, or allow his or her body to be tattooed or permanently marked by another. An inmate shall not be in possession of an instrument or device used for the purpose of making tattoos.

I, II[, III]

Revise Section 270.2(B)(19)(iii) to read as follows:

270.2(B)(19)(iii)

118.21 An inmate shall not create a fire, health or safety hazard in any area of the facility by improperly storing or using flammable materials or other property, in his or her living quarters or any other area of the facility.

I, II[, III]

Revise Section 270.2(B)(19)(ix) to read as follows:

270.2(B)(19)(ix)

118.31 An inmate shall not alter, rewire, tamper or attempt to repair electrical outlets or any electrical device.

I, II[, III]

Revise Section 270.2(B)(22)(ii) to read as follows:

270.2(B)(22)(ii)

121.11 An inmate shall not engage in a telephone call to a telephone number which has been connected through call-forwarding or a call-forwarding service. Telephone calls and telephone conversations shall be restricted to the telephone number dialed or otherwise placed by or for the inmate. Telephone call-forwarding, the use of a call forwarding service or other third-party phone call function, and the use of a credit card to place a call are prohibited.

I, II[, III]

Revise Section 270.2(B)(22)(iii) to read as follows:

270.2(B)(22)(iii)

121.12 An inmate shall comply with and follow the guidelines and instructions given by the staff regarding facility telephone programs pursuant to the requirements of departmental Directive No. 4423 (7 NYCRR Part 723). I, II[, III]

Revise Section 270.2(B)(22)(v) to read as follows:

270.2(B)(22)(v)

121.14 An inmate shall not exchange a personal identification number (PIN), or use the PIN of another inmate. I, II[, III]

Revise Section 270.2(B)(23)(i) to read as follows:

270.2(B)(23)(i)

122.10 An inmate may only smoke outdoors in designated areas. I, II[, III]

Rescind Section 270.2(B)24. Self-Mutilation

Revise Section 270.2(B)(26)(vii)

270.2(B)(26)(vii)

180.17 An inmate may not provide legal assistance to another inmate without prior approval of the superintendent or designee. An inmate shall not receive any form of compensation for providing legal assistance. I, II[, III]

Add to Section 270.2 at the end to read as follows:

In order to promote progressive discipline, the department shall establish disciplinary sanction guidelines which may include sanction ranges for certain charges based upon the level of seriousness of the offense. Disaggregation will not result in additional numbered charges under the department's disciplinary rules, and previous offenses relating to the same numbered charge, regardless of disaggregation, will be considered "prior charges" for the purpose of determining whether a particular violation is a "first", "second", or "third" offense.

Revise Section 270.3 to read as follows:

(a) The following tiers of disciplinary hearings serve the purpose of determining allegations of rule violations contained in misbehavior reports:

- (1) Tier I - violation hearing; provided for in Part 252 of this Title;
- (2) Tier II - disciplinary hearing; provided for in Part 253 of this Title; and
- (3) Tier III - superintendent's hearing; provided for in Part 254 of this Title.

The facility review officer shall review the misbehavior report to consider the seriousness of the alleged violations and refer the report to the lowest appropriate disciplinary body (Tier Level) for action.

(b) [Inmates]incarcerated individuals involved in attempts or conspiracies to violate institutional rules of conduct, or as accessories to rule violations will be punishable to the same degree as violators of such rules. [Inmates]Incarcerated individuals may be cited for attempts, conspiracies or as accessories whether or not the text of an actual rule contains such terms. These terms have the following meanings:

(1) *Attempt*. Any act which constitutes a step in a course of conduct which would result in an act of misbehavior.

(2) *Conspiracy*. Agreement with one or more persons to engage in an act of misbehavior.

(3) *Accessory*. Providing assistance in any manner prior to, during or after a person commits an act of misbehavior.

Revise Section 301.1 as follows:

Incarcerated individuals [Inmates] may be admitted to special housing units for any of the several situations described in this Part. Incarcerated individuals in special populations as defined in 7 NYCRR §1.5 shall not be placed in segregated confinement for any length of time.

No incarcerated individual may be placed in segregated confinement as a result of a disciplinary hearing, administrative segregation, protective custody, keeplock, or other admissions in accordance with Section 301.7 for longer than necessary and: (i) effective on and after October 1, 2021, for no more than ninety (90) days; (ii) effective on and after April 1, 2022, for no more than sixty (60) days; and (iii) effective on and after October 1, 2022, for no more than thirty (30) days. Upon reaching this limit, the incarcerated individual must be released from segregated confinement or diverted to a residential rehabilitation unit or a step-down unit. Such admission to a residential rehabilitation unit or step-down unit shall occur as expeditiously as possible and in no case longer than seventy-two hours from the time transfer should occur.

