

Committee on Criminal Justice
Jeremy Whiteman, *Legislative Counsel*
Natalie Meltzer, *Legislative Policy Analyst*
Casey Lajszky, *Financial Analyst*
Jack Storey, *Senior Financial Analyst*



THE COUNCIL OF THE CITY OF NEW YORK

COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION

Andrea Vazquez, Legislative Director
Rachel Cordero, Deputy Director, Governmental Affairs Division

COMMITTEE ON CRIMINAL JUSTICE

Hon. Sandy Nurse, Chair

January 30, 2024

INT NO. 549-A:

By the Public Advocate (Mr. Williams) and Council Members Rivera, Cabán, Hudson, Won, Restler, Hanif, Avilés, Nurse, Sanchez, Narcisse, Krishnan, Abreu, Louis, Farías, De La Rosa, Ung, Ossé, Gutiérrez, Richardson Jordan, Joseph, Brannan, Menin, Schulman, Barron, Moya, Williams, Powers, Marte, Stevens, Brooks-Powers,

Bottcher, Dinowitz, Ayala, Riley, Feliz, Brewer and The Speaker (Council Member Adams) (by request of the Brooklyn Borough President)

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins.

ADMINISTRATIVE CODE:

Adds section 9-167

I. INTRODUCTION

On January 30, 2024, the Committee on Criminal Justice, chaired by Council Member Sandy Nurse, will meet to consider whether to recommend the override of the Mayor's veto of Introduction Number (Int. No.) 549-A, sponsored by Public Advocate Williams and whether to recommend that veto messages M-12-2024 be filed.

On June 16, 2022, Int. 549 was introduced and referred to the Committee on Criminal Justice.¹ On September 28, 2022, the Committee on Criminal Justice considered testimony on Int. 549.² The bill was subsequently amended, and on December 20, 2023, the Committee on Criminal Justice considered Int. 549-A, passed the legislation by a vote of 6 in the affirmative and one in the negative and sent it for approval by the full Council. At the Stated Meeting of December 20, 2023, the Council approved the bill by a vote of 39 in the affirmative, 7 in the negative, with 1 abstention.

¹ NYC Council Stated Meeting, June 16, 2022. Available at: <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=984267&GUID=B7506E36-8360-45C0-AB3C-E505E78A1CE9&Options=ID|Text|&Search=549>

² NYC Council Committee on Criminal Justice Meeting, September 28, 2022. Available at: <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=999448&GUID=3E18E1D1-0670-4650-A65D-A19CCF521DC3&Options=ID|Text|&Search=549>

On January 19, 2024, the Mayor issued a message of disapproval for Int. 549-A. Pursuant to Section 37(b) of the Charter, the clerk presented the Mayor's veto message, M-12-2024, at the next Stated Meeting on January 30, 2024, and it was referred to the Committee on Criminal Justice. The Mayor's veto message is appended hereto as Appendix A.

The question before the Committee on Criminal Justice today is whether to recommend that Int. 549-A be re-passed notwithstanding the objections of the Mayor and whether to recommend that the Mayor's veto message, M-12-2024, be filed.

II. BACKGROUND

In New York City, DOC provides for the care, custody, and control of persons accused of crimes or convicted and sentenced to one year or less of jail time.³ As of January 23rd, there were 6,167 people incarcerated in New York City jails.⁴

Prior to 2013, the Department placed incarcerated individuals found guilty of committing rule infractions in "punitive segregation," regardless of age.⁵ Punitive segregation, also known as "solitary confinement," consisted of housing an incarcerated individual in a single-occupancy cell for 23 hours per day, with access to daily showers in the housing unit and access to medical care.⁶ There were also significant restrictions on visitation and recreational time.⁷ Reports indicate that at its peak, there were 1,035 people in punitive segregation in 2012.⁸ According to the Board of

³ "About the New York City Department of Correction" New York City Department of Correction, <https://www1.nyc.gov/site/doc/about/about-doc.page>.

⁴ <https://greaterjusticenyc.vera.org/nycjail/>

⁵ New Mental Health Initiative Will Intervene and Provide Treatment for Seriously Mental Ill among Jail Population (May 2013), NYC Department of Correction, at http://www.nyc.gov/html/doc/downloads/pdf/NEWS_from_Mental_Health_051313.pdf

⁶ United States Attorney General's Office for the Southern District of New York, RE: CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island (August 4, 2014), U.S. Department of Justice, p. 47, available at <https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf>

⁷ *Id.*

⁸ The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the New York City Department of Correction (June 2017), at

Correction (BOC), on December 31, 2014, there were 414 people in punitive segregation.⁹ In January of 2015, BOC amended its Minimum Standards to include provisions limiting the use of punitive segregation. By December 31, 2015, the number of people in punitive segregation was reduced to 181.¹⁰ On November 2, 2021, the population was reduced to 68.¹¹ As of 2022, the Department indicated there were no individuals in punitive segregation and around 117 people in restrictive housing¹²

Despite the Department's claims to not practice solitary confinement, reports indicate that individuals are confined in conditions that are arguably a form of solitary confinement.¹³ For example, a report released by Columbia University in December 2023 provides information on "involuntary protective custody," "de-escalation confinement units," and "decontamination units," each of which has functioned as form of solitary confinement.¹⁴

An effort to end solitary confinement and reform restrictive housing in New York City jails began in June 2020 when former Mayor de Blasio and then Board of Correction Chair Jennifer Jones Austin announced the formation of a working group to eliminate punitive segregation in the

<https://www.vera.org/downloads/publications/safe-alternatives-segregation-initiative-findings-recommendations-nycsas.pdf>

⁹ Punitive Segregation Reforms and Exceptions: Recent Results, at <https://www1.nyc.gov/site/boc/reports/BOC-Reports/punitive-segregation-reports.page>

¹⁰ Id.

¹¹ <https://www.thecity.nyc/2021/11/2/22760112/de-blasio-delays-solitary-confinement-reform-over-rikers-chaos>

¹² <https://www1.nyc.gov/site/boc/meetings/july-12-2022.page>,

<https://www.nytimes.com/2023/12/18/nyregion/solitary-confinement-adams-nyc.html>

¹³ Solitary by Many Other Names, Center for Justice at Columbia University (Dec. 2023) Available at:

<https://centerforjustice.columbia.edu/news/new-report-solitary-many-other-names-report-persistent-and-pervasive-use-solitary-confinement#:~:text=various%20different%20names,-.Solitary%20by%20Many%20Other%20Names%3A%20A%20Report%20on%20the%20Persistent.contamination%20units%22%20and%20%22enhanced%20supervision; See also,>

<https://gothamist.com/news/solitary-confinement-persists-at-rikers-island-just-by-different-names>,

<https://comptroller.nyc.gov/newsroom/nyc-comptroller-lander-public-advocate-williams-council-member-rivera-recognize-improvements-call-out-solitary-confinement-conditions-following-surprise-inspection-of-rikers/>

¹⁴ Id.

City's jails.¹⁵ On June 7, 2021, the Board unanimously approved its proposed rules on restrictive housing ("the Rule"). The Rule was revised to address concerns from the public and to comply with new state law requirements in the Humane Alternatives to Long-Term Solitary Confinement Act ("HALT Act"), signed into law on April 1, 2021. According to the de Blasio Administration, the Rule, when implemented, which was anticipated to be in the fall of 2021, would end solitary confinement¹⁶. The Administration described solitary confinement as a long-practiced form of restrictive housing where people are locked in their cells for 20-24 hours each day, which would be replaced with a new alternative disciplinary model, the Risk Management Accountability System (RMAS). The de Blasio Administration described RMAS as a two-level progression model that includes:¹⁷

- Attorney Representation at the infraction hearing and throughout the process
- Minimum 10 hours out of cell, socializing with at least one other person
- A strong presumption of progression from Level 1 to Level 2 in 15 days, and out of Level 2 in 15 days
- The ability for the Department to extend placement in RMAS only when necessary; extension must be documented with a clear threat to safety; person in custody has ability to appeal with attorney representation
- Individualized behavioral support plans
- Steady, experienced case managers

¹⁵ City of New York, Mayor de Blasio and Board of Correction Chair Jennifer Jones Austin Announce Working Group to End Punitive Segregation (Jun. 29, 2020), available at <https://www1.nyc.gov/office-of-the-mayor/news/481-20/mayor-de-blasio-board-correction-chair-jennifer-jones-austin-working-group-end>

¹⁶ <https://www1.nyc.gov/assets/boc/downloads/pdf/RULE-AND-SBP-6-4-21-Legal-11833206.pdf>

¹⁷ *Id.*

- Hours of daily programming, including required therapeutic programming in space outside the dayroom space; and
- Daily rounding by health and mental health staff
- Post-RMAS, step-down Restorative Rehabilitation Unit with 14 hours of lock out, full access to Minimum Standards, and intensive programming.¹⁸

Some advocates were critical of the RMAS.¹⁹ Among the issues raised, they pointed out there are no strict limits on how many days a detainee could remain in segregation and contend that out-of-cell time should not include walking around in a "fenced in porch" adjacent to their cell.²⁰

Ultimately, after announcing the RMAS would go into effect on November 1, 2021, just prior to implementation, Mayor de Blasio signed an emergency executive order putting the plan on hold, initially for five days, but subsequently repeated, citing a jail system unable to staff required security posts with more than 1,000 correction officers reportedly calling out sick daily at that time.²¹ The Adams Administration continued to sign similar emergency executive orders while indicating they anticipated the new system would go into effect on July 1, 2022.²²

On June 30, 2022, the court-appointed Monitor, appointed as part of the consent settlement in the case of Nunez vs. City of New York,²³ issued a status report stating that, at that juncture, they did not approve the Department's proposal to implement RMAS on July 1, 2022.²⁴ The Monitor outlined a rationale for why proceeding with RMAS was not prudent and posed significant

¹⁸ Id.

