

CHANGES TO COUNTY MINIMUM STANDARDS

Effective

Section(s)

4/11/01

7028.2 (a) ; 7028.4 (c)

SUBTITLE AA
State Commission of Correction

PART

Chapter I Minimum Standards and Regulations for Management
of County Jails and Penitentiaries
7000

Chapter II Miscellaneous
7300 Substitute Jail Orders

CHAPTER I

Minimum Standards and Regulations for Management of County Jails
and Penitentiaries

PART

Subchapter A Minimum Standards and Regulations
7000

SUBCHAPTER A

Minimum Standards and Regulations

PART

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PART 7000

LEGAL AUTHORITY

(Statutory authority: Correction Law, §45(6))

Sec.

7000.1 Legal authority

Section 7000.1 Legal authority. (a) Article XVII, section 5, of the New York State Constitution provides that there shall be a State Commission of Correction which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime.

(b) Article 3, section 45, of the New York State Correction Law defines the following as basic functions of the State Commission of Correction:

- (1) promulgate rules and regulations establishing minimum standards for the care, custody, correctional treatment, supervision, discipline and other correctional programs for all persons confined in local correctional institutions; (Note: As used in this statute, the term local correctional institution means any county penitentiary, county jail, city jail, court detentional pen, hospital prison ward, or town, village or county lockup.)
- (2) aid in securing humane and economic administration and best sanitary conditions of the institutions subject to inspection;
- (3) investigate their management and conduct of their officials;
- (4) approve or reject plans for construction or renovation;
- (5) collect statistical information with respect to the inmates; and
- (6) close any of the facilities subject to inspection which are unsafe, unsanitary or inadequate to provide for the separation and classification of prisoners as required by law or which has not adhered to or complied with the rules and regulations promulgated by the commission.

(c) Article 3, section 46, of the Correction Law provides that, in any case where a sheriff, superintendent, officer or employee of an institution subject to inspection by the State Commission of Correction shall refuse or cause admission to be refused to any member, officer or inspector of the commission for the purpose of visitation and inspection, or shall refuse or neglect to furnish the information required by the commission or by any of its members, officers or inspectors, the commission may apply to the Supreme Court for an order directing such person to comply therewith; and, upon such application, the court may issue such order as may be just. A failure to comply with the court's order shall be a contempt of court and punishable as such.

(d) On or before the first day of February of each year, each sheriff, superintendent, commissioner, or other officer in charge of a county jail or county penitentiary shall submit a statistical report containing data with respect to prisoners received and discharged during the preceding calendar year. Forms on which such data is to be reported will be forwarded by the commission at the appropriate time.

PART 7001

CONSTRUCTION AND RENOVATION

(Statutory authority: Correction Law, §45(6))

Sec.

7001.1 Construction and renovation

Section 7001.1 Construction and renovation. (a) Correction Law, section 45, subdivision 10, requires that any plans and specifications for the construction or renovation of detention facilities must be submitted for review to the State Commission of Correction.

(b) Approval of the commission must be obtained before a construction or renovation project is advertised for bids. If it is not contemplated that a bidding procedure is to be followed, approval must be obtained before any construction or renovation is undertaken.

(c) Information as to general requirements to be observed in the construction or renovation of county jails and county penitentiaries is available and will be provided on request to the commission office at Albany.

PART 7002

ADMISSIONS

(Statutory authority: Correction Law, §§45[6], 504[2])

Sec.

- 7002.1 Policy
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- 7002.3 Identification
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Section 7002.1 Policy. (a) Consistent with the requirements of this Part, each local correctional facility shall establish policies and procedures designed to ensure that all prisoners are admitted to such facility in accordance with law, and in a manner designed to protect the safety of all persons and the security of the facility.

(b) Only persons lawfully committed to a local correctional facility shall be admitted to such facility.

7002.2 Authority for admissions. (a) Prior to the admission of any prisoner, facility staff performing receiving and admissions functions shall examine the committing instrument or document which serves as the basis for the admission. Prisoners shall be admitted to a facility only when:

- (1) an examination of available prisoner identification confirms that a prisoner's identity corresponds with any information accompanying such document;
- (2) reasonable efforts have been made to confirm that the prisoner is of proper age for admission to a correctional facility in the State of New York. If the prisoner has not reached his or her 16th birthday, such prisoner shall not be admitted to the facility, except in accordance with section 304.1 of the Family Court Act or section 510.15 of the Criminal Procedure Law;
- (3) reasonable efforts have been made to confirm that the

commitment document bears the signature of a magistrate or other appropriate authority;

- (4) it has been confirmed that the prisoner has been committed or otherwise authorized for admission to the receiving facility, and is not intended for commitment to another facility; and
- (5) it has been determined that the commitment document is not otherwise defective so as to render the admission of a prisoner unlawful.

(b) The chief administrative officer shall designate facility staff members to be responsible for admitting prisoners in accordance with the provisions of this Part.

(c) Persons delivering a prisoner to a facility shall present identification as required by the admitting facility staff person.

(d) The admissions process shall include the recording of:

- (1) the name of the prisoner received;
- (2) the authority for admission to the facility;
- (3) an itemization of all documents and property received with the prisoner;
- (4) the date and time of admission; and
- (5) the name, rank, badge number and authority of delivering officer.

7002.3 Identification. (a) Consistent with the requirements of this section, identification procedures, including fingerprinting, shall be established for prisoners confined in local correctional facilities.