Revise § 301.2 as follows:

(a) An incarcerated individual shall only be placed in segregated confinement for behavior that violates institutional rules and regulations involving conduct that poses an unreasonable risk to the health, safety or security of staff, incarcerated individuals, or security of the facility by: (i) causing or attempting to cause injury or death to another person or making a credible threat of such injury or death; (ii) engaging in a sexual act, or compelling or attempting to compel another person to engage in a sexual act; (iii) coercing another, by force or threat of force, to violate any rule; (iv) leading, organizing, inciting, or attempting to cause a riot, insurrection, strike, or other serious disturbance that may result in physical harm to another person, significant property damage or significant interference with facility operations; (v) procuring, possessing, brandishing, or using a weapon that poses a threat to the health, safety, or security of staff, incarcerated individuals, or security of the facility; (vi) procuring, possessing, using or distributing dangerous contraband that poses a threat to the health, safety, or security of staff, incarcerated individuals, or security of the facility; (vii) escaping, attempting to escape or facilitating an escape from a facility, or absconding or attempting to abscond outside of the facility; or (viii) engaging in conduct constituting a felony under the penal law.

[Disposition of superintendent's (Tier III) hearing.] Such disposition shall be for a designated period

of time as specified by the hearing officer (7 NYCRR 254.7) and in accordance with the disciplinary sanction guidelines as referenced in 7 NYCRR §270.2.

(b) [Upon transfer from another facility's SHU while serving] An incarcerated individual may be placed in segregated confinement in connection with a disciplinary disposition rendered at [the former] another facility.

Revise § 301.4 as follows:

(a) This section applies to [inmates assigned involuntarily to SHU after a hearing conducted pursuant to Part 254 of this Title, that results in a hearing disposition which sets forth specific reasons why administrative segregation is warranted. The hearing shall be conducted within 14 days] the involuntary removal of an [inmate's admission to administrative segregation, after issuance] incarcerated individual from general confinement and placement in a special housing unit, residential rehabilitation unit, or in the case of an [administrative segregation recommendation made by the employee who ascertained the facts or circumstances.] [(b)] [Administrative segregation admission results from] adolescent offender, placement in an adolescent offender separation unit based upon a determination [by the facility] that the [inmates'] individual's continued presence in general population would pose [a threat]an unreasonable and demonstrable risk to the safety and security of [the]staff, incarcerated individuals, 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.

[(c) When housed in SHU, administrative segregation inmates will be subject to the same rules and regulations as those disciplinary inmates who have completed 30 days of satisfactory adjustment.]

(b) Within seven days after the initial determination and placement within administrative segregation housing, a hearing shall be conducted 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 his or her designee who shall issue a final written determination to the incarcerated individual within seven days of receipt of the initial determination.

[(d)](c) An incarcerated individual [An inmate] in administrative segregation status shall have such status reviewed every [60]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 [inmate's] incarcerated individual's institutional record and prepare and submit to the [superintendent] deputy commissioner for correctional facilities or his or her designee a report setting forth the following:

- (i) reasons why the [inmate] individual was initially determined to be appropriate for administrative segregation;
- (ii) information on the [inmate's] individual's subsequent behavior and attitude; and
- (iii) any other factors that they believe may favor retaining the [inmate] individual in or releasing the [inmate] individual from administrative segregation.

(2) Upon receipt of the report and any written statement received from the [inmate] incarcerated individual, the [superintendent shall, except where the superintendent] deputy commissioner for correctional facilities or his or her designee [refers the matter to central office pursuant to paragraph (3) of this subdivision, make a determination to retain the inmate in or release the inmate from administrative segregation.

(3) Where the deputy commissioner for correctional facilities has notified the superintendent that an inmate in administrative segregation is to receive central office review, the superintendent or designee shall as part of every 60-day review thereafter, refer the committee report, and any written statement received from the inmate,] 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 [inspector general's staff] 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 [inmate] incarcerated individual, the deputy commissioner for correctional facilities or his or her designee shall [make the] document in writing whether such determination [to retain the inmate in or release the inmate] shall continue or such individual shall be released from administrative segregation, and shall state the specific facts and reasons underlying the continuance or release.

~~[(4)]~~ (3) As part of every [60-day] review, whenever a determination is made to continue the [inmate] incarcerated individual in administrative segregation, the [superintendent or, as applicable, the] deputy commissioner for correctional facilities or his or her designee shall provide a notice to the [inmate] 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 [60-day] review, you may write to the [superintendent] 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."

~~[(e)]~~ (d) At any time when deemed appropriate, an [inmate] 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 [inmate] incarcerated individual may be programmed into general population. Nothing in this subdivision shall be construed to terminate the administrative segregation status of an [inmate who is subject to central office review in accordance with paragraph (d)(3) of this section] incarcerated individual upon the individual's [inmate's] transfer to another facility, absent written authorization from the deputy commissioner for correctional facilities or his or her 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 7 NYCRR §301.1.

(g) Incarcerated individuals in special populations as defined in 7 NYCRR §1.5 shall not be placed in administrative segregation for any length of time.

Revise § 301.6 as follows:

(a) An [inmate]incarcerated individual in a medium or minimum security correctional facility or Upstate Correctional Facility may be housed in a special housing unit for reasons such as, but not limited to, the following:

- (1) awaiting disposition of a disciplinary (Tier II) or superintendent's (Tier III) hearing;
- (2) for confinement pursuant to a disposition of a disciplinary (Tier II) or superintendent's (Tier III) hearing; or
- (3) awaiting transfer to another facility.