¹⁹ <https://www.thecity.nyc/2021/6/7/22523617/solitary-confinement-reforms-set-for-nyc-jails-after-polanco>

²⁰ <https://www.thecity.nyc/2021/11/2/22760112/de-blasio-delays-solitary-confinement-reform-over-rikers-chaos>

²¹ <https://www.thecity.nyc/2021/11/2/22760112/de-blasio-delays-solitary-confinement-reform-over-rikers-chaos>

²² *Supra* note 10

²³ No. 11 CIV. 5845 LTS JCF, 2013 WL 2149869 (S.D.N.Y. May 17, 2013)

²⁴ <https://www1.nyc.gov/assets/doc/downloads/pdf/Status-Report-06-30-22-As-Filed.pdf>

safety concerns. The report noted that for the past six years, the Monitoring Team has observed a pattern of hasty, ill-planned implementation of these types of critical programs that fail because the time needed to develop a strong foundation was short-circuited (e.g., staff selection and training), in combination with poor fidelity to design and that therefore, the Department must adopt lessons learned from previous attempts to address serious misconduct and develop both a credible program model and invest the time necessary to select, train, guide and coach staff.²⁵ The Monitor also stated that the RMAS program design would be unlikely to hold individuals accountable for violent misconduct in a safe and effective manner.²⁶

The Monitoring Team recommended the Department retain a consultant with the requisite expertise to support the creation of a program model that provides the necessary structure and security on the housing units and an implementation plan that avoids the pitfalls of the past. Finally, the Monitor noted that the Monitoring Team intends to work closely with the Department and the consultant that the Department has already retained, Dr. Austin, on the development of a program that can ultimately be approved by the Monitor.²⁷ Citing the Monitor's report, the Department indicated that they would not be implementing RMAS on July 1, 2022 as planned but rather would work with the consultant as requested by the Monitor to develop an alternative plan.²⁸

As of March 2023, DOC instituted a new Enhanced Supervision Housing (ESH) system for the selection and housing of incarcerated individuals who engage in acts that threaten the safety and security of the jail.²⁹ Under this system, if an incarcerated individual commits a qualifying offense, they can be separated from general population, and placed in pre-hearing detention for

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ https://www.nyc.gov/assets/doc/downloads/directives/4491_Enhanced_Supervision_Housing.pdf

seven days before they must be afforded a hearing with certain due process protections. If an individual is found guilty at a hearing, they may be placed in an ESH unit. There are two levels of ESH and a person must successfully complete Level I before being eligible for Level 2 and must successfully complete Level II before being returned to general population. To progress through these levels, individuals are evaluated every thirty days to determine whether they are complying with program participation requirements. There are no durational caps on placement in ESH. At each level of ESH, individuals must be provided seven hours of out-of-cell time. In ESH Level II, the use of restraints is relaxed, individuals can participate in congregate outdoor recreation, and they have a greater ability to make purchases at the commissary.³⁰

As of June 2023, DOC opened new ESH units in the Rose M. Singer Center, commonly referred to as "RESH."³¹ In a status report issued by the Nunez monitor on October 5, 2023, they described conditions in RESH as "chaotic, violent, and unsafe" and noted that in July and August of 2023 RESH had the highest use-of-force rate in the Department and the largest number of slashings and stabbings of any command.³² As a result of DOC's failure to properly implement the ESH program and the high levels of violence and fear in those units, the Monitor described RESH as an environment that "in practice, is not substantially different that punitive segregation."³³

Impact of Punitive Segregation:

A study cited by the National Institute of Justice in 2016 stated that "there is little evidence that [solitary confinement] has had effects on overall levels of violence within individual

³⁰ *Id.*

³¹ Nunez Monitor's Report, October 5, 2023, available at <https://tillidgroup.com/projects/nunez-monitorship/>

³² *Id.*

³³ *Id.*

institutions or across correctional systems."³⁴ For example, in Cook County, Illinois, where the use of solitary confinement was reportedly eliminated in 2016, assaults on people in custody and staff plummeted to an all-time low in 2018.³⁵ This was reportedly achieved by placing disruptive incarcerated people in a "Special Management Unit" where they spend time in open rooms or yards with other people in custody for up to eight hours at a time under direct supervision from correctional staff who are trained in de-escalation and conflict resolution.³⁶ Similarly, other states that have decreased the use of solitary confinement, such as Colorado, Mississippi and Maine, have seen corresponding reductions in assaults and other violent behavior.³⁷

Research shows that solitary confinement has hardly any individual or general deterrence effect on violent behavior and misconduct.³⁸ One study found that exposure to short-term punitive segregation for initial violent behavior did not deter incarcerated people from engaging in more violence.³⁹ The study found that in a small percentage of incarcerated people, exposure to punitive segregation might have actually *increased* their propensity to commit more violence.⁴⁰

³⁴ Natasha Frost and Carlos Monteiro, Administrative Segregation in U.S. Prisons Executive Summary (March 2016), National Institute of Justice of U.S. Department of Justice, at <https://www.ncjrs.gov/pdffiles1/nij/249750.pdf>

³⁵ Sheriff Tom Dart, My Jail Stopped Using Solitary Confinement: Here's Why (April 2019), *Washington Post*, available at https://www.washingtonpost.com/opinions/my-jail-stopped-using-solitary-confinement-it-should-be-eliminated-everywhere/2019/04/04/f06da502-5230-11e9-88a1-ed346f0ec94f_story.html

³⁶ *Id.*

³⁷ SB 11-176 Annual Report: Administrative Segregation for Colorado Inmates (Jan. 2015), Office of Planning and Analysis of Colorado Department of Corrections, p. 3, available

<https://www.colorado.gov/pacific/sites/default/files/Ad%20Seg%20Annual%20Report%20FY%202013-14.pdf>;

Shira Gordon, Solitary Confinement, Public Safety, and Recidivism, 47 U. Mich. J. L. Reform 495 (2014), p. 516, available at https://prospectusmjl.files.wordpress.com/2014/02/47_2_gordon.pdf;

Change is Possible A Case Study of Solitary Confinement Reform in Maine (Mar. 2013), American Civil Liberties Union of Maine, pp. 14-17 and 30-31, available at

https://www.aclumaine.org/sites/default/files/field_documents/aclu_solitary_report_webversion.pdf

³⁸ Craig Haney, Restricting the Use of Solitary Confinement (Nov. 3, 2017), *Annual Review of Criminology*, p. 288, available at

https://www.researchgate.net/profile/Craig_Haney2/publication/320845455_Restricting_the_Use_of_Solitary_Confinement/links/5b61f65a458515c4b2591804/Restricting-the-Use-of-Solitary-Confinement.pdf

³⁹ Robert Morris, Exploring the Effect of Exposure to Short-term Solitary Confinement Among Violent Prison Inmates, 32 J. Quant. Criminology (2016), pp. 15, 19, available at

https://politicalscience.gsu.edu/files/2016/04/Morris_solitary_joqc2015.pdf

⁴⁰ *Id.*, p. 15.

Researchers explain that the condition of segregated housing and mistreatment of persons held in this setting led them to become more violent.⁴¹

Research also shows that solitary confinement is harmful to the people in custody who are subjected to the practice. A 2014 study of New York City Jails found that people in custody who were placed in punitive segregation committed self-harm at disproportionately high rates.⁴² The study found that people who were placed in punitive segregation were over seven times more likely to harm themselves and six times more likely to commit fatal self-harm.⁴³ The deaths of Kalief Browder,⁴⁴ Bradley Ballard,⁴⁵ and Jason Echeverria⁴⁶ are tragic illustrations of this phenomenon; all of these individuals took their own life after spending time in punitive segregation in New York City jails.⁴⁷ In addition to self-harm, solitary confinement leads to other or overlapping mental health problems. Research shows that people who spent time in restrictive housing in prisons and jails experienced serious psychological distress.⁴⁸ Similarly, research found that solitary confinement can lead to hallucinations and paranoia.⁴⁹ Almost a third of the people in custody

⁴¹ Shira Gordon, Solitary Confinement, Public Safety, and Recidivism, 47 U. Mich. J. L. Reform 495 (2014), p. 516, available at https://prospectusmjlr.files.wordpress.com/2014/02/47_2_gordon.pdf;

⁴² Fatos Kaba, et. al, Solitary confinement and risk of self-harm among jail inmates, American Journal of Public Health, 2014 104(3): 442–447, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/>. Note, the report refers to punitive segregation as solitary confinement.