(b) All prisoner fingerprints shall be taken in accordance with the rules and methods prescribed by the Division of Criminal Justice Services. If the prisoner is sentenced for a felony or a misdemeanor, two copies of the prisoner's fingerprints shall be forwarded by the facility to the Division of Criminal Justice Services within 24 hours of the admission of such sentenced prisoner to the facility. One copy of such fingerprints shall be retained by the facility.

(c) When deemed necessary to maintain the safety and security of the facility, the chief administrative officer may:

- (1) take the fingerprints of unsentenced prisoners; or
- (2) take palmprints or a photograph of any prisoner.

7002.4 Property confiscation. (a) Facility staff shall confiscate all contraband from prisoners admitted to the facility.

(b) As used in this section, the term contraband shall mean:

- (1) any article or substance the possession of which would constitute an offense as that term is defined in the New York State Penal Law;
- (2) any deadly weapon, as such weapon is defined in subdivision 12 of section 10.00 of the Penal Law;
- (3) any article or substance the possession of which is specifically prohibited by written facility regulations;
- (4) any article or substance the possession of which is specifically prohibited by the provisions of this Subtitle; and
- (5) any article or substance which may present a substantial sanitation or health threat to the facility.

(c) All prisoner property confiscated by facility staff shall be inventoried and recorded in writing. Such inventory shall include:

- (1) the name of the prisoner;
- (2) an itemization of each personal property item confiscated with an accurate description of such item;
- (3) the date of confiscation; and
- (4) the name and signature of officer completing the inventory.

(d) The prisoner shall verify by signing the inventory that such inventory is a complete and accurate itemization of such prisoner's confiscated personal property. If, for any reason, a prisoner is not able to verify, or refuses to verify, that such listing is accurate or complete by signing the inventory, such inventory shall be witnessed and signed by a second facility staff member. If, at a later time, such prisoner is able or willing to effect such signature, the prisoner shall be permitted to do so. The prisoner shall be given a copy of the signed inventory, and at least one copy shall be retained in the facility.

(e) Except as provided in subdivisions (g), (h) and (i) of this section, all prisoner property confiscated pursuant to this section shall be kept in a safe and secure area.

(f) The chief administrative officer shall establish and

maintain accurate books of account with respect to any money confiscated as contraband pursuant to this Part. Money confiscated as contraband pursuant to this section shall be deposited in the prisoner's account.

(g) A prisoner may designate, in writing, persons to receive property confiscated pursuant to this section. Personal property shall be released to persons designated by the prisoner when:

- (1) such person has presented adequate identification;
- (2) such person signs the personal property inventory; and
- (3) the inventory has been amended to reflect the release of each item of property.

(h) If a prisoner is not able to designate a person to receive property, or if the designee refuses to receive such property, and if such property cannot be stored within the facility because such storage may present a substantial facility health or sanitation threat, such property may, upon the order of the chief administrative officer, be destroyed. Any such order shall be in writing and shall state:

- (1) the name of the prisoner;
- (2) the specific property being destroyed;
- (3) the time and date of destruction of the property; and
- (4) the specific facts and reasons why such property constitutes a facility health or sanitation threat.

(i) The chief administrative officer shall not release any confiscated prisoner property, the possession of which may constitute an offense, to any person except appropriate law enforcement officials. Any such release shall be in writing and shall state:

- (1) a description of the property released to law enforcement officials;
- (2) the time and date of release;
- (3) the name of the prisoner from whom the property is confiscated; and
- (4) the name and organization of the official to whom the property is released.

7002.5 Records. (a) Consistent with the requirements of section 500-f of the Correction Law, each local correctional facility shall record and maintain information concerning each prisoner admitted to a local correctional facility.

(b) A record shall be made of the name, address, telephone number and relationship to the prisoner, of a person designated by

a prisoner to be notified in case of the death, serious illness or other serious incident involving the prisoner.

7002.6 Medical screening. A medical screening questionnaire shall be administered by facility staff at the time of admission or prior to the placement of a prisoner in a facility housing unit.

7002.7 Personal hygiene and clothing issue. (a) Consistent with the requirements of Part 7005 of this Subtitle, all prisoners shall be provided at admission with an issue of personal hygiene items.

(b) Clothing shall be issued to prisoners when requested or required pursuant to the requirements of Part 7005 of this Subtitle.

7002.8 Admissions telephone call. Consistent with the provisions of Part 7031 of this Subtitle, a prisoner shall be permitted to make telephone calls upon admission to a facility. Prisoners shall be informed upon admission of their rights to make such telephone calls.

7002.9 Facility rules and information. (a) Each local correctional facility shall prepare and distribute to all prisoners, upon admission, a written copy of facility rules and information. Such rules and information shall include, but is not limited to, the following:

- (1) facility rules of conduct, penalties for violation, and disciplinary procedures;
- (2) available health services, including physician visits and sick calls;
- (3) telephone services and rules for use;
- (4) recreation activities;
- (5) information and eligibility criteria for any available facility program including, but not limited to:
 - (i) temporary release programs;
 - (ii) educational programs;
 - (iii) counseling programs;
 - (iv) vocational programs; and
 - (v) work programs;
- (6) commissary operations;

- (7) lock-in and lock-out times, wake-up and lights-out times;
- (8) rules for the use of television, radio or musical instrument playing;
- (9) package rules and permissible items;
- (10) correspondence rules;
- (11) visitation rules and schedules;
- (12) eligibility criteria and procedures for requesting funeral and deathbed visits;
- (13) eligibility criteria and procedures, including application forms, for conditional release;
- (14) divine worship schedules;
- (15) grievance procedures;
- (16) the availability of legal reference materials and supplies, including a specific reference to the availability of rules and regulations of the State Commission of Correction; and
- (17) any additional information the chief administrative officer feels may assist prisoners.