(b) An [inmate]incarcerated individual in any correctional facility may be admitted to a special housing unit for confinement pursuant to a disposition of a disciplinary (Tier II) or a superintendent's (Tier III) hearing, where the disposition included a determination that the [inmate]incarcerated individual violated rule 106.11 (section 270.2(B)(7)(ii) of this Title).

(c) [Inmates]incarcerated individuals assigned to keeplock status in a special housing unit pursuant to this section shall be subject to the property limitations set forth in section 302.2(a)-(g) of this Title.

(d) [Inmates]incarcerated individuals assigned to keeplock status in a special housing unit pursuant to this section shall be subject to the visiting conditions set forth in section 302.2(i)(1) of this Title, unless restricted by disciplinary or administrative action.

(e) [Inmates]incarcerated individuals assigned to keeplock status in a special housing unit pursuant to this section shall be subject to the package limitations set forth in section 302.2(i)(3).

(f) [Inmates]incarcerated individuals assigned to keeplock status in a special housing unit pursuant to this section shall have their commissary privileges suspended pending a determination in a disciplinary proceeding.

(g) [Inmates]incarcerated individuals assigned to keeplock status in a special housing unit pursuant to this section shall be subject to the limitation on telephone calls contained in section 302.2(i)(2) of this Title.

(h) [Inmates]incarcerated individuals assigned to keeplock status in a special housing unit pursuant to this section shall be afforded correspondence privileges as set forth in section 302.2(h) of this Title.

(i) Incarcerated individuals assigned to keeplock status in a special housing unit pursuant to this section 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 7 NYCRR §301.1.

(j) Incarcerated individuals assigned to keeplock status in a special housing unit shall be credited at the rate of three days for every two days served.

(k) "Keeplock confinement" refers to disciplinary confinement that restricts an incarcerated individual to a general population cell or dorm. An incarcerated individual placed in keeplock confinement shall be offered the same out-of-cell time as provided for in the residential rehabilitation units. Normal property and privileges shall be maintained unless the specific item or privilege would cause a threat to the safety or security of the incarcerated individual, other incarcerated individuals, staff or the facility. The provisions governing the residential rehabilitation units shall apply to any incarcerated individual serving keeplock confinement in a residential rehabilitation unit. Incarcerated individuals

placed in keeplock confinement shall be released to general confinement no later than the expiration of the sanction imposed.

Revise Section 304.1 as follows:

(a) The provision of an essential service to an incarcerated individual shall not be denied, restricted or limited as a means of discipline or punishment. The provision of an essential service shall include, but not be limited to correspondence, hygiene items, clothing, bedding, outdoor exercise, food services, health services, religious items and services, printed materials and publications, and legal reference materials.

(b) The following [inmate] incarcerated individual support services are mandated and must be furnished at any time following admission unless deprived by issuance of a deprivation order in accord with section 305.2 of this Title.

Revise Section 304.2 as follows:

[Inmates]Incarcerated individuals confined in [the SHU]a special housing unit, residential rehabilitation unit, step-down unit or adolescent offender separation unit will be provided meals of the same type as the meals available to [inmates]incarcerated individuals in general population and in sufficient quantity to be nutritionally adequate, except as provided in this section.

(a) All food items will be delivered to the [inmates]incarcerated individuals upon receipt from the food service area, and in a manner that will ensure receipt of the food in an appropriate condition.

(b) [inmates]Incarcerated individuals may not be placed on a restricted diet [in accordance with the provisions of Chapter V of this Title,]as a form of punishment. [for the following reasons:

- (1) throwing food while assigned to the SHU;
- (2) committing unhygienic acts in the SHU, such as spitting at staff or other [inmates]Incarcerated individuals or throwing feces or urine;
- (3) refusing to obey a direct order at the time of meal distribution or refusing to obey a direct order to return a food container or utensil at the conclusion of a meal, while assigned to SHU; or
- (4) as a long-term SHU inmate who is disruptive and who has lost all other available privileges and good time.]

(c) Incarcerated individuals may receive a special management meal consisting of a nutritious, calorie-sufficient and palatable alternative meal composed of regular food items that can be safely delivered to and eaten by them, for the following reasons:

- (1) throwing food while assigned to the SHU;
- (2) committing unhygienic acts in the SHU, at the time of meal distribution, such as spitting at staff or other incarcerated individuals or throwing feces or urine; or
- (3) refusing to obey a direct order at the time of meal distribution or refusing to obey a direct order to return a food container or utensil at the conclusion of a meal, while assigned to SHU[.].