⁴³ *Id.*

⁴⁴ Jennifer Gonnerman, Kalief Browder 1993-2015 (Jun. 7, 2015), *The New Yorker*, available at <https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>

⁴⁵ Rikers Island inmate died after seven days alone in New York City cell (May 22, 2014), *The Guardian*, available at <https://www.theguardian.com/world/2014/may/22/rikers-island-inmate-mental-health-died-cell>

⁴⁶ Stephen Rex Brown, EXCLUSIVE: City settles for \$3.8M in Rikers Island inmate's soap-swallowing horror (Nov. 17, 2015), *New York Daily News*, available at <https://www.nydailynews.com/new-york/nyc-crime/city-settles-4m-rikers-inmate-poison-horror-article-1.2437263>

⁴⁷ *Supra* note 72-75

⁴⁸ Allen Beck, Use of Restrictive Housing in U.S. Prisons and Jails, 2011-12 (Oct. 2015), Bureau of Justice Statistics of the U.S. Department of Justice, available at <https://www.bjs.gov/content/pub/pdf/urhuspi1112.pdf>

⁴⁹ Stuart Grassian, Psychiatric Effects of Solitary Confinement, 22 Wash. U. J. L. & POL'Y 325 (2006), available at https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy

interviewed in a study described hearing voices, while almost half reported paranoid and persecutory fears.⁵⁰

Solitary confinement, even for short periods of time, has been correlated with harm and death. On June 7, 2019, Layleen Xtravaganza Cubilette-Polanco died in the Rose M. Singer Center on Rikers Island at the age of 27. On the day she died, Ms. Polanco had been locked in her cell for only two to three hours.⁵¹ According to the *New York Times*, in the days before Elijah Muhammed died on July 10, 2022, he spent 32 hours in isolation without a bed or access to medical care. Mr. Muhammed, who was receiving mental health treatment in custody, was isolated in both a “decontamination shower” and in “de-escalation confinement unit” before his death at 31 years of age.⁵²

Research conducted by Cornell University found that subjecting a person to solitary confinement, even for just a few days, may significantly increase their risk of death after serving their sentences.⁵³ In several jurisdictions across the United States, youth detention facilities have limited the use of “room confinement” or “seclusion” to minutes or hours at a time to avoid the adverse consequences associated with this form of punishment.⁵⁴ Similarly, in adult mental health facilities, the use of isolation has been limited in recent years. For example, in Pennsylvania, after previously limiting “seclusion” to just over one hour, the state’s mental health hospitals stopped

⁵⁰ *Id.*

⁵¹ New York City Board of Correction, “The Death of Layleen Xtravaganza Cubilette-Polanco, 1991–2019,” June 23, 2020, Available at:

https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06_Polanco/Final_Polanco_Public_Report_1.pdf.

⁵² *Supra* note 13, See Also: In a Rikers Jail Cell, a Man Lay Dead for Hours Before He Was Discovered, Jan Ransom, *New York Times* (July 12, 2022), Available at:

<https://www.nytimes.com/2022/07/12/nyregion/rikers-jail-man-dead.html>

⁵³ Solitary confinement heightens post-incarceration death risk, *Cornell Chronicle* (Feb. 5, 2020). Available at: <https://news.cornell.edu/stories/2020/02/solitary-confinement-heightens-post-incarceration-death-risk>

⁵⁴ *Supra* note 13

using “seclusion” entirely and saw a corresponding reduction in the number of assaults by patients.⁵⁵

BILL ANALYSIS

Int. 549-A would ban the use of solitary confinement in city jails and provide individuals in DOC custody due process protections before being placed in restrictive housing or continued use of restraints. The bill also limits how DOC can use emergency lock-ins and requires regular reporting on the Department's use of de-escalation confinement, restrictive housing, and emergency lock-ins. The bill would take effect 180 days after enactment.

Since introduction, the bill has been amended in several respects: 1) by adding or amending definitions for de-escalation confinement, legal advocate, pre-hearing temporary restrictive housing, restraints, suicide prevention aides, out-of cell, restrictive housing, solitary confinement, and violent grade I offense; 2) by removing requirements that medical and mental health assessments and medical rounding occur during periods of de-escalation confinement, restrictive housing, and emergency lock-in and shifting responsibility to conduct regular rounding to DOC staff and suicide prevention aides; 3) by removing bill provisions that gave medical staff the authority to remove an individual from de-escalation confinement, restrictive housing, or an emergency lock-in; 4) by adding a provision that states suicide prevention aides shall not face retaliation for carrying out duties outlined in the bill; 5) by requiring that persons in de-escalation confinement and those subject to an emergency lock-in have access to a tablet or device that can make phone calls outside the facility or to medical staff; 6) by mandating that de-escalation confinement not be located in intake areas or decontamination showers; 7) by requiring that the Department not maintain locked decontamination showers and not place an

⁵⁵ Id.

incarcerated individual in a decontamination shower or any locked space that does not meet BOC minimum standards; 8) by adding limited exceptions for instances in which the department may use restraints on incarcerated persons under the age of 22; 9) by adding subdivision (g) which outlines the procedures and policies for when a person may be placed pre-hearing temporary restrictive housing following de-escalation confinement but before a hearing for placement in restrictive housing; 10) by adding requirements that all housing for medical or mental health support, including for those in contagious disease units, and units for transgender and gender non-conforming individuals, voluntary protective custody, and for purposes of school attendance comply with new standards established in this bill and 11) by changing the effective date from 60 days to 180 days after the bill becomes law. The bill also received technical edits.

Int. No. 549-A

By the Public Advocate (Mr. Williams) and Council Members Rivera, Cabán, Hudson, Won, Restler, Hanif, Avilés, Nurse, Sanchez, Narcisse, Krishnan, Abreu, Louis, Farías, De La Rosa, Ung, Ossé, Gutiérrez, Richardson Jordan, Joseph, Brannan, Menin, Schulman, Barron, Moya, Williams, Powers, Marte, Stevens, Brooks-Powers, Bottcher, Dinowitz, Ayala, Riley, Feliz, Brewer and The Speaker (Council Member Adams) (by request of the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code is amended by adding a new section 9-167 to read as follows:

§ 9-167 Solitary confinement. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Advocate. The term "advocate" means a person who is a law student, paralegal, or an incarcerated person.

Cell. The term "cell" means any room, area or space that is not a shared space conducive to meaningful, regular and congregate social interaction among many people in a group setting, where an individual is held for any purpose.

De-escalation confinement. The term "de-escalation confinement" means holding an incarcerated person in a cell immediately following an incident where the person has caused physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons.

Emergency lock-in. The term "emergency lock-in" means a department-wide emergency lock-in, a facility emergency lock-in, a housing area emergency lock-in, or a partial facility emergency lock-in as defined in section 9-155.

Out-of-cell. The term "out-of-cell" means being in a space outside of, and in an area away from a cell, in a group setting with other people all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction and activity or being in any space during the time of carrying out medical treatment, individual one-on-one counseling, an attorney visit or court appearance.

Pre-hearing temporary restrictive housing. The term "pre-hearing temporary restrictive housing" means any restrictive housing designated for incarcerated persons who continue to pose a specific risk of imminent serious physical injury to staff, themselves, or other incarcerated persons after a period of de-escalation confinement has exceeded time limits established by this section and prior to a hearing for recommended placement in restrictive housing has taken place.

Restraints. For the purposes of this section, the term "restraints" means any object, device or equipment that impedes movement of hands, legs, or any other part of the body.

Restrictive housing. The term "restrictive housing" means any housing area that separates incarcerated persons from the general jail population on the basis of security concerns or discipline, or a housing area that poses restrictions on programs, services, interactions with other incarcerated persons or other conditions of confinement. This definition excludes housing designated for incarcerated persons who are: (1) in need of medical or mental health support as determined by the entity providing or overseeing correctional medical and mental health, including placement in a contagious disease unit, (2) transgender or gender non-conforming, (3) in need of voluntary protective custody, or (4) housed in a designated location for the purpose of school attendance.

Solitary confinement. The term "solitary confinement" means any placement of an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for a count not to exceed two hours in any 24-hour period.

Suicide prevention aide. For the purposes of this section, the term "suicide prevention aide" means a person in custody who has been trained to identify unusual and/or suicidal behavior.