(b) If any prisoner is illiterate or non-English speaking, reasonable efforts shall be made to assist such prisoner in the understanding of, and use of, necessary facility services and programs, as provided in section 7030.2 of this Title.

(c) Facility rules and information shall be updated and amended as needed.

(d) The chief administrative officer may require that each prisoner sign a ledger or other record verifying that such prisoner has received the facility rules and information required pursuant to this section.

(e) The chief administrative officer may require that prisoners forfeit possession of their copy of facility rules and regulations upon discharge from the facility.

PART 7003

SECURITY AND SUPERVISION

(Statutory authority: Correction Law, §45(6))

Sec.

- 7003.1 Policy
- 7003.2 Definitions
- 7003.3 Supervision of prisoners in facility housing areas
- 7003.4 Supervision of prisoners outside facility housing areas
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- 7003.8 Firearms control
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- 7003.10 Locks and other securing devices

Section 7003.1 Policy. Consistent with the requirements of this Part, each local correctional facility shall develop and employ policies and procedures designed to ensure that proper facility safety, security and supervision is maintained.

7003.2 Definitions. As used in this Part, the following definitions shall apply to the terms listed below:

(a) Supervisory visit shall mean:

- (1) a personal visual observation of each individual prisoner by facility staff responsible for the care and custody of such prisoners to monitor their presence and proper conduct; and
- (2) a personal visual inspection of each occupied individual prisoner housing unit and the area immediately surrounding such housing unit by facility staff responsible for the care and custody of prisoners to ensure the safety, security and good order of the facility.

(b) General supervision shall mean the availability to prisoners of facility staff responsible for the care and custody of such prisoners which shall include supervisory visits conducted at 30-minute intervals.

(c) Active supervision shall mean the immediate availability

to prisoners of facility staff responsible for the care and custody of such prisoners which shall include:

- (1) the uninterrupted ability to communicate orally with and respond to each prisoner unaided by any electronic or other artificial amplifying device;
- (2) the conducting of supervisory visits at 30-minute intervals;
- (3) the ability of staff to immediately respond to emergency situations; and
- (4) in any facility housing area in which more than 20 inmates are housed, the continuous occupation of a security post within such housing area.

(d) Constant supervision shall mean the uninterrupted personal visual observation of prisoners by facility staff responsible for the care and custody of such prisoners without the aid of any electrical or mechanical surveillance devices. Facility staff shall provide continuous and direct supervision by permanently occupying an established post in close proximity to the prisoners under supervision which shall provide staff with:

- (1) a continuous clear view of all prisoners under supervision; and
- (2) the ability to immediately and directly intervene in response to situations or behavior observed which threaten the health or safety or prisoners of the good order of the facility.

7003.3 Supervision of prisoners in facility housing areas. (a) Active supervision shall be maintained in all facility housing areas, including multiple occupancy housing units, when any prisoners are confined in such areas but not secured in their individual housing units.

(b) Where a security post is not located within a facility housing area pursuant to paragraph (4) of subdivision (c) of section 7003.2, each supervisory visit conducted in the course of providing active supervision shall be entered in the housing area logbook at the time such visits are made.

(c) At a minimum, general supervision shall be maintained in all facility housing areas when all prisoners are secured in their individual housing units.

(d) Notwithstanding the requirements of this section, the chief administrative officer shall determine the type and manner of supervision to be provided to trustees while such trustees are confined in a facility housing area housing only trustees.

(e) Whenever all prisoners are secured in their individual housing units and general supervision is maintained, mechanical or electrical time recording devices shall be used to record the performance of supervisory visits conducted pursuant to the requirements of this section.

(f) The records resulting from the use of mechanical or electrical time recording devices shall be retained within the facility and reviewed periodically by the chief administrative officer.

(g) Mechanical or electrical time recording devices shall not be required to record the performance of supervisory visits conducted pursuant to the requirements of this section when active supervision is maintained.

(h) The chief administrative officer and/or the facility physician shall determine whether a prisoner requires additional supervision based on the prisoner's condition, illness or injury, and the chief administrative officer shall order such supervision if warranted. Additional supervision may include:

- (1) more frequent supervisory visits;
- (2) active supervision when only general supervision is required; or
- (3) constant supervision.

(i) Consistent with the requirements of subdivision (j) of this section, such determinations and orders for additional supervision shall be recorded.

(j) All written records pertaining to facility housing supervision required pursuant to this section shall be recorded in ink in a bound ledger of consecutively numbered pages which shall be maintained in each housing area. Such records shall include, but not be limited to, the following information:

- (1) the name of the facility housing area in which the supervision is being maintained;
- (2) the name(s) of facility staff conducting the supervision;
- (3) when active supervision is conducted, the date and time supervision is initiated and the date and time it ends;

- (4) when general supervision is conducted, the date and time each supervisory visit is performed pursuant to the requirements of subdivision (b) of section 7003.2 of this Part and the signature of facility staff conducting the supervisory visit;
- (5) when the chief administrative officer and/or the facility physician determine a prisoner requires additional supervision pursuant to subdivision (h) of this section:
 - (i) the reasons underlying such determination;
 - (ii) orders made requiring such additional supervision, including the dates and times when the supervision is to be initiated and end;
 - (iii) the name(s) of the individual(s) making such determination and/or ordering the supervision;
 - (iv) the dates and times when supervision was initiated and ended;
 - (v) the name(s) of facility staff conducting the supervision; and
 - (vi) periodic facility staff observations of the prisoner's condition or behavior;
- (6) any significant events and activities occurring during supervision.