([c]d) The superintendent or his or her designee may issue a written order placing an [inmate]incarcerated individual reported to have engaged in conduct described in subdivision ([b]c) of this section on a [restricted diet for no more than seven days pending the outcome of the inmate's superintendent's hearing]special management meal. The order shall briefly state the reason(s) for the imposition of the [restricted diet]special management meal and contain the following notice to the [inmate]incarcerated individual: "You may write to the deputy superintendent of security or his/her designee to make a statement as to the need for the continued [pre-hearing] imposition of the [restricted diet]special management meal." One copy of the order shall be given to the [inmate]incarcerated individual and another copy forwarded to the commissioner within 24 hours of issuance.

[(d) Whenever a restricted diet is imposed as a part of a superintendent's hearing disposition, a written report shall be made to the commissioner within three days of the commencement of the diet. This report shall contain the name and DIN of the inmate; date of the hearing; duration of the diet, including beginning and ending dates; and a brief description of the reason(s).

(e) The restricted diet must consist of a sufficient quantity of wholesome and nutritious food.]

[(f)e] Health services and food services shall be notified in advance of the imposition of a [restricted diet] special management meal. A physician, nurse or physician's assistant, designated by the facility health services director, must examine into the state of health of the [inmate] incarcerated individual within 24 hours of the commencement of the [restriction] special management meal and daily thereafter during the period of restriction.

[(g)f] The superintendent shall give full consideration to any recommendation that may be made by such physician, nurse or physician's assistant, shall forthwith report to the commissioner any recommendation made by such person that is not carried out, and shall, in any event, make a full report, in writing, to the commissioner at least once per week concerning the [inmate's] incarcerated individual's condition.

Revise § 305.2 as follows:

[(a) An order depriving an inmate of a specific item, privilege or service may be issued when it is determined that a threat to the safety or security of staff, inmates, or State property exists.

(b) A deprivation order must be authorized by the officer of the day (O.D.) or the]

(a) The provision of an essential service to an incarcerated individual shall not be denied, restricted, or limited unless the facility deputy superintendent for security [services], officer of the day (O.D.), or higher-ranking authority determines that providing such an essential service would cause a threat to the safety or security of the facility, or the safety, security, or health of the incarcerated individual, staff or other incarcerated individuals. Initial authorization may be given verbally, but must be confirmed in writing within 24 hours with a copy to the superintendent, and one copy to the [inmate] incarcerated individual. The writing shall state specific facts and reasons underlying the determination.

[(c)](b) Each deprivation order must be reviewed on a daily basis by the deputy superintendent for security or, in [his/her] his or her absence, the O.D. or higher-ranking authority. If the O.D. is not present at the facility (weekends or holidays), the watch commander will personally review the deprivation order and sign the form indicating approval or discontinuance. This review shall be documented by the reviewing officer, who shall initial and date the order, adding any comments that are appropriate.

(c) Any determination made pursuant to this Part shall be reviewed by the facility superintendent at intervals not to exceed seven days. If a deprivation order has been in effect for seven days, the superintendent and [inmate] incarcerated individual shall receive a written notice of renewal on the seventh day and, thereafter, every seventh day that the order remains in effect.

(d) The written order and any notice of renewal thereafter must briefly state the reason(s) for the deprivation and contain the following notice to the [inmate] incarcerated individual: "You may write to the deputy superintendent for security or his/her designee to make a statement on the need for continuing the deprivation order."

(e) A review conducted by the facility superintendent pursuant to this Part which may impact an incarcerated individual's health shall include consultation with qualified facility health staff who shall record, in writing, any determination that continuing the deprivation would not risk significantly compromising the health of the incarcerated individual. Following each such review, the facility

superintendent shall document, in writing, whether such determination shall continue or cease, and state the specific facts and reasons underlying the continuance or termination.

[(e)](f) Any deprivation order depriving an [inmate]in~~carcerated individual~~ of minimum standard items (e.g., bedding, clothing, etc.) for “mental health” or “psychiatric” reasons must be approved by an appropriate clinical professional or, in their absence, by the ranking facility health service professional.

[(f)](g) If there is an order depriving an [inmate]in~~carcerated individual~~ of in-cell water, the [inmate's]in~~carcerated individual's~~ cell water shall be turned on for at least 10 minutes, five times per day, as follows: approximately 30 minutes prior to the service of each meal, once at the beginning of tour I (nights), and once during tour III (evenings) in accordance with a schedule established by the superintendent. Staff shall notify the [inmate]in~~carcerated individual~~ prior to turning on the water and record the times that the water is turned on and off in the unit activity log.

Add New Part 315 as follows:

PART 315. RESIDENTIAL REHABILITATION UNITS

315.1 Purpose.

Residential rehabilitation units are housing units used for the treatment and rehabilitative programming of incarcerated individuals serving disciplinary sanctions which extend beyond the maximum duration of placement set forth in section 301.1 of this Title. Incarcerated individuals placed in a residential rehabilitation unit shall be afforded out-of-cell time in the most congregate setting available and shall be provided the least restrictive environment necessary to maintain the safety and security of the facility.