Violent grade I offense. The term "violent grade I offense" shall have the same meaning as defined by the rules of the department of correction as of January 1, 2022.

b. Ban on solitary confinement. The department shall not place an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for count not to exceed two hours in any 24-hour period, unless for the purpose of de-escalation confinement or during emergency lock-ins.

c. De-escalation confinement. The department's uses of de-escalation confinement shall comply with the following provisions:

1. De-escalation confinement shall not be located in intake areas and shall not take place in decontamination showers. Spaces used for de-escalation confinement must, at a minimum, have the features specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and be maintained in accordance with the personal hygiene and space requirements set forth in such sections;

2. Department staff must regularly monitor a person in de-escalation confinement and engage in continuous crisis intervention and de-escalation to support the person's health and well-being, attempt de-escalation, work toward a person's release from de-escalation confinement and determine whether it is necessary to continue to hold such person in such confinement;

3. The department shall conduct visual and aural observation of each person in de-escalation confinement every 15 minutes, shall refer any health concerns to medical or mental health staff, and shall bring any person displaying any indications of any need for medical documentation, observation, or treatment to the medical clinic. Suicide prevention aides may conduct check-ins with a person in de-escalation confinement at least every 15 minutes and refer any health concerns to department staff who will get medical or mental health staff to treat any reported immediate health needs. No suicide prevention aide shall face any retaliation or other harm for carrying out their role;

4. Throughout de-escalation confinement, a person shall have access to a tablet or device that allows such person to make phone calls outside of the facility and to medical staff in the facility;

5. A person shall be removed from de-escalation confinement immediately following when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others;

6. The maximum duration a person can be held in de-escalation confinement shall not exceed four hours immediately following the incident precipitating such person's placement in such confinement. Under no circumstances may the department place a person in de-escalation confinement for more than four hours total in any 24-hour period, or more than 12 hours in any seven-day period; and

7. In circumstances permitted in subdivision g of this section, the department may transfer a person from de-escalation confinement to pre-hearing temporary restrictive housing.

(a) The department shall not place any incarcerated person in a locked decontamination shower nor in any other locked space in any facility that does not have, at a minimum, the features

specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and maintained in accordance with the personal hygiene and space requirements as set forth in such sections.

(b) The department shall not maintain any locked decontamination showers. Any other locked spaces in any facility for holding incarcerated people must at least have the features specified in and maintained in accordance with the personal hygiene and space requirements set forth in 40 RCNY § 1-03 and § 1-04.

d. Reporting on de-escalation confinement. For each instance an incarcerated person is placed in de-escalation confinement as described in subdivision c of this section, the department shall prepare an incident report that includes a detailed description of why isolation was necessary to de-escalate an immediate conflict and the length of time the incarcerated person was placed in such confinement. Beginning on July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide the speaker of the council and the board of correction all such reports for the preceding quarter and post all such reports on the department's website. The department shall redact all personally identifying information prior to posting such reports on the department's website. Beginning July 31, 2024, and within 30 days of the end of each subsequent quarter, the department shall provide to the speaker of the council and the board of correction, and post on the department's website, a report with data for the preceding quarter on the total number of people placed in such confinement, disaggregated by race, age, gender identity and mental health treatment level, as well as the total number of people held in such confinement disaggregated by whether confinement lasted less than one hour, between one and two hours, between two and three hours, and between three and four hours.

e. Use of restraints. 1. The department shall not place an incarcerated person in restraints unless an individualized determination is made that restraints are necessary to prevent an imminent

risk of self-injury or injury to other persons. In such instances, only the least restrictive form of restraints may be used and may be used no longer than is necessary to abate such imminent harm. Restraints shall not be used on an incarcerated person under the age of 22 except in the following circumstances: (i) during transportation in and out of a facility, provided that during transportation no person shall be secured to an immovable object; and (ii) during escorted movement within a facility to and from out-of-cell activities where an individualized determination is made that restraints are necessary to prevent an immediate risk of self-injury or injury to other persons. The department is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements.

2. The department shall not place an incarcerated person in restraints beyond the use of restraints described in paragraph 1 of this subdivision, or on two consecutive days, until a hearing is held to determine if the continued use of restraints is necessary for the safety of others. Such hearing shall comply with the rules of the board of correction as described in paragraph 1 of subdivision f of this section. Any continued use of restraints must be reviewed by the department on a daily basis and discontinued once there is no longer an imminent risk of self-injury or injury to other persons. Continued use of restraints may only be authorized for seven consecutive days.

f. Restrictive housing hearing. Except as provided in subdivision g of this section, the department shall not place an incarcerated person in restrictive housing until a hearing on such placement is held and the person is found to have committed a violent grade I offense. Any required hearing regarding placement of a person into restrictive housing shall comply with rules to be established by the board of correction.

1. The board of correction shall establish rules for restrictive housing hearings that shall, at a minimum, include the following provisions:

(i) An incarcerated person shall have the right to be represented by their legal counsel or advocate;

(ii) An incarcerated person shall have the right to present evidence and cross-examine witnesses;

(iii) Witnesses shall testify in person at the hearing unless the witnesses' presence would jeopardize the safety of themselves or others or security of the facility. If a witness is excluded from testifying in person, the basis for the exclusion shall be documented in the hearing record;

(iv) If a witness refuses to provide testimony at the hearing, the department must provide the basis for the witness's refusal, videotape such refusal, or obtain a signed refusal form, to be included as part of the hearing record;

(v) The department shall provide the incarcerated person and their legal counsel or advocate written notice of the reason for proposed placement in restrictive housing and any supporting evidence for such placement, no later than 48 hours prior to the restrictive housing hearing;

(vi) The department shall provide the legal counsel or advocate adequate time to prepare for such hearings and shall grant reasonable requests for adjournments;

(vii) An incarcerated person shall have the right to an interpreter in their native language if the person does not understand or is unable to communicate in English. The department shall take reasonable steps to provide such interpreter;

(viii) A refusal by an incarcerated person to attend any restrictive housing hearings must be videotaped and made part of the hearing record;

(ix) If the incarcerated person is excluded or removed from a restrictive housing hearing because it is determined that such person's presence will jeopardize the safety of themselves or

others or security of the facility, the basis for such exclusion must be documented in the hearing record;

(x) A restrictive housing disposition shall be reached within five business days after the conclusion of the hearing. Such disposition must be supported by substantial evidence, shall be documented in writing, and must contain the following information: a finding of guilty or not guilty, a summary of each witness's testimony and whether their testimony was credited or rejected with the reasons thereof, the evidence relied upon by the hearing officer in reaching their finding, and the sanction imposed, if any; and

(xi) A written copy of the hearing disposition shall be provided to the incarcerated person and their counsel or advocate within 24 hours of the determination.

2. Failure to comply with any of the provisions described in paragraph 1 of this subdivision, or as established by board of correction rule, shall constitute a due process violation warranting dismissal of the matter that led to the hearing.

g. Pre-hearing temporary restrictive housing. In exceptional circumstances, the department may place a person in pre-hearing temporary restrictive housing prior to conducting a restrictive housing hearing as required by subdivision f of this section.

1. Such placement shall only occur upon written approval of the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security. Such written approval shall include: the basis for a reasonable belief that the incarcerated person has committed a violent grade I offense, and whether such person has caused serious physical injury or poses a specific and significant risk of imminent serious physical injury to staff or other incarcerated persons.

2. A restrictive housing hearing shall occur as soon as reasonably practicable following placement in pre-hearing temporary restrictive housing, and must occur within five days of such placement, unless the person placed in such restrictive housing seeks a postponement of such hearing.

3. If a person is found guilty at a restrictive housing hearing, time spent in pre-hearing temporary restrictive housing prior to such hearing determination shall be deducted from any sentence of restrictive housing and such time shall count toward the time limits in restrictive housing.

4. Pre-hearing temporary restrictive housing shall comply with all requirements for restrictive housing, including but not limited to those established in subdivision h of this section.

5. During the first day of placement in pre-hearing temporary restrictive housing, department staff must regularly monitor the person and engage in continuous crisis intervention and attempt de-escalation, work toward a person's release from pre-hearing temporary restrictive housing and determine whether it is necessary to continue to hold the person in pre-hearing temporary restrictive housing.

h. Restrictive housing regulations. The department's use of restrictive housing must comply with the following provisions:

1. The department shall not place an incarcerated person in restrictive housing for longer than necessary and for no more than a total of 60 days in any 12 month period.

2. Within 15 days of placement of an incarcerated person in restrictive housing, the department shall meaningfully review such placement to determine whether the incarcerated person continues to present a specific, significant and imminent threat to the safety and security of other persons if housed outside restrictive housing. If an individual is not discharged from

restrictive housing after review, the department shall provide in writing to the incarcerated person: (i) the reasons for the determination that such person must remain in restrictive housing and (ii) any recommended program, treatment, service, or corrective action. The department shall provide the incarcerated person access to such available programs, treatment and services.

3. The department shall discharge an incarcerated person from restrictive housing if such person has not engaged in behavior that presents a specific, significant, and imminent threat to the safety and security of themselves or other persons during the preceding 15 days. In all circumstances, the department shall discharge an incarcerated person from restrictive housing within 30 days after their initial placement in such housing.