(k) Each entry recorded in the bound ledger required pursuant to this section shall be signed by the staff member making the entry.

(l) Alterations made by facility staff to any entries contained within such ledger shall be:

- (1) accomplished by facility staff drawing a single line through the entry to be changed which does not prevent the original entry from being read; and
- (2) dated and signed by the staff member making the alteration with the reason(s) noted why the record was altered.

(m) Notwithstanding the provisions of this section requiring a bound ledger, records pertaining to facility housing supervision may be recorded on a computerized log. Entries made on a computerized log shall identify the staff member making such entry.

Entries made on a computerized log shall not be erased. Alterations to entries shall be made by making an additional entry.

7003.4 Supervision of prisoners outside facility housing areas.

(a) Except as otherwise provided in this section, active supervision shall be maintained whenever prisoners are participating in activities outside facility housing areas.

(b) The chief administrative officer may determine that supervision, other than active supervision, is required for prisoners participating in activities outside facility housing areas. Such supervision may, where appropriate, include:

- (1) constant supervision; or
- (2) supervision by:
 - (i) facility staff members primarily responsible for duties other than the care and custody of prisoners; or
 - (ii) other persons providing services within the facility, including persons conducting facility programs.

(c) Prisoners participating in temporary release programs as provided in articles 22-A and 27 of the Correction Law need not be supervised when such prisoners are outside the confines of the facility.

(d) The chief administrative officer shall determine the type and manner of supervision to be provided to trustees while such trustees are outside their facility housing areas.

7003.5 Prisoner population counts. (a) Prisoner population counts shall:

- (1) be conducted at the completion of each regularly scheduled shift;
- (2) be conducted by the facility staff member completing such regularly scheduled shift in conjunction with the facility staff member beginning the next regularly scheduled shift; and
- (3) include an accounting of all prisoners housed in or otherwise assigned to the facility area in which such count is conducted.

(b) The results of each prisoner population count conducted pursuant to subdivision (a) of this section shall be recorded in writing. Such written record shall include the:

- (1) date and time of the count;
- (2) facility area in which the count was conducted;
- (3) number of prisoners accounted for; and
- (4) names of facility staff members conducting the count.

(c) Subsequent to each prisoner population count conducted pursuant to subdivision (a) of this section, the written records of the results of each count compiled pursuant to subdivision (b) of this section shall be immediately forwarded to the chief administrative officer. Upon receipt of the results of all prisoner population counts, the chief administrative officer shall determine the total prisoner population count. Such total prisoner population count shall account for each prisoner committed to the facility.

(d) Total prisoner population counts shall be made in writing and shall include the:

- (1) date and time of such count;
- (2) the results of such count; and
- (3) signature of the chief administrative officer.

(e) The chief administrative officer shall immediately initiate appropriate emergency procedures in response to any discrepancy in the prisoner population count.

7003.6 Requirements of facility staff members prior to assuming responsibilities in an assigned facility area. Each facility staff member shall, prior to assuming responsibilities in an assigned facility area, perform the following:

(a) review the records maintained pursuant to subdivisions (j) of section 7003.3 of this Part and, subsequent to such review, initial such written records;

(b) obtain all necessary keys for the assigned area in accordance with the provisions of section 7003.9 of this Part;

(c) inspect all supplies, equipment, locks, gates, bars, screens, security windows and other securing devices; and

(d) perform any other necessary security functions as determined by the chief administrative officer.

7003.7 Prisoner transportation. (a) Except as otherwise provided in this Part, constant supervision of prisoners shall be provided by facility staff members when such prisoners are being transported to or from any local correctional facility by facility staff members.

(b) Facility staff members responsible for the transportation of a prisoner to or from a local correctional facility shall, prior to beginning such transportation, obtain:

- (1) all necessary documents or other authorizations; and
- (2) any other necessary information relative to such transportation.

7003.8 Firearms control. (a) Except as otherwise provided in this Part, firearms or ammunition shall not be permitted within the secure area of any local correctional facility.

(b) All persons in possession of any firearms or ammunition shall be required to deposit such items in a secure depository or with a facility staff member prior to entering the secure area of any local correctional facility. Any person so depositing firearms or ammunition may demand, and upon demand shall receive, a receipt for such items. Any firearms or ammunition deposited pursuant to this subdivision shall be maintained in a safe and secure manner.

(c) All facility firearms or ammunition shall be maintained in a safe and secure area. An inspection of all facility firearms or ammunition shall be conducted at least every six months. A written record of such inspections shall be maintained and shall include:

- (1) the name of the person conducting the inspection;
- (2) the date of inspection;
- (3) the type and quantity of firearms or ammunition; and
- (4) any other information relative to the condition of the firearms or ammunition.

(d) Facility firearms or ammunition shall be issued only upon the determination of the chief administrative officer. Such determination shall be in writing and shall include the:

- (1) specific facts and reasons underlying the determination;
- (2) date and time of issuance and return of any firearms or ammunition;
- (3) type and serial number of firearms or ammunition issued; and
- (4) name of any person issued the firearms or ammunition.

(e) Firearms or ammunition shall be issued only to facility staff members trained in the use of such equipment by a certified firearms instructor.