315.2 Admissions.

- (a) Incarcerated individuals admitted to a residential rehabilitation unit shall be offered the following:
- (1) at least five hours of out-of-cell programming, activities, or recreation five days per week, excluding holidays, and at least two hours of recreation on the remaining days, and
 - (2) out-of-cell programs and activities that promote personal development and group engagement, addressing underlying causes of problematic behavior resulting in placement in segregated confinement or a residential rehabilitation unit, and helping prepare for discharge from the unit to general confinement or the community, and
 - (3) the opportunity to earn additional privileges under the progressive inmate movement system.
 - (4) An incarcerated individual can be denied out-of-cell activities described in this section, if the commissioner or his designee determines that the incarcerated individual's participation in such activities presents an imminent risk of danger to the incarcerated individual or to others.
- (b) Upon admission to a residential rehabilitation unit, a program management team shall:
- (1) develop an individual rehabilitation plan in consultation with the incarcerated individual based upon his or her programming needs, identifying specific goals, program(s) to be offered, including discharge from the unit or a recommendation to transition to a step-down unit, and

- (2) conduct periodic reviews of the incarcerated individuals.
- (c) An incarcerated individual serving a disciplinary sanction in a residential rehabilitation unit will only be discharged to a special housing unit under the following specific, limited circumstances:
- (1) When it is determined by the program management team that an incarcerated individual has been chronically failing to comply with the program objectives, the program management team will first attempt to obtain program compliance. De-escalation, intervention and informational reports and the withdrawal of incentives shall be the preferred methods of responding to less serious negative behavior. All efforts to obtain compliance will be fully documented by the program management team. Absent compliance, a recommendation may be made for alternate program placement or discharge to a special housing unit. The recommendation by the program management team shall be forwarded to the superintendent for determination. The superintendent's determination will be forwarded to central office for review, and if necessary, transfer action. Misbehavior reports can only be issued in circumstances where the incarcerated individual is accused of serious offenses, the alleged behavior demonstrates a threat to safety and/or the incarcerated individual has engaged in repeated acts of disruptive misbehavior despite prior alternative interventions.
 - (2) When it is determined that an incarcerated individual poses an immediate or continuing unacceptable threat to the safety of staff or other incarcerated individuals or to the security of the facility, the deputy superintendent for security will consult with the program management team and make a recommendation. The recommendation by the deputy superintendent for security will be forwarded to the superintendent for determination. The superintendent's determination will in turn be forwarded to central office for review, and if necessary, transfer action.
- (d) Incarcerated individuals placed in a residential rehabilitation unit shall be released to general confinement no later than the expiration of the sanction imposed or upon successful completion of a residential rehabilitation unit program, whichever is earlier. The remainder of the incarcerated individual's sanction, if any, will be suspended upon the incarcerated individual's release from the residential rehabilitation unit program. If the incarcerated individual does not engage in any sanctionable conduct during the duration of the suspended sanction, that disciplinary sanction will expire on the earlier of the sanction end-date or six months from the date of release to general confinement. Service of suspended penalties may be imposed as a sanction, based on an individualized assessment, only for serious misbehavior or for committing the same or similar violation as that leading to the suspended sanction.
- (e) An incarcerated individual assigned to keeplock status in a residential rehabilitation unit pursuant to this section shall:
- (1) be subject to the property limitations set forth in section 302.2(a)-(g) of this Title;
 - (2) be subject to the visiting conditions set forth in section 302.2(i)(1) of this Title, unless restricted by disciplinary or administrative action;
 - (3) be subject to the package limitations set forth in section 302.2(i)(3);
 - (4) have their commissary privileges suspended pending a determination in a disciplinary proceeding;
 - (5) be subject to the limitation on telephone calls contained in section 302.2(i)(2) of this Title;
 - (6) be afforded correspondence privileges as set forth in section 302.2(h) of this Title; and
 - (7) be credited at the rate of three days for every two days served.

Add New Part 316 as follows:

PART 316. STEP-DOWN UNITS

316.1 Purpose

To provide incarcerated individuals with a productive alternative to segregated confinement by preparing them for the transition back to general confinement or the community.

316.2 Definition

A step-down unit means a housing unit used for the progressive programming of an incarcerated individual with a violent or behavioral history that has led to long-term periods of segregated confinement in order to prepare him or her for return to general population or the community. Incarcerated individuals placed in a step-down unit shall be afforded out-of-cell time in the most congregate setting available and shall be provided the least restrictive environment necessary to maintain the safety and security of the facility.