4. A person placed in restrictive housing must have interaction with other people and access to congregate programming and amenities comparable to those housed outside restrictive housing, including access to at least seven hours per day of out-of-cell congregate programming or activities with groups of people in a group setting all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction. If a person voluntarily chooses not to participate in congregate programming, they shall be offered access to comparable individual programming. A decision to voluntarily decline to participate in congregate programming must be done in writing or by videotape.

5. The department shall utilize programming that addresses the unique needs of those in restrictive housing. The department shall provide persons in restrictive housing with access to core educational and other programming comparable to core programs in the general population. The department shall also provide persons in restrictive housing access to evidence-based therapeutic interventions and restorative justice programs aimed at addressing the conduct resulting in their placement in restrictive housing. Such programs shall be individualized and trauma-informed,

include positive incentive behavior modification models, and follow best practices for violence interruption. Staff that routinely interact with incarcerated persons must be trained in de-escalation techniques, conflict resolution, the use of force policy, and related topics to address the unique needs of those in restrictive housing units.

6. The department shall use positive incentives to encourage good behavior in restrictive housing units and may use disciplinary sanctions only as a last resort in response to behavior presenting a serious and evident danger to oneself or others after other measures have not alleviated such behavior.

7. All housing for medical or mental health support provided to persons recommended to receive such support by the entity providing and, or overseeing correctional medical and mental health, including placement in contagious disease units, housing for people who are transgender or gender non-conforming, housing for voluntary protective custody, and housing for purposes of school attendance, shall comply with subdivisions (b), (c), (e), (i), (j) and (k) of this section and paragraphs 4, 5, and 6 of this subdivision.

8. For purposes of contagious disease units, after a referral from health care staff, a person may be held in a medical unit overseen by health care staff, for as limited a time as medically necessary as exclusively determined by health care staff, in the least restrictive environment that is medically appropriate. Individuals in a contagious disease unit must have comparable access as individuals incarcerated in the general population to phone calls, emails, visits, and programming done in a manner consistent with the medical and mental health treatment being received, such as at a physical distance determined appropriate by medical or mental health staff. Such access must be comparable to access provided to persons incarcerated outside of restrictive housing units.

9. Reporting on restrictive housing. For each instance a disciplinary charge that could result in restrictive housing is dismissed or an incarcerated individual is found not guilty of the disciplinary charge, the department shall prepare an incident report that includes a description of the disciplinary charge and the reasons for the dismissal or not guilty determination. For each instance an incarcerated person is placed in restrictive housing, the department shall prepare an incident report that includes a detailed description of the behavior that resulted in placement in restrictive housing and why restrictive housing was necessary to address such behavior, including if a person was placed in pre-hearing temporary restrictive housing and the reasons why the situation met the requirements in paragraph 1 of subdivision g of this section. For each instance in which confinement in restrictive housing is continued after a 15-day review of an incarcerated person's placement in restrictive housing, the department shall prepare an incident report as to why the person was not discharged, including a detailed description of how the person continued to present a specific, significant and imminent threat to the safety and security of the facility if housed outside restrictive housing and what program, treatment, service, and/or corrective action was required before discharge. Beginning on July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide the speaker of the council and the board of correction all such reports for the prior quarter and post all such reports on the department's website. The department shall redact all personally identifying information prior to posting the reports on the department's website. Beginning July 31, 2024, and within 30 days of the end of each subsequent quarter, the department shall provide to the speaker of the council and the board of correction, and post on the department's website, a report with data for the preceding quarter on the total number of people placed in restrictive housing during that time period, disaggregated by race, age, gender identity, mental health treatment level and length of time in restrictive housing,

and data on all disposition outcomes of all restrictive housing hearing during such time period, disaggregated by charge, race, age, gender identity and mental health treatment level.

i. Out-of-cell time. 1. All incarcerated persons must have access to at least 14 out-of-cell hours every day except while in de-escalation confinement pursuant to subdivision c of this section and during emergency lock-ins pursuant to subdivision j of this section.

2. Incarcerated persons may congregate with others and move about their housing area freely during out-of-cell time and have access to education and programming pursuant to section 9-110 of the administrative code.

j. Emergency lock-ins. 1. Emergency lock-ins may only be used when the Commissioner, a Deputy Commissioner, or another equivalent member of department senior leadership with responsibility for the operations of security for a facility determines that such lock-in is necessary to de-escalate an emergency that poses a threat of specific, significant and imminent harm to incarcerated persons or staff. Emergency lock-ins may only be used when there are no less restrictive means available to address an emergency circumstance and only as a last resort after exhausting less restrictive measures. Emergency lock-ins must be confined to as narrow an area as possible and limited number of people as possible. The department shall lift emergency lock-ins as quickly as possible. The Commissioner, a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security shall review such lock-ins at least every hour. Such lock-ins may not last more than four hours.

2. Throughout an emergency lock-in, the department shall conduct visual and aural observation of every person locked in every fifteen (15) minutes, shall refer any health concerns to medical or mental health staff, and shall bring any person displaying any indications of any need for medical documentation, observation, or treatment to the medical clinic. Throughout an

emergency lock-in, other than in a department-wide emergency lock-in or a facility emergency lock-in, each person locked in shall have access to a tablet or other device that allows the person to make phone calls both outside of the facility and to medical staff in the facility.

3. The department shall immediately provide notice to the public on its website of an emergency lock-in, including information on any restrictions on visits, phone calls, counsel visits or court appearances.

4. For each instance an emergency lock-in is imposed, the department shall prepare an incident report that includes:

(a) A description of why the lock-in was necessary to investigate or de-escalate an emergency, including the ways in which it posed a threat of specific, significant and imminent harm;

(b) A description of how other less restrictive measures were exhausted;

(c) The number of people held in lock-in;

(d) The length of lock-in;

(e) The areas affected and the reasons such areas were subject to the emergency lock-in;

(f) The medical and mental health services affected, the number of scheduled medical and or mental health appointments missed and requests that were denied;

(g) Whether visits, counsel visits or court appearances were affected;

(h) What programs, if any, were affected;

(i) All actions taken during the lock-in to resolve and address the lock-in; and

(j) The number of staff diverted for the lock-in.

Beginning July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide the speaker of the council and the board of correction all such reports for

the preceding quarter and shall post all such reports on the department's website with any identifying information redacted. Beginning July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide to the speaker of the council and the board of correction a report on the total number of lock-ins occurring during the preceding quarter, the areas affected by each such lock-in, the length of each such lock-in and number of incarcerated people subject to each such lock-in, disaggregated by race, age, gender identity, mental health treatment level and length of time in cell confinement.

k. Incarcerated persons under the age of 22 shall receive access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.

§ 2. This local law takes effect 180 days after it becomes law. The board of correction shall take any actions necessary for the implementation of this local law, including the promulgation of rules relating to procedures and penalties necessary to effectuate this section before such date.

Session 12

AM

LS # 7797

6/2/22

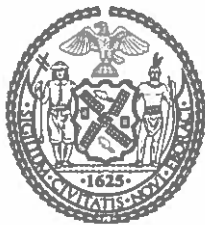
Session 11

AM

LS # 2666/2936/12523/12658/12676/12913

Int. # 2173– 2020

APPENDIX A



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

January 19, 2024

Michael McSweeney
City Clerk of the Council
141 Worth Street
New York, NY 10013

Dear Mr. McSweeney:

Transmitted herewith is the bill disapproved by the Mayor. The bill is as follows:

Int. 549-A – A Local Law to amend the administrative code of the city of New York, in relation to banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins.

Sincerely,

Connor Martinez
Director of City Legislative Affairs

cc: Honorable Adrienne E. Adams



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

January 19, 2024

Hon. Michael McSweeney
City Clerk and Clerk of the Council
141 Worth Street
New York, NY 10013

Dear Mr. McSweeney,

Pursuant to Section 37 of the New York City Charter, I hereby disapprove Introductory Number 549-A, which would amend the Administrative Code of the City of New York “in relation to banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins.” Introductory Number 549-A would replace sound correctional practices with a series of misguided mandates governing the management of persons who commit serious acts of violence while in custody. In doing so, it would make the City’s jails less safe in several important ways.