(f) Except as otherwise provided in this subdivision, only firearms or ammunition issued by the facility shall be used by facility staff members in the performance of their official duties. Firearms other than facility issued firearms may be used by facility staff members in the performance of their official duties when:

- (1) the chief administrative officer has approved such use in writing; and
- (2) such facility staff members present certification of training in the use of such equipment by a certified firearms instructor.

(g) The storage, inspection, issuance and administration of chemical agents shall be in accordance with the provisions of Part 7063 of this Subtitle.

7003.9 Key control. (a) Consistent with the requirements of this section, the chief administrative officer shall establish written procedures for the control and use of all keys in a local correctional facility.

(b) All keys used in a local correctional facility shall be maintained in a safe and secure area.

(c) The chief administrative officer shall ensure that a duplicate of every key used in a local correctional facility is maintained. Such duplicate keys shall be maintained in a safe and secure area and shall be readily accessible when needed.

(d) Each local correctional facility shall establish procedures to ensure that all keys issued within such facility are properly controlled. A written record shall be maintained with respect to the control and issuance of keys and shall include the:

- (1) name of any facility staff member issued the keys;
- (2) date and time of issuance of the keys; and
- (3) date and time of return of the keys.

(e) All keys which could provide prisoners with a means of exit from any local correctional facility shall not be permitted in any area where prisoners may gain access to such keys.

7003.10 Locks and other securing devices. The chief administrative officer shall ensure that all locks and other securing devices including, but not limited to, bars, security windows, fences and screens are inspected at least weekly to ensure that such locks and other securing devices are in proper working order. Written records of such inspections shall be maintained and

shall include:

- (1) the name of the facility staff member performing the inspection;
- (2) the date of inspection;
- (3) the condition of the locks and other securing devices; and
- (4) any action taken to correct deficiencies in the locks and other securing devices.

PART 7004

CORRESPONDENCE

(Statutory authority: Correction Law, §45(6))

Sec.

- 7004.1 Policy
- 7004.2 Outgoing prisoner correspondence
- 7004.3 Incoming prisoner correspondence
- 7004.4 Privileged incoming and outgoing correspondence
- 7004.5 Restrictions on correspondence
- 7004.6 Contraband found in incoming prisoner correspondence

Section 7004.1 Policy. (a) Subject to the limitations of this Part, prisoners are entitled to correspond with any person.

(b) There shall be no restriction upon incoming or outgoing prisoner correspondence based upon:

- (1) the amount of correspondence sent or received; or
- (2) the language in which such correspondence is written.

(c) If a prisoner is unable to read or write, he may receive assistance with his correspondence from other persons designated by the chief administrative officer, including but not limited to facility employees and prisoners at times not unduly disruptive of the facility routine.

7004.2 Outgoing prisoner correspondence. (a) Each local correctional facility shall make available to indigent prisoners at facility expense stationery and postage for at least two one-ounce pieces of correspondence each week.

(b) Each facility shall make available for purchase by prisoners both stationery and postage.

(c) Outgoing prisoner correspondence shall bear at least the sender's name and the institutional post office box or street address in the upper left-hand corner of the envelope.

(d) Outgoing prisoner correspondence shall be sealed by the prisoner.

(e) All outgoing prisoner correspondence shall be collected and forwarded to the United States Postal Service at least once each

business day.

(f) Outgoing prisoner nonprivileged correspondence shall not be opened or read except when the chief administrative officer determines there is reasonable suspicion to believe that the contents of such correspondence endanger or threaten the safety or security of the facility or the safety, security or health of another person.

(g) When the chief administrative officer makes such a determination, he shall issue a written order which shall state the specific facts and reasons why such action is necessary to maintain the safety and security of the facility or the safety and security of another person.

(h) A prisoner shall be notified in writing when his outgoing nonprivileged correspondence is opened pursuant to this section.

(i) A prisoner shall be present when his outgoing nonprivileged correspondence is read pursuant to this section.

(j) The chief administrative officer may delay notifying the inmate regarding the specific facts and reasons when such notification would endanger the safety, security and good order of the facility. As soon as the danger no longer exists, the chief administrative officer shall immediately notify the inmate.

7004.3 Incoming prisoner correspondence. (a) Incoming prisoner correspondence other than privileged correspondence may be opened and inspected outside the presence of the intended prisoner recipient. Such correspondence may be opened and inspected solely to ensure the absence of contraband.

(b) Incoming prisoner correspondence shall not be read except pursuant to a written order of the chief administrative officer. Such written order shall state the specific facts and reasons why such action is necessary to maintain the safety, security or good order of a facility, or the health of any individual.

(1) A copy of any order made pursuant to this subdivision shall be forwarded by the chief administrative officer to:

- (i) the intended prisoner recipient; and
- (ii) the sender of the correspondence at issue.

(2) A written record of correspondence read pursuant to this subdivision shall be maintained. Such record shall include:

- (i) the name of the sender;
- (ii) the name of the intended prisoner recipient;
- (iii) the date the correspondence was read; and
- (iv) the name of the reader.

(c) Should the chief administrative officer, upon reading any incoming prisoner correspondence pursuant to subdivision (b) of this section, determine that such correspondence or any portion thereof constitutes a threat to the safety, security or good order of the facility or other correctional facilities, except as provided in subdivision (d) of this section, he shall return the correspondence to the sender together with a written statement setting forth the specific facts and reasons underlying the determination. A copy of this written statement shall be forwarded to the intended prisoner recipient.