316.3 Admissions

- (a) Incarcerated individuals may be admitted to a step-down unit from either segregated confinement or a residential rehabilitation unit.
- (b) Incarcerated individuals admitted to a step-down unit shall be offered the following:
 - (1) at least five 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, and
 - (2) out-of-cell programs and activities that promote personal development and group engagement, addressing underlying causes of problematic behavior resulting in placement in segregated confinement or a residential rehabilitation unit, and helping prepare for discharge from the unit to general confinement or the community, and
 - (3) the opportunity to lessen restrictions and earn additional privileges under the progressive inmate movement system by meeting established benchmarks and individual goals.
 - (4) An incarcerated individual can be denied out-of-cell activities described in this section, if the commissioner or his designee determines that the incarcerated individual's participation in such activities presents an imminent risk of danger to the incarcerated individual or to others.
- (c) Upon admission to a step-down unit, a program management team shall:
 - (1) develop an individual rehabilitation plan in consultation with the incarcerated individual based upon his or her programming needs, identifying specific goals, program(s) to be offered, including discharge from the unit to general confinement or the community, and
 - (2) conduct periodic reviews of the incarcerated individuals.
- (d) An incarcerated individual serving a disciplinary sanction in a step-down unit will only be discharged to a special housing unit under the following specific, limited circumstances:
 - (1) When it is determined by the program management team that an incarcerated individual has been chronically failing to comply with the program objectives, the program management team will first attempt to obtain program compliance. De-escalation, intervention and informational reports and the withdrawal of incentives shall be the preferred methods of responding to less serious negative behavior. All efforts to obtain compliance will be fully documented by the program management

team. Absent compliance, a recommendation may be made for alternate program placement or discharge to a special housing unit. The recommendation by the program management team shall be forwarded to the superintendent for determination. The superintendent's determination will be forwarded to central office for review, and if necessary, transfer action. Misbehavior reports can only be issued in circumstances where the incarcerated individual is accused of serious offenses, the alleged behavior demonstrates a threat to safety and/or the incarcerated individual has engaged in repeated acts of disruptive misbehavior despite prior alternative interventions.

- (2) When it is determined that an incarcerated individual poses an immediate or continuing unacceptable threat to the safety of staff or other incarcerated individuals or to the security of the facility, the deputy superintendent for security will consult with the program management team and make a recommendation. The recommendation by the deputy superintendent for security will be forwarded to the superintendent for determination. The superintendent's determination will in turn be forwarded to central office for review, and if necessary, transfer action.
- (e) Incarcerated individuals placed in a step-down unit shall be released to general confinement no later than the expiration of the sanction imposed or upon successful completion of a step-down unit program, whichever is earlier. The remainder of the incarcerated individual's sanction, if any, will be suspended upon the incarcerated individual's release from the step-down unit program. If the incarcerated individual does not engage in any sanctionable conduct during the duration of the suspended sanction, that disciplinary sanction will expire on the earlier of the sanction end-date or six months from the date of release to general confinement. Service of suspended penalties may be imposed as a sanction, based on an individualized assessment, only for serious misbehavior or for committing the same or similar violation as that leading to the suspended sanction.

Add New Part 319 as follows:

PART 319. MENTAL ILLNESS

319.1 Effective Date

This provision shall take effect on the two year and one hundred eightieth day after it shall become a law.

319.2 Purpose

To help ensure that incarcerated individuals with serious mental illness who are placed in segregated confinement for disciplinary purposes receive timely assessments and a heightened level of mental health care and, absent exceptional circumstances, are placed in a residential mental health treatment unit.

319.3 Admissions and Placement

- (a) Except as set forth in clause (5) of subparagraph (b) of this subpart, the department, in consultation with mental health clinicians, shall divert or remove incarcerated individuals with serious mental illness, as defined in Correction Law section 137, from segregated confinement or confinement in a residential rehabilitation unit, step-down unit or adolescent offender separation unit, where such confinement could potentially be for a period in excess of 30-days, to a residential mental health treatment unit. Nothing in this paragraph shall be

deemed to prevent the disciplinary process from proceeding in accordance with department rules and regulations for disciplinary hearings.

(b) (1) Upon placement of an incarcerated individual into segregated confinement or a residential rehabilitation unit, step-down unit or adolescent offender separation unit at a level one or level two facility, a suicide prevention screening instrument shall be administered by staff from the department or the office of mental health who has been trained for that purpose. If such a screening instrument reveals that the incarcerated individual is at risk of suicide, a mental health clinician shall be consulted and appropriate safety precautions shall be taken. Additionally, within one business day of the placement of such an incarcerated individual into segregated confinement at a level one or level two facility, the incarcerated individual shall be assessed by a mental health clinician.

(2) Upon placement of an incarcerated individual into segregated confinement or a residential rehabilitation unit, step-down unit or adolescent offender separation unit at a level three or level four facility, a suicide prevention screening instrument shall be administered by staff from the department or the office of mental health who has been trained for that purpose. If such a screening instrument reveals that the incarcerated individual is at risk of suicide, a mental health clinician shall be consulted and appropriate safety precautions shall be taken. All incarcerated individuals placed in segregated confinement or a residential rehabilitation unit, step-down unit or adolescent offender separation unit at a level three or level four facility shall be assessed by a mental health clinician, within seven days of such placement into segregated confinement.

