



Legislation Text

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Int. No. 549

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 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

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 9-163 to read as follows:

§ 9-163 Solitary confinement. a. Definitions. For the purposes of this section, the following terms have the following meanings:

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.

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 that is conducive to meaningful and regular social interaction and activity or being in any space during medical treatment or court appearances.

Restrictive housing. The term “restrictive housing” means any housing area that separates incarcerated individuals from the general jail population or that poses restrictions on programs, services, interactions with other incarcerated individuals or other conditions of confinement.

b. Ban on solitary confinement. The department shall not place an incarcerated individual in a cell, other than at night for sleep 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 such confinement is necessary to de-escalate immediate conflict that has caused injury or poses a specific, serious and imminent danger to a person’s safety. In such circumstances, an incarcerated individual may be confined in a cell for no longer than necessary to de-escalate the conflict, not to exceed four hours immediately following such conflict. During this period, department staff must meet with the individual at least once an hour to attempt de-escalation, work toward their release from such confinement and determine whether it is necessary to continue to hold the individual in such confinement. While an incarcerated individual is in such confinement, medical staff shall conduct meaningful rounding every 15 minutes to engage with the individual in confinement and evaluate and treat any immediate health needs. Mental health staff must meet with the individual at least once an hour to conduct an assessment of their mental health and attempt de-escalation. Medical and mental health staff have the authority to determine if any individual should be removed from such confinement if at any time remaining in such confinement is medically contraindicated. If medical or mental health staff make such a determination, the department shall remove the individual from such confinement to the appropriate setting. The department shall not place an individual in such confinement for more than four hours total in any 24-hour period, nor more than 12 hours in any seven-day period. The provisions of this subdivision do not apply to an emergency lock-in.

c. Reporting on confinement. For each instance an incarcerated individual is placed in the type of confinement described in subdivision b of this section, the department shall prepare an incident report that includes a detailed description of why isolation was necessary to de-escalate immediate conflict and the length of time the incarcerated individual was placed in such confinement. Within 15 days of the end of each quarter

of the calendar year, the department shall provide the speaker of the council and the board of correction all such reports 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. Within 30 days of the end of each quarter of the calendar year, 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 on the total number of people placed in such confinement during the reporting period, 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.

d. Restrictive housing. 1. The department shall not place an incarcerated individual in restrictive housing until a hearing on such placement is held pursuant to the rules of the board of correction and the individual is found to have committed a violent grade I offense as defined by the rules of the department of correction. Incarcerated individuals have the right to be represented by their legal counsel or legal advocate for such hearings and have the right to present evidence and cross-examine witnesses. The department shall provide the incarcerated individual and their legal counsel or legal advocate written notice of the reason for proposed placement in restrictive housing and the supporting evidence no later than 48 hours prior to the restrictive housing placement hearing. The department shall not place the incarcerated individual in restrictive housing prior to the hearing. The department shall provide the legal counsel or legal advocate with adequate time to prepare for such hearings and shall grant reasonable requests for adjournments. Any refusal by an incarcerated individual to attend such hearings must be videotaped and made part of the record. A failure to provide the notice or evidence described herein or to enter into the record videotaped evidence of an alleged refusal to attend by the incarcerated individual constitutes a due process violation warranting dismissal.

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

3. Within 15 days of placement of an incarcerated individual in restrictive housing, the department shall meaningfully review such placement with a multi-disciplinary team that includes program and health staff to determine whether the incarcerated individual 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 individual: (i) the reasons for the determination and (ii) any recommended program, treatment, service or corrective action. The department shall provide the incarcerated individual access to the programs, treatment and services specified.

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

5. Individuals placed in restrictive housing must have comparable interaction with other individuals and have access to comparable congregate programming and comparable amenities 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 that is conducive to meaningful and regular social interaction.

6. The department shall utilize programming that addresses the unique needs of those in restrictive housing. Staff that routinely interact with incarcerated individuals 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.