- (1) For the purposes of this Part, correspondence shall not be deemed to constitute a threat to the safety, security or good order of a facility solely because it:
 - (i) criticizes a correctional facility, its staff, or the correctional system; or
 - (ii) espouses unpopular ideas, including ideas that facility staff deem not conducive to rehabilitation or correctional treatment.
- (2) Any reading or determination made pursuant to this subdivision shall be completed by the chief administrative officer within five business days after receipt of the correspondence at the facility.

(d) When any incoming prisoner correspondence read pursuant to subdivision (c) of this section may involve a criminal offense, it shall be forwarded by the chief administrative officer to the appropriate authority for criminal prosecution.

7004.4 Privileged incoming and outgoing correspondence. (a) As used in this Part, legal privileged correspondence shall mean correspondence to or from attorneys and individuals under the direct supervision of attorneys, legal assistance agencies and individuals under the direct supervision of legal assistance agencies, and courts. General privileged correspondence shall mean correspondence to and from the State Commission of Correction and other correctional officials, local, State and Federal law enforcement agencies, and the media.

(b) Incoming general and legal privileged correspondence shall not be opened and inspected for contraband except in the presence of the recipient prisoner.

(c) Outgoing general and legal privileged correspondence shall not be opened and inspected for contraband except where the chief administrative officer determines there is reasonable suspicion to believe that the contents of such privileged correspondence threaten the safety or security of the facility or the safety and security of another person. A prisoner shall be present when his outgoing general or legal privileged correspondence is opened pursuant to this subdivision.

(d) Incoming or outgoing prisoner legal privileged correspondence shall not be read except pursuant to a lawful search warrant. Such warrant shall be obtained within 24 hours of the facility's receipt of such correspondence and shall be enforced immediately after its issuance. A prisoner shall be present when his privileged correspondence is read pursuant to this subdivision.

(e) Incoming and outgoing general privileged correspondence shall not be read except where the chief administrative officer determines there is reasonable suspicion to believe that the contents of such general privileged correspondence endanger or threaten the safety or security of the facility or the safety and security of another person. When the chief administrative officer makes such a determination, he shall issue a written order which shall state the specific facts and reasons why such action is necessary to maintain the safety and security of the facility or the safety and security of another person. The recipient inmate shall be present when his incoming and outgoing general privileged correspondence is read pursuant to this subdivision.

7004.5 Restrictions on correspondence. Nothing contained in this Part shall be deemed to prevent the chief administrative officer from establishing a list of correspondents whom prisoners shall be prohibited from corresponding with.

7004.6 Contraband found in incoming prisoner correspondence.
(a) As used in this Part, the term contraband shall include all items which constitute a threat to the safety, security or good order of a facility.

(b) Incoming prisoner correspondence that is found to contain contraband shall be forwarded to the chief administrative officer for disposition.

(1) Contraband that may involve a criminal offense shall be forwarded by the chief administrative officer to the appropriate law enforcement authority.

(2) Contraband that does not involve a criminal offense shall

be returned to the sender or retained with the prisoner's secured property for return upon the prisoner's release.

- (3) Contraband that presents a threat to facility sanitation or health may, upon order of the chief administrative officer, be destroyed.
- (4) Cash, checks, or money orders shall be deposited in the intended prisoner recipient's facility account or delivered to the chief administrative officer for disposition in accordance with facility rules and regulations. The prisoner shall be notified of all amounts received and the disposition of such.

(c) The chief administrative officer shall give written notice to the intended prisoner recipient of any determination made pursuant to this section. This written notice shall include:

- (1) the name and address of the sender;
- (2) the nature of the contraband; and
- (3) a statement of the specific facts and reasons underlying the determination.

(d) Subsequent to any determination made pursuant to this section, the chief administrative officer shall, upon removal of the contraband contained in the correspondence, forward such correspondence to the intended prisoner recipient, except when such action may interfere with any pending criminal investigation of the matter.

PART 7005

PRISONER PERSONAL HYGIENE

(Statutory authority: Correction Law, §45[6])

Sec.

- 7005.1 Policy
- 7005.2 Showers
- 7005.3 Shaving
- 7005.4 Haircuts
- 7005.5 Hairstyles
- 7005.6 Personal health care items
- 7005.7 Clothing
- 7005.8 Laundry and repair of clothing
- 7005.9 Bedding
- 7005.10 Storage of clothing and bedding
- 7005.11 Housing area maintenance

Section 7005.1 Policy. Consistent with the requirements of this Part, the chief administrative officer of each local correctional facility shall provide for and maintain reasonable standards of prisoner personal hygiene.

7005.2 Showers. (a) Hot showers shall be made available to all prisoners daily. Consistent with facility health requirements, the chief administrative officer may require prisoners to shower periodically.

(b) Notwithstanding the requirements of subdivision (a) of this section, hot showers shall be made available to all prisoners confined in special housing, as that term is defined in subdivision (h) of section 7013.2, at least three times per week.

7005.3 Shaving. (a) Prisoners shall be permitted to shave daily. Necessary shaving items shall be provided at facility expense and shall be maintained in a safe and sanitary condition.

(b) Hot water sufficient to enable prisoners to shave with care and comfort shall be provided.

(c) Notwithstanding the requirements of subdivision (a) of this section, prisoners confined in special housing, as that term is defined in subdivision (h) of section 7013.2, shall be permitted to shave at least three times per week.

7005.4 Haircuts. (a) Hair shall be cut only by persons who, in the opinion of the chief administrative officer, are trained or skilled in the use of barber tools.

(b) Barber tools shall be maintained in a safe and sanitary condition.

(c) Haircuts shall be provided indigent prisoners at facility expense.