(3) At the initial assessment, if the mental health clinician finds that an incarcerated individual suffers from a serious mental illness, that person shall be diverted or removed from segregated confinement or a residential rehabilitation unit, step-down unit or adolescent offender unit and a recommendation shall be made whether exceptional circumstances, as described in clause (5) of this subparagraph, exist. In a facility with a joint case management committee, such recommendation shall be made by such committee. In a facility without a joint case management committee, the recommendation shall be made jointly by a committee consisting of the facility's highest-ranking mental health clinician, the deputy superintendent for security, and the deputy superintendent for program services, or their equivalents. Any such recommendation shall be reviewed by the joint central office review committee. The administrative process described in this clause shall be completed within seven days of the initial assessment, and if the result of such process is that the incarcerated individual should be removed from segregated confinement or a residential rehabilitation unit, step-down unit or adolescent offender separation unit, such removal shall occur as soon as practicable, but in no event more than seventy-two hours from the completion of the administrative process. Except in exceptional circumstances, nothing in this section shall permit the placement of an incarcerated individual with serious mental illness into segregated confinement at any time, even for the purposes of assessment. For purposes of this clause, exceptional circumstances shall mean the occurrence of an act of serious misconduct by the incarcerated individual with serious mental illness, and, in the judgment of the superintendent, or, if unavailable, the highest ranking security individual at the facility when the serious misconduct occurred, that there exists an immediate threat to the health and well-being of the incarcerated individual, one or more other incarcerated individuals or staff, such that the incarcerated individual cannot be safely housed in any other immediately available housing unit at the facility. Upon a finding of exceptional circumstances, the incarcerated individual may be housed in segregated confinement for a period not to exceed 48 hours. As soon as possible during such temporary placement of the incarcerated individual in segregated confinement, however, an assessment shall be made by a staff member from the office of mental health, as well as by a facility health services practitioner, to ascertain the current

condition of the incarcerated individual in segregated confinement. If either individual determines that such temporary placement in segregated confinement poses a significant risk of harm to the incarcerated individual, then the superintendent, or highest-ranking security official, at the facility, shall arrange for the immediate removal of such individual and transfer to a different facility where the individual can be safely housed in a setting that is not segregated confinement.

(4) If an incarcerated individual with a serious mental illness is not diverted or removed to a residential mental health treatment unit, such incarcerated individual shall be diverted to a residential rehabilitation unit, step-down unit or adolescent offender separation unit and reassessed by a mental health clinician within 14-days of the initial assessment and at least once every 14-days thereafter. After each such additional assessment, a recommendation as to whether such incarcerated individual should be removed from a residential rehabilitation unit, step-down unit or adolescent offender separation unit shall be made and reviewed according to the process set forth in clause (3) of this subpart.

(5) A recommendation or determination whether to remove an incarcerated individual from a residential rehabilitation unit, step-down unit or adolescent offender separation unit shall take into account the assessing mental health clinicians' opinions as to the incarcerated individual's mental condition and treatment needs, and shall also take into account any safety and security concerns that would be posed by the incarcerated individual's removal, even if additional restrictions were placed on the incarcerated individual's access to treatment, property, services or privileges in a residential mental health treatment unit. A recommendation or determination shall direct the incarcerated individual's removal from a residential rehabilitation unit, step-down unit or adolescent offender separation unit except in the following exceptional circumstances: (1) when the reviewer finds that removal would pose a substantial risk to the safety of the incarcerated individual or other persons, or a substantial threat to the security of the facility, even if additional restrictions were placed on the incarcerated individual's access to treatment, property, services or privileges in a residential mental health treatment unit; or (2) when the assessing mental health clinician determines that such placement is in the incarcerated individual's best interests based on his or her mental condition and that removing such incarcerated individual to a residential mental health treatment unit would be detrimental to his or her mental condition. Any determination not to remove an incarcerated individual with serious mental illness from a residential rehabilitation unit, step-down unit or adolescent offender separation unit shall be documented in writing and include the reasons for the determination.

(c) Incarcerated individuals with serious mental illness who are not diverted or removed from a residential rehabilitation unit, step-down unit or adolescent offender separation unit shall be offered a heightened level of mental health care, involving a minimum of three hours daily of out-of-cell therapeutic treatment and programming. This heightened level of care shall not be offered only in the following circumstances:

(1) The heightened level of care shall not apply when an incarcerated individual with serious mental illness does not, in the reasonable judgment of a mental health clinician, require the heightened level of care. Such determination shall be documented with a written statement of the basis of such determination and shall be reviewed by the Central New York Psychiatric Center clinical director or his or her designee. Such a determination is subject to change should the incarcerated individual's clinical status change. Such determination shall be reviewed and documented by a mental health clinician every 30-days, and in consultation with the Central New York Psychiatric Center clinical director or his or her designee not less than every 90-days.

(2) The heightened level of care shall not apply in exceptional circumstances when providing such care would create an unacceptable risk to the safety and security of incarcerated individuals or staff. Such determination shall be documented by security personnel together with the basis of such determination and shall be reviewed by the facility superintendent, in consultation with a mental health clinician, not less than every seven days for as long as the incarcerated individual remains in a residential rehabilitation unit, step-down unit or adolescent offender separation unit. The facility shall attempt to resolve such exceptional circumstances so that the heightened level of care may be provided. If such exceptional circumstances remain unresolved for 30-days, the matter shall be referred to the joint central office review committee for review.