7. 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 after other measures have not alleviated such behavior.

8. 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 individual is placed in restrictive housing, the department shall prepare an incident report that includes a detailed description of the behavior that resulted in restrictive housing and why restrictive housing was necessary to address the behavior. For each instance in which confinement in restrictive housing is continued after a 15-day review of an incarcerated individual's placement in restrictive housing, the department shall prepare an incident report as to why the individual was not discharged, including a detailed description of how the individual 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. Within 15 days of the end of each quarter of the calendar year, the department shall provide the speaker of the council and the board of correction all such reports and post all such reports on the department's website along with data on the total number of people placed in restrictive housing during that time period, broken down by race, age, gender identity, mental health treatment level and length of time in restrictive housing, as well as data on all dispositions on all charges during that time period, broken down by charge, race, age, gender identity and mental health treatment level. The department shall redact all personally identifying information prior to posting the reports on the department's website.

e. Out-of-cell time. 1. All incarcerated individuals must have access to at least 14 out-of-cell hours every day except for incarcerated individuals placed in confinement for de-escalation pursuant to subdivision b of this section and for emergency lock-in.

2. The department shall not place an incarcerated individual in restraints during out-of-cell time unless an individualized determination is made that restraints are necessary to prevent an immediate risk of self-injury or injury to other persons. In such instances, only the least restrictive form of restraints may be used and for no

longer than necessary to abate such imminent harm. Restraints shall not be used on an incarcerated individual under the age of 22.

3. The department shall not place an incarcerated individual in restraints beyond the initial occasion described in paragraph 2 of this subdivision until a hearing is held to determine if the continued use of restraints is necessary for the safety of others. Incarcerated individuals have the right to be represented by their legal counsel or legal advocate for such hearings and have the right to present evidence and cross-examine witnesses. The department shall provide the incarcerated individual and their legal counsel or legal advocate written notice of the reason for proposed continued placement in restraints and any supporting evidence no later than 48 hours prior to the hearing. The department shall provide the legal counsel or legal advocate with adequate time to prepare for such hearings and shall grant reasonable requests for adjournments. Any refusal by an incarcerated individual to attend such hearings shall be videotaped and made part of the record. A failure to provide the notice or evidence described herein or to enter into the record videotaped evidence of an alleged refusal to attend by the incarcerated individual constitutes a due process violation warranting dismissal. Any continued use of restraints shall be reviewed daily and discontinued once there is no longer an immediate risk of injury. Continued use of restraints may only be authorized for a seven-day period.

4. Incarcerated individuals 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.

f. Emergency lock-ins. 1. Emergency lock-ins may only be used when the chief of department determines such lock-ins are necessary to de-escalate an emergency that poses a threat of specific, significant and imminent harm to incarcerated individuals or staff. Emergency lock-ins may only be used when there are no less restrictive means to address an emergency 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 to as limited number of people as possible. The department shall lift emergency lock-ins as quickly as possible. The chief of department 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, medical staff must conduct meaningful rounding every 15 minutes to engage with each individual locked in, evaluating and treating any immediate health needs. Mental health staff must meet with each individual at least once an hour to conduct an assessment of their health. Medical and mental health staff have the authority to determine if any individual should be removed from such confinement if at any time remaining in such confinement is medically contraindicated. If medical or mental health staff make such a determination, the department shall remove the individual from such confinement to the appropriate setting.

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 why;

(f) The medical and mental health services affected;

(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.

Within 15 days of the end of each quarter of the calendar year, the department shall provide the speaker of the council and the board of correction all such reports and post all such reports on the department's website

with any identifying information redacted. Within 15 days of the end of each quarter of the calendar year, the department shall provide to the speaker of the council and the board of correction a report on the total number of lock-ins, the areas affected by each lock-in, the length of each lock-in and number of people locked-in, disaggregated by race, age, gender identity, mental health treatment level and length of time in cell confinement.

g. Incarcerated individuals 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 60 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.

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Session 11

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