7005.5 Hair styles. (a) Consistent with the requirements of Part 7024 of this chapter, the chief administrative officer may establish rules for the permissible style and length of inmates' hair.

(b) Prisoners assigned to work in areas where food is stored, prepared, served or otherwise handled may be required to wear a hairnet or other head covering.

(c) The chief administrative officer may determine that certain work assignments constitute a safety or health hazard to those prisoners with long hair or beards. Prisoners unwilling or unable to conform to the safety requirements of such work assignments shall be assigned elsewhere.

(3) Should examination of a prisoner's hair reveal the presence of a health condition that may threaten the health of other persons, medical treatment shall be initiated immediately. Such medical treatment may include the cutting of a prisoner's hair upon the written determination of the facility physician that such action is necessary. Such hair-cutting shall be performed under the direct supervision of a member of the facility health services staff.

(e) When in the opinion of the chief administrative officer, the growth or removal of a prisoner's hair, including facial hair, creates an identification problem, a new photograph may be taken of that prisoner.

7005.6 Personal health care items. (a) Upon admission to a facility, all prisoners shall be provided at facility expense with an issue of a personal health care items, including but not limited to:

- (1) soap;
- (2) toothbrush;
- (3) toothpaste;
- (4) drinking cup;
- (5) toilet paper; and

(6) bath towel.

(b) In addition to the items listed in subdivision (a) of this section, all female prisoners shall be provided at facility expense with necessary feminine hygiene items, including but not limited to:

- (1) tampons; and
- (2) sanitary napkins.

(c) All feminine hygiene items shall be stored and dispensed in a manner sufficient to ensure that they are sanitary.

(d) Bath towels shall be exchanged weekly, or more frequently when necessary. All other personal health care items issued pursuant to subdivisions (a) and (b) of this section shall be replenished or replaced as needed.

7005.7 Clothing. (a) All prisoners shall be entitled to wear facility-issued clothing. Facility-issued clothing shall be provided at facility expense and shall include, but is not limited to:

(1) For men:

- (i) one shirt; and
- (ii) one pair of trousers.

(2) For women:

- (i) one shirt or blouse; and
- (ii) one skirt, smock, dress or pair of slacks.

(3) For men and women:

- (I) two pairs of socks;
- (ii) two sets of undergarments;
- (iii) one pair of suitable footwear when needed; and
- (iv) one sweater, sweatshirt or jacket to be issued during cold weather.

(b) When the facility clothing issue provided women prisoners pursuant to this section does not include slacks, women prisoners shall be permitted to receive slacks from any source, and to wear such slacks within the facility.

(c) Women prisoners shall be permitted to wear brassieres. Women prisoners shall be permitted to receive brassieres from any source and to wear such brassieres within the facility.

(d) When weather conditions necessitate additional clothing for prisoners who will be outside the facility, such additional clothing

shall be provided such prisoners as needed.

(e) At the discretion of the chief administrative officer, sentenced and/or unsentenced prisoners may be required to wear facility-issued clothing.

(f) Prisoners who are not required to wear facility-issued clothing shall be permitted to wear clothing worn by such prisoners at the time of admission to the facility and/or clothing received from any other source.

(g) All prisoner clothing shall be limited to those items that, in the opinion of the chief administrative officer, do not constitute a threat to the safety, security or good order of a facility. Prisoners clothing may be limited to that amount which can be safely stored within a facility. Prisoner clothing may be limited to items that may be easily washed. (h) Prisoners engaged in work assignments requiring special clothing shall be provided with such clothing at facility expense.

(h) Prisoners engaged in work assignments requiring special clothing shall be provided with such clothing at facility expense.

7005.8 Laundry and repair of clothing. (a) Laundry services sufficient to provide all prisoners with a clean change of any clothing permitted or required pursuant to section 7005.7 of this Part shall be provided at facility expense twice a week and more frequently when necessary.

(b) Reasonable repairs of any clothing permitted or required pursuant to section 7005.7 of this Part shall be made at facility expense.

(c) When a prisoner is without clothing items as listed in subdivision (a) of section 7005.7 of this Part, as the result of clothing having been collected for laundering or repair, such prisoner shall be immediately provided with such items.

(d) All facility-issued clothing shall be laundered and repaired prior to being reissued to another prisoner.

7005.9 Bedding. (a) Upon admission to a facility, all prisoners shall be provided at facility expense with an issue of clean bedding in good condition.

(b) Pillowcases and sheets shall be exchanged weekly or more frequently when necessary. All other bedding items issued pursuant to subdivision (a) of this section shall be exchanged when necessary.

(c) All bedding items issued or exchanged pursuant to this section shall be cleaned, checked for damage and repaired when necessary before reissue.

(d) Mattresses should be constructed of fire-retardant material. When issued, mattress covers should be constructed of materials both water-resistant and easily sanitized.

7005.10 Storage of clothing and bedding. All items of clothing and bedding stored within the facility shall be maintained in a safe and sanitary manner.

7005.11 Housing area maintenance. A supply of brooms, mops, pails, soap, disinfectant and other materials sufficient to properly clean and maintain facility housing areas shall be provided prisoners at facility expense.

PART 7006

DISCIPLINE

(Statutory authority: Correction Law, §45 [6])

Sec.