(d) All incarcerated individuals in segregated confinement in a level one or level two facility who are not assessed with a serious mental illness at the initial assessment shall be offered at least one interview with a mental health clinician within seven days of their initial mental health assessment, unless the mental health clinician at the most recent interview recommends an earlier interview or assessment. All incarcerated individuals in a residential rehabilitation unit, step-down unit or adolescent offender separation unit in a level three or level four facility who are not assessed with a serious mental illness at the initial assessment shall be offered at least one interview with a mental health clinician within 30-days of their initial mental health assessment, and additional interviews at least every 90-days thereafter, unless the mental health clinician at the most recent interview recommends an earlier interview or assessment.

Revise Section 321.1 as follows:

Add new subsections (a)-(c)

321.1 Disciplinary confinement of [juvenile inmates]an individual confined in an adolescent offender facility.

(a) An [inmate under the age of 18 years of age]incarcerated individual confined in an adolescent offender facility as defined in Section 1.5(v) of this Title who receives a disciplinary confinement penalty [in accordance with section 253.7 or 254.7 of this Title] shall serve that penalty in an [juvenile]adolescent offender separation unit ([J]AOSU) as defined in section 321.2 of this Part: except]_

(b) An incarcerated individual placed in an AOSU shall be released to general confinement no later than the expiration of the sanction imposed or upon successful completion of an AOSU program, whichever is earlier. The remainder of the individual's sanction, if any, will be suspended upon the individual's release from the AOSU program. If the individual does not engage in any sanctionable conduct during the duration of the suspended sanction, that [if the inmate is housed at Woodbourne or Greene Correctional Facility and receives a] disciplinary [confinement penalty of 30]sanction will expire on the earlier of the sanction end-date or six months from the date of release to general confinement. Service of suspended penalties may be imposed as a sanction, based on an individualized assessment, only for serious misbehavior or for committing the same or similar violation as that leading to the suspended sanction.

(c) An incarcerated individual assigned to keeplock status in an AOSU pursuant to this section shall:

- (1) be subject to the property limitations set forth in section 302.2(a)-(g) of this Title;
- (2) be subject to the visiting conditions set forth in section 302.2(i)(1) of this Title, unless restricted by disciplinary or administrative action;
- (3) be subject to the package limitations set forth in section 302.2(i)(3);

- (4) have their commissary privileges suspended pending a determination in a disciplinary proceeding;
- (5) be subject to the limitation on telephone calls contained in section 302.2(i)(2) of this Title;
- (6) be afforded correspondence privileges as set forth in section 302.2(h) of this Title; and
- (7) be credited at the rate of three (3) days [or less, the inmate shall serve that penalty in either JSU at Greene, or in a cell at Woodbourne with out-of-cell time at least equal to what is available to an inmate housed in a JSU]for every two (2) days served.

Revise Section 321.2 as follows:

321.2 [Juvenile]Adolescent offender separation unit.

An [JSU]adolescent offender separation unit (AOSU) means [is] a [separate housing location within a correctional]housing unit used for incarcerated individuals housed in an adolescent offender facility [designed for inmates under 18 years of age who, due to their behavior, would otherwise be serving]that receive a disciplinary confinement [penalty in a SHU or]sanction or who have been deemed by the superintendent to be an unreasonable risk to the safety and security of staff, incarcerated individuals or the facility. Incarcerated individuals placed in [another housing unit]an AOSU shall be afforded out-of-cell time in the most congregate setting available and shall be provided the least restrictive environment necessary to maintain the safety and security of the facility.

The unit is designed to meet the educational and other needs of the [inmates]incarcerated individual, while maintaining adequate safety and security on the unit, with a goal of expediting their transition back to general population and encouraging their interactions with others. [Although a]An [J]AOSU 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 penalties, inmates]; however, incarcerated individuals on the unit may be subject to limitations on the quantity and type of property they are permitted to have in their cells and may receive access to programs that are more restrictive than those afforded general population [inmates]incarcerated individuals in order to maintain security and order on the unit. An [inmate]incarcerated individual housed in an [J]AOSU shall be offered at least six hours of out-of-cell [time on weekdays]programming, activities, and recreation five days per week, excluding holidays]. The out-of-cell time shall consist of a minimum of four hours of education and other appropriate programming], and [weather permitting,]at least two hours of [outside exercise. A minimum of two hours of out-of-cell outside exercise]recreation on the remaining days. Individuals in an AOSU shall have the opportunity to earn additional privileges under the progressive inmate movement system. Such incarcerated individuals in an AOSU shall [also be offered on weekends]have access to out-of-cell programs and [holidays, weather permitting]activities that promote personal development and group engagement, addressing underlying causes of problematic behavior resulting in placement in the unit and helping prepare for discharge from the unit to general confinement or the community. An [inmate]incarcerated individual can be denied out-of-cell activities described in this section, if the commissioner or his [or]designee determines that the [inmate's]incarcerated individual's participation in such activities presents an imminent risk of danger to the [inmate]incarcerated individual or to others.