Although the title of Introductory Number 549-A states that it relates to prohibiting solitary confinement (which is generally understood to mean holding an individual in a jail cell for 22 or more hours a day without meaningful human contact), that is *not* what Introductory Number 549-A is about. Solitary confinement was already eliminated from New York City jails in 2019. Rather, Introductory Number 549-A would establish far-reaching restrictions on the operations of the Department of Correction (DOC) that would increase the risk of harm to incarcerated persons in the City’s custody and to the City’s correctional staff as follows:

First, Introductory Number 549-A would undermine the restrictive housing program developed in consultation with the Federal Monitor which, pursuant to a court order issued in *Nunez v. City of New York*, 11 CV 5845 (SDNY), will require such Monitor’s approval. Currently, persons placed in restrictive housing after committing a violent act—for instance, stabbing another individual or assaulting staff—are allowed out of cell in a congregate setting for seven hours a day. But Introductory Number 549-A requires that persons placed in a restrictive housing unit after committing a violent act must be out of cell 14 hours a day, the same as for general population, and must be given access to programming and amenities greater than those available to general population, purportedly “to encourage good behavior.” In other words, Introductory Number 549-

A eliminates any negative consequences for those who commit violent acts on other persons or on staff. To make matters worse, Introductory Number 549-A requires that placement in restrictive housing for persons in custody be reduced from the current 60 days to 15 days unless a person engages in conduct that presents an “imminent” threat of harm to themselves or others during that time. The notion that 15 days of programming, no matter how skilled the counselor, is sufficient to effect meaningful change in a person with a known propensity for serious violence is not supported by evidence or experience. Change takes time and commitment, and 15 days is barely enough to get started.

Second, Introductory Number 549-A would make escorting and transporting persons in custody far more dangerous by disallowing the use of restraints on individuals 22 years of age or older during transportation to and from court or elsewhere outside the Department’s facilities absent an individualized determination that restraints are necessary to prevent an “imminent risk” of injury. Illustrating the lack of coherence that characterizes the bill, for reasons not explained, and perhaps reflecting an inadvertent error, Introductory Number 549-A would permit restraints for those under 22 during transportation but not for those 22 or over. Each day, DOC sends 500 or more people in custody—25 or more buses with 20 or more persons on each bus—to courts in the five boroughs. As many as a third of those persons face homicide charges. Currently, persons are restrained—typically two persons are handcuffed together—for the safety of other persons in custody and DOC staff. A prohibition on restraining persons during transportation would lead to chaos. Police officers, after all, do not transport even one arrestee without restraint, let alone 20.

Third, Introductory Number 549-A removes DOC’s necessary discretion in conducting “lock-downs”—periods when, for everyone’s safety, incarcerated persons are held in their cells following a disturbance in a housing unit. Introductory Number 549-A establishes a fixed limit of four hours on lock-downs. While most such disturbances can be resolved in four hours or less, some inevitably require more time to investigate and restore order. An inflexible four-hour rule is not sound correctional policy. Introductory Number 549-A also requires persons to have telephone access during emergency lock-ins, even if that would enable violence, including gang violence. This requirement is also poor correctional policy. If two gangs clash in a housing unit, a person with access to a telephone could communicate with fellow gang members in other units (by calling a friend who is not incarcerated and conferencing in gang members who are incarcerated), and violence could easily spread.

Tellingly, the Federal Monitor, appointed under the *Nunez* consent decree and tasked with approving restrictive housing policy, has provided an assessment stating that, if Introductory Number 549-A were implemented, “in all likelihood, [it] would create or exacerbate the unsafe conditions” in New York City jails. The Monitor is clear about the heightened safety risks to people who work and live in Rikers created by this bill:

Council Bill 549-A includes absolute prohibitions in areas where at least some discretion is necessary, contains requirements that are both vague and ambiguous, contains multiple internal inconsistencies, and sets standards that are not consistent with sound correctional practice. These issues directly impact various Department policies and procedures addressed by the [Federal] Court Orders and which require the Monitor’s approval. . . . The Monitor will not approve policies and procedures

that include the problematic requirements [in 549-A] because they do not reflect sound correctional practice and would further exacerbate the extant unsafe conditions. Consequently, the Monitoring Team must reiterate its concern that the bill's requirements . . . will create situations that will impair, if not prevent, the Department from being able to comply with the [Federal] Court Orders.

Monitor's Assessment dated January 12, 2024, at 10; *see also* Assessment at 11 (Introductory Number 549-A "will intensify the risk of harm to both persons in custody and Department staff"). The Monitor speaks from decades of experience in corrections and with a mandate to assist New York City to improve safety conditions for persons in custody and staff. The assessment strengthens the Administration's view that the effects of Introductory Number 549-A would be dangerous.

Accordingly, I hereby disapprove Introductory Number 549-A.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Adams", with a long horizontal flourish extending to the right.

Eric Adams
Mayor

Cc: Hon. Adrienne Adams

Int. No. 549-A

By the Public Advocate (Mr. Williams) and Council Members Rivera, Cabán, Hudson, Won, Restler, Hanif, Avilés, Nurse, Sanchez, Narcisse, Krishnan, Abreu, Louis, Farías, De La Rosa, Ung, Ossé, Gutiérrez, Richardson Jordan, Joseph, Brannan, Menin, Schulman, Barron, Moya, Williams, Powers, Marte, Stevens, Brooks-Powers, Botcher, Dinowitz, Ayala, Riley, Feliz, Brewer and The Speaker (Council Member Adams) (by request of the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins

Be it enacted by the Council as follows:

1 Section 1. Chapter 1 of title 9 of the administrative code is amended by adding a new
2 section 9-167 to read as follows:

3 § 9-167 Solitary confinement. a. Definitions. For the purposes of this section, the following
4 terms have the following meanings:

5 Advocate. The term “advocate” means a person who is a law student, paralegal, or an
6 incarcerated person.

7 Cell. The term “cell” means any room, area or space that is not a shared space conducive
8 to meaningful, regular and congregate social interaction among many people in a group setting,
9 where an individual is held for any purpose.

10 De-escalation confinement. The term “de-escalation confinement” means holding an
11 incarcerated person in a cell immediately following an incident where the person has caused
12 physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or
13 other incarcerated persons.

14 Emergency lock-in. The term “emergency lock-in” means a department-wide emergency
15 lock-in, a facility emergency lock-in, a housing area emergency lock-in, or a partial facility
16 emergency lock-in as defined in section 9-155.

1 Out-of-cell. The term “out-of-cell” means being in a space outside of, and in an area away
2 from a cell, in a group setting with other people all in the same shared space without physical
3 barriers separating such people that is conducive to meaningful and regular social interaction and
4 activity or being in any space during the time of carrying out medical treatment, individual one-
5 on-one counseling, an attorney visit or court appearance.

6 Pre-hearing temporary restrictive housing. The term “pre-hearing temporary restrictive
7 housing” means any restrictive housing designated for incarcerated persons who continue to pose
8 a specific risk of imminent serious physical injury to staff, themselves, or other incarcerated
9 persons after a period of de-escalation confinement has exceeded time limits established by this
10 section and prior to a hearing for recommended placement in restrictive housing has taken place.

11 Restraints. For the purposes of this section, the term “restraints” means any object, device
12 or equipment that impedes movement of hands, legs, or any other part of the body.

13 Restrictive housing. The term “restrictive housing” means any housing area that separates
14 incarcerated persons from the general jail population on the basis of security concerns or discipline,
15 or a housing area that poses restrictions on programs, services, interactions with other incarcerated
16 persons or other conditions of confinement. This definition excludes housing designated for
17 incarcerated persons who are: (1) in need of medical or mental health support as determined by
18 the entity providing or overseeing correctional medical and mental health, including placement in
19 a contagious disease unit, (2) transgender or gender non-conforming, (3) in need of voluntary
20 protective custody, or (4) housed in a designated location for the purpose of school attendance.

21 Solitary confinement. The term “solitary confinement” means any placement of an
22 incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours
23 in any 24-hour period or during the day for a count not to exceed two hours in any 24-hour period.

1 Suicide prevention aide. For the purposes of this section, the term “suicide prevention aide”
2 means a person in custody who has been trained to identify unusual and/or suicidal behavior.

3 Violent grade I offense. The term “violent grade I offense” shall have the same meaning as
4 defined by the rules of the department of correction as of January 1, 2022.

5 b. Ban on solitary confinement. The department shall not place an incarcerated person in a
6 cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period
7 or during the day for count not to exceed two hours in any 24-hour period, unless for the purpose
8 of de-escalation confinement or during emergency lock-ins.

9 c. De-escalation confinement. The department’s uses of de-escalation confinement shall
10 comply with the following provisions:

11 1. De-escalation confinement shall not be located in intake areas and shall not take place
12 in decontamination showers. Spaces used for de-escalation confinement must, at a minimum, have
13 the features specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and
14 be maintained in accordance with the personal hygiene and space requirements set forth in such
15 sections;

16 2. Department staff must regularly monitor a person in de-escalation confinement and
17 engage in continuous crisis intervention and de-escalation to support the person’s health and well-
18 being, attempt de-escalation, work toward a person’s release from de-escalation confinement and
19 determine whether it is necessary to continue to hold such person in such confinement;

20 3. The department shall conduct visual and aural observation of each person in de-
21 escalation confinement every 15 minutes, shall refer any health concerns to medical or mental
22 health staff, and shall bring any person displaying any indications of any need for medical
23 documentation, observation, or treatment to the medical clinic. Suicide prevention aides may

1 conduct check-ins with a person in de-escalation confinement at least every 15 minutes and refer
2 any health concerns to department staff who will get medical or mental health staff to treat any
3 reported immediate health needs. No suicide prevention aide shall face any retaliation or other
4 harm for carrying out their role;

5 4. Throughout de-escalation confinement, a person shall have access to a tablet or device
6 that allows such person to make phone calls outside of the facility and to medical staff in the
7 facility;

8 5. A person shall be removed from de-escalation confinement immediately following when
9 such person has sufficiently gained control and no longer poses a significant risk of imminent
10 serious physical injury to themselves or others;

11 6. The maximum duration a person can be held in de-escalation confinement shall not
12 exceed four hours immediately following the incident precipitating such person's placement in
13 such confinement. Under no circumstances may the department place a person in de-escalation
14 confinement for more than four hours total in any 24-hour period, or more than 12 hours in any
15 seven-day period; and

16 7. In circumstances permitted in subdivision g of this section, the department may transfer
17 a person from de-escalation confinement to pre-hearing temporary restrictive housing.

18 (a) The department shall not place any incarcerated person in a locked decontamination
19 shower nor in any other locked space in any facility that does not have, at a minimum, the features
20 specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and maintained
21 in accordance with the personal hygiene and space requirements as set forth in such sections.

22 (b) The department shall not maintain any locked decontamination showers. Any other
23 locked spaces in any facility for holding incarcerated people must at least have the features

1 specified in and maintained in accordance with the personal hygiene and space requirements set
2 forth in 40 RCNY § 1-03 and § 1-04.

3 d. Reporting on de-escalation confinement. For each instance an incarcerated person is
4 placed in de-escalation confinement as described in subdivision c of this section, the department
5 shall prepare an incident report that includes a detailed description of why isolation was necessary
6 to de-escalate an immediate conflict and the length of time the incarcerated person was placed in
7 such confinement. Beginning on July 15, 2024, and within 15 days of the end of each subsequent
8 quarter, the department shall provide the speaker of the council and the board of correction all such
9 reports for the preceding quarter and post all such reports on the department's website. The
10 department shall redact all personally identifying information prior to posting such reports on the
11 department's website. Beginning July 31, 2024, and within 30 days of the end of each subsequent
12 quarter, the department shall provide to the speaker of the council and the board of correction, and
13 post on the department's website, a report with data for the preceding quarter on the total number
14 of people placed in such confinement, disaggregated by race, age, gender identity and mental
15 health treatment level, as well as the total number of people held in such confinement
16 disaggregated by whether confinement lasted less than one hour, between one and two hours,
17 between two and three hours, and between three and four hours.

18 e. Use of restraints. 1. The department shall not place an incarcerated person in restraints
19 unless an individualized determination is made that restraints are necessary to prevent an imminent
20 risk of self-injury or injury to other persons. In such instances, only the least restrictive form of
21 restraints may be used and may be used no longer than is necessary to abate such imminent harm.
22 Restraints shall not be used on an incarcerated person under the age of 22 except in the following
23 circumstances: (i) during transportation in and out of a facility, provided that during transportation

1 no person shall be secured to an immovable object; and (ii) during escorted movement within a
2 facility to and from out-of-cell activities where an individualized determination is made that
3 restraints are necessary to prevent an immediate risk of self-injury or injury to other persons. The
4 department is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine
5 an individual's escorted movements.

6 2. The department shall not place an incarcerated person in restraints beyond the use of
7 restraints described in paragraph 1 of this subdivision, or on two consecutive days, until a hearing
8 is held to determine if the continued use of restraints is necessary for the safety of others. Such
9 hearing shall comply with the rules of the board of correction as described in paragraph 1 of
10 subdivision f of this section. Any continued use of restraints must be reviewed by the department
11 on a daily basis and discontinued once there is no longer an imminent risk of self-injury or injury
12 to other persons. Continued use of restraints may only be authorized for seven consecutive days.

13 f. Restrictive housing hearing. Except as provided in subdivision g of this section, the
14 department shall not place an incarcerated person in restrictive housing until a hearing on such
15 placement is held and the person is found to have committed a violent grade I offense. Any required
16 hearing regarding placement of a person into restrictive housing shall comply with rules to be
17 established by the board of correction.

18 1. The board of correction shall establish rules for restrictive housing hearings that shall,
19 at a minimum, include the following provisions:

20 (i) An incarcerated person shall have the right to be represented by their legal counsel or
21 advocate;

22 (ii) An incarcerated person shall have the right to present evidence and cross-examine
23 witnesses;

1 (iii) Witnesses shall testify in person at the hearing unless the witnesses' presence would
2 jeopardize the safety of themselves or others or security of the facility. If a witness is excluded
3 from testifying in person, the basis for the exclusion shall be documented in the hearing record;

4 (iv) If a witness refuses to provide testimony at the hearing, the department must provide
5 the basis for the witness's refusal, videotape such refusal, or obtain a signed refusal form, to be
6 included as part of the hearing record;

7 (v) The department shall provide the incarcerated person and their legal counsel or
8 advocate written notice of the reason for proposed placement in restrictive housing and any
9 supporting evidence for such placement, no later than 48 hours prior to the restrictive housing
10 hearing;

11 (vi) The department shall provide the legal counsel or advocate adequate time to prepare
12 for such hearings and shall grant reasonable requests for adjournments;

13 (vii) An incarcerated person shall have the right to an interpreter in their native language if
14 the person does not understand or is unable to communicate in English. The department shall take
15 reasonable steps to provide such interpreter;

16 (viii) A refusal by an incarcerated person to attend any restrictive housing hearings must
17 be videotaped and made part of the hearing record;

18 (ix) If the incarcerated person is excluded or removed from a restrictive housing hearing
19 because it is determined that such person's presence will jeopardize the safety of themselves or
20 others or security of the facility, the basis for such exclusion must be documented in the hearing
21 record;

22 (x) A restrictive housing disposition shall be reached within five business days after the
23 conclusion of the hearing. Such disposition must be supported by substantial evidence, shall be

1 documented in writing, and must contain the following information: a finding of guilty or not
2 guilty, a summary of each witness's testimony and whether their testimony was credited or rejected
3 with the reasons thereof, the evidence relied upon by the hearing officer in reaching their finding,
4 and the sanction imposed, if any; and

5 (xi) A written copy of the hearing disposition shall be provided to the incarcerated person
6 and their counsel or advocate within 24 hours of the determination.

7 2. Failure to comply with any of the provisions described in paragraph 1 of this subdivision,
8 or as established by board of correction rule, shall constitute a due process violation warranting
9 dismissal of the matter that led to the hearing.

10 g. Pre-hearing temporary restrictive housing. In exceptional circumstances, the department
11 may place a person in pre-hearing temporary restrictive housing prior to conducting a restrictive
12 housing hearing as required by subdivision f of this section.

13 1. Such placement shall only occur upon written approval of the Commissioner or a Deputy
14 Commissioner, or another equivalent member of department senior leadership over the operations
15 of security. Such written approval shall include: the basis for a reasonable belief that the
16 incarcerated person has committed a violent grade I offense, and whether such person has caused
17 serious physical injury or poses a specific and significant risk of imminent serious physical injury
18 to staff or other incarcerated persons.

19 2. A restrictive housing hearing shall occur as soon as reasonably practicable following
20 placement in pre-hearing temporary restrictive housing, and must occur within five days of such
21 placement, unless the person placed in such restrictive housing seeks a postponement of such
22 hearing.

1 3. If a person is found guilty at a restrictive housing hearing, time spent in pre-hearing
2 temporary restrictive housing prior to such hearing determination shall be deducted from any
3 sentence of restrictive housing and such time shall count toward the time limits in restrictive
4 housing.

5 4. Pre-hearing temporary restrictive housing shall comply with all requirements for
6 restrictive housing, including but not limited to those established in subdivision h of this section.

7 5. During the first day of placement in pre-hearing temporary restrictive housing,
8 department staff must regularly monitor the person and engage in continuous crisis intervention
9 and attempt de-escalation, work toward a person's release from pre-hearing temporary restrictive
10 housing and determine whether it is necessary to continue to hold the person in pre-hearing
11 temporary restrictive housing.

12 h. Restrictive housing regulations. The department's use of restrictive housing must
13 comply with the following provisions:

14 1. The department shall not place an incarcerated person in restrictive housing for longer
15 than necessary and for no more than a total of 60 days in any 12 month period.

16 2. Within 15 days of placement of an incarcerated person in restrictive housing, the
17 department shall meaningfully review such placement to determine whether the incarcerated
18 person continues to present a specific, significant and imminent threat to the safety and security of
19 other persons if housed outside restrictive housing. If an individual is not discharged from
20 restrictive housing after review, the department shall provide in writing to the incarcerated person:
21 (i) the reasons for the determination that such person must remain in restrictive housing and (ii)
22 any recommended program, treatment, service, or corrective action. The department shall provide
23 the incarcerated person access to such available programs, treatment and services.

1 3. The department shall discharge an incarcerated person from restrictive housing if such
2 person has not engaged in behavior that presents a specific, significant, and imminent threat to the
3 safety and security of themselves or other persons during the preceding 15 days. In all
4 circumstances, the department shall discharge an incarcerated person from restrictive housing
5 within 30 days after their initial placement in such housing.

6 4. A person placed in restrictive housing must have interaction with other people and access
7 to congregate programming and amenities comparable to those housed outside restrictive housing,
8 including access to at least seven hours per day of out-of-cell congregate programming or activities
9 with groups of people in a group setting all in the same shared space without physical barriers
10 separating such people that is conducive to meaningful and regular social interaction. If a person
11 voluntarily chooses not to participate in congregate programming, they shall be offered access to
12 comparable individual programming. A decision to voluntarily decline to participate in congregate
13 programming must be done in writing or by videotape.

14 5. The department shall utilize programming that addresses the unique needs of those in
15 restrictive housing. The department shall provide persons in restrictive housing with access to core
16 educational and other programming comparable to core programs in the general population. The
17 department shall also provide persons in restrictive housing access to evidence-based therapeutic
18 interventions and restorative justice programs aimed at addressing the conduct resulting in their
19 placement in restrictive housing. Such programs shall be individualized and trauma-informed,
20 include positive incentive behavior modification models, and follow best practices for violence
21 interruption. Staff that routinely interact with incarcerated persons must be trained in de-escalation
22 techniques, conflict resolution, the use of force policy, and related topics to address the unique
23 needs of those in restrictive housing units.

1 6. The department shall use positive incentives to encourage good behavior in restrictive
2 housing units and may use disciplinary sanctions only as a last resort in response to behavior
3 presenting a serious and evident danger to oneself or others after other measures have not alleviated
4 such behavior.

5 7. All housing for medical or mental health support provided to persons recommended to
6 receive such support by the entity providing and/or overseeing correctional medical and mental
7 health, including placement in contagious disease units, housing for people who are transgender
8 or gender non-conforming, housing for voluntary protective custody, and housing for purposes of
9 school attendance, shall comply with subdivisions (b), (c), (e), (i), (j) and (k) of this section and
10 paragraphs 4, 5, and 6 of this subdivision.

11 8. For purposes of contagious disease units, after a referral from health care staff, a person
12 may be held in a medical unit overseen by health care staff, for as limited a time as medically
13 necessary as exclusively determined by health care staff, in the least restrictive environment that
14 is medically appropriate. Individuals in a contagious disease unit must have comparable access as
15 individuals incarcerated in the general population to phone calls, emails, visits, and programming
16 done in a manner consistent with the medical and mental health treatment being received, such as
17 at a physical distance determined appropriate by medical or mental health staff. Such access must
18 be comparable to access provided to persons incarcerated outside of restrictive housing units.

19 9. Reporting on restrictive housing. For each instance a disciplinary charge that could result
20 in restrictive housing is dismissed or an incarcerated individual is found not guilty of the
21 disciplinary charge, the department shall prepare an incident report that includes a description of
22 the disciplinary charge and the reasons for the dismissal or not guilty determination. For each
23 instance an incarcerated person is placed in restrictive housing, the department shall prepare an

1 incident report that includes a detailed description of the behavior that resulted in placement in
2 restrictive housing and why restrictive housing was necessary to address such behavior, including
3 if a person was placed in pre-hearing temporary restrictive housing and the reasons why the
4 situation met the requirements in paragraph 1 of subdivision g of this section. For each instance in
5 which confinement in restrictive housing is continued after a 15-day review of an incarcerated
6 person's placement in restrictive housing, the department shall prepare an incident report as to why
7 the person was not discharged, including a detailed description of how the person continued to
8 present a specific, significant and imminent threat to the safety and security of the facility if housed
9 outside restrictive housing and what program, treatment, service, and/or corrective action was
10 required before discharge. Beginning on July 15, 2024, and within 15 days of the end of each
11 subsequent quarter, the department shall provide the speaker of the council and the board of
12 correction all such reports for the prior quarter and post all such reports on the department's
13 website. The department shall redact all personally identifying information prior to posting the
14 reports on the department's website. Beginning July 31, 2024, and within 30 days of the end of
15 each subsequent quarter, the department shall provide to the speaker of the council and the board
16 of correction, and post on the department's website, a report with data for the preceding quarter on
17 the total number of people placed in restrictive housing during that time period, disaggregated by
18 race, age, gender identity, mental health treatment level and length of time in restrictive housing,
19 and data on all disposition outcomes of all restrictive housing hearing during such time period,
20 disaggregated by charge, race, age, gender identity and mental health treatment level.

21 i. Out-of-cell time. 1. All incarcerated persons must have access to at least 14 out-of-cell
22 hours every day except while in de-escalation confinement pursuant to subdivision c of this section
23 and during emergency lock-ins pursuant to subdivision j of this section.

1 2. Incarcerated persons may congregate with others and move about their housing area
2 freely during out-of-cell time and have access to education and programming pursuant to section
3 9-110 of the administrative code.

4 j. Emergency lock-ins. 1. Emergency lock-ins may only be used when the Commissioner,
5 a Deputy Commissioner, or another equivalent member of department senior leadership with
6 responsibility for the operations of security for a facility determines that such lock-in is necessary
7 to de-escalate an emergency that poses a threat of specific, significant and imminent harm to
8 incarcerated persons or staff. Emergency lock-ins may only be used when there are no less
9 restrictive means available to address an emergency circumstance and only as a last resort after
10 exhausting less restrictive measures. Emergency lock-ins must be confined to as narrow an area as
11 possible and limited number of people as possible. The department shall lift emergency lock-ins
12 as quickly as possible. The Commissioner, a Deputy Commissioner, or another equivalent member
13 of department senior leadership over the operations of security shall review such lock-ins at least
14 every hour. Such lock-ins may not last more than four hours.

15 2. Throughout an emergency lock-in, the department shall conduct visual and aural
16 observation of every person locked in every fifteen (15) minutes, shall refer any health concerns
17 to medical or mental health staff, and shall bring any person displaying any indications of any need
18 for medical documentation, observation, or treatment to the medical clinic. Throughout an
19 emergency lock-in, other than in a department-wide emergency lock-in or a facility emergency
20 lock-in, each person locked in shall have access to a tablet or other device that allows the person
21 to make phone calls both outside of the facility and to medical staff in the facility.

1 3. The department shall immediately provide notice to the public on its website of an
2 emergency lock-in, including information on any restrictions on visits, phone calls, counsel visits
3 or court appearances.

4 4. For each instance an emergency lock-in is imposed, the department shall prepare an
5 incident report that includes:

6 (a) A description of why the lock-in was necessary to investigate or de-escalate an
7 emergency, including the ways in which it posed a threat of specific, significant and imminent
8 harm;

9 (b) A description of how other less restrictive measures were exhausted;

10 (c) The number of people held in lock-in;

11 (d) The length of lock-in;

12 (e) The areas affected and the reasons such areas were subject to the emergency lock-in;

13 (f) The medical and mental health services affected, the number of scheduled medical and
14 or mental health appointments missed and requests that were denied;

15 (g) Whether visits, counsel visits or court appearances were affected;

16 (h) What programs, if any, were affected;

17 (i) All actions taken during the lock-in to resolve and address the lock-in; and

18 (j) The number of staff diverted for the lock-in.

19 Beginning July 15, 2024, and within 15 days of the end of each subsequent quarter, the
20 department shall provide the speaker of the council and the board of correction all such reports for
21 the preceding quarter and shall post all such reports on the department's website with any
22 identifying information redacted. Beginning July 15, 2024, and within 15 days of the end of each
23 subsequent quarter, the department shall provide to the speaker of the council and the board of

1 correction a report on the total number of lock-ins occurring during the preceding quarter, the areas
2 affected by each such lock-in, the length of each such lock-in and number of incarcerated people
3 subject to each such lock-in, disaggregated by race, age, gender identity, mental health treatment
4 level and length of time in cell confinement.

5 k. Incarcerated persons under the age of 22 shall receive access to trauma-informed, age-
6 appropriate programming and services on a consistent, regular basis.

7 § 2. This local law takes effect 180 days after it becomes law. The board of correction shall
8 take any actions necessary for the implementation of this local law, including the promulgation of
9 rules relating to procedures and penalties necessary to effectuate this section before such date.

10 I hereby certify that the above bill was passed by the Council of the City of
Wednesday, December 20, 2023
New York onreceiving the following votes:

Affirmative..... 39
Negative..... 7
Abstentions..... 1

Session 12
AM
LS # 7797
6/2/22

Session 11
AM
LS # 2666/2936/12523/12658/12676/12913
Int. # 2173- 2020


Michael M. McSweeney, City Clerk, Clerk of the Council.

DISAPPROVED

ON THE 19 DAY OF January 2024
 MAYOR