- 7006.1 Policy
- 7006.2 Facility policies and procedures
- 7006.3 Rules of inmate conduct
- 7006.4 Misbehavior reports
- 7006.5 Investigattions
- 7006.6 Assistance to inmates
- 7006.7 Administrative segregation pending a disciplinary hearing
- 7006.8 The disciplinary hearing
- 7006.9 Disciplinary sanctions
- 7006.10 Appeal procedures
- 7006.11 Recordkeeping

Section 7006.1 Policy. In order to promote the safety, security and welfare of all inmates and staff within local correctional facilities, the chief administrative officer of each facility shall establish and maintain a system of inmate discipline designed to set standards of appropriate behavior, encourage self control and punish misbehavior fairly, impartially and consistently.

7006.2 Facility policies and procedures. The chief administrative officer of each local correctional facility shall develop and implement written policies and procedures consistent with this Part.

7006.3 Rules of inmate conduct. (a) The chief administrative officer of each facility shall develop written rules of inmate conduct which contain a list of all rules and regulations governing inmate behavior.

(b) The rules of inmate conduct shall include:

- (1) all chargeable offenses;
- (2) the range of punishments that may be imposed for each violation, consistent with the seriousness of the conduct prohibited; and

(3) a detailed description and an explanation of the facility's disciplinary procedures.

(c) Each inmate shall be provided with a copy of the rules of inmate conduct upon admission to the facility, and a copy shall also be maintained in the facility law library.

(d) Non-English speaking and illiterate inmates shall be assisted to understand the rules of inmate conduct.

7006.4 Misbehavior reports. (a) When a staff member has a reasonable belief that an inmate has committed an offense that constitutes a violation of the facility's rules of inmate conduct, and such violation is not informally resolved, such staff member shall prepare a written misbehavior report.

(b) Each misbehavior report shall include:

- (1) the name(s) of the inmate(s) charged with the misconduct;
- (2) the date, time and place of occurrence;
- (3) a description of the incident or behavior involved and the rule(s) allegedly violated;
- (4) the date and time the report is written;
- (5) the reporting staff member's printed name and signature.

(c) If two or more violations are involved, all may be incorporated in a single report, separately stated. Each violation shall be disposed of separately in accordance with facility policies and procedures.

(d) If more than one inmate is involved in any incident, the facts and circumstances surrounding each inmate's involvement shall be separately stated in the misbehavior report.

(e) The inmate charged with the violation shall be issued a copy of the misbehavior report as soon as practicable, but in no event later than 24 hours prior to a hearing based upon the incident giving rise to such report.

7006.5 Investigations. (a) An investigation into the facts and circumstances of the incident shall be initiated if the chief administrative officer determines that the circumstances warrant such an investigation.

(b) In those cases where an investigation is deemed necessary, the investigation shall be conducted by persons who were not involved in the incident, and a completed report shall be provided to the hearing officer prior to any hearing based on the incident

investigated.

7006.6 Assistance to inmates. (a) If an inmate is non-English speaking, illiterate, or for any other reason is unable to prepare a defense, assistance shall be provided to the inmate by a person designated by the chief administrative officer at least 24 hours prior to the hearing.

(b) Such assistance shall include:

- (1) interviewing witnesses;
- (2) obtaining evidence and/or written statements;
- (3) providing assistance at the disciplinary hearing;
- (4) providing assistance understanding administrative segregation decisions;
- (5) providing assistance understanding the evidence relied on by the hearing officer and the reasons for action taken;
- (6) providing assistance understanding the waiver of any rights provided by this Part; and
- (7) providing assistance in filing an appeal as provided by this Part.

(c) The chief administrative officer may limit the number of witnesses interviewed and the evidence and/or written statements obtained where it is determined that such witnesses, evidence, and/or statements are irrelevant or redundant. Such determination shall be documented in the hearing record.

7006.7 Administrative segregation pending a disciplinary hearing. (a) An inmate who threatens the safety, security, and good order of the facility may be immediately confined in a cell or room pending a disciplinary hearing and may be retained in administrative segregation until the completion of the disciplinary process.

(b) Within 24 hours of such confinement, the inmate shall be provided with a written statement setting forth the reason(s) for such confinement. Upon receipt of the written statement, the inmate shall be provided with an opportunity to respond to such statement orally or in writing to the chief administrative officer.

(c) The chief administrative officer shall review the administrative confinement within 24 hours of such confinement in order to determine if continued confinement is warranted.

7006.8 The disciplinary hearing. (a) An inmate charged with a violation in accordance with section 7006.4 of this Part shall receive a hearing within fifteen business days of receipt of the misbehavior report. The inmate shall be given at least 24 hours prior written notice of the time, date, and place of the hearing. A hearing shall be completed within five business days of its convening unless otherwise authorized by the chief administrative officer. The time frames required by this subdivision may be waived by the inmate, however, such waiver shall not be effective unless made in writing.

(b) The chief administrative officer shall appoint one or more impartial persons to serve as hearing officer or as members of a hearing panel during the disciplinary hearing.

(c) The inmate shall be allowed to be present at the hearing unless the inmate has waived his right to be present or the hearing officer determines that the inmate's presence will jeopardize the safety, security, or good order of the facility. A waiver of the right to be present shall be made in writing and signed by the inmate. If the inmate refuses to sign such waiver, it shall be so noted in the record. A hearing officer's determination that an inmate's presence will jeopardize the safety, security, or good order of the facility shall be documented in the hearing record.

(d) The inmate shall be given the opportunity to speak on his own behalf at the hearing, and shall be permitted to call witnesses and present evidence in his defense if relevant and not redundant, and when doing so would not jeopardize the safety, security, or good order of the facility. A hearing officer's determination that the presence of a particular witness or the introduction of particular evidence is irrelevant, redundant, or will jeopardize the safety, security, or good order of the facility shall be documented in the hearing record.

(e) If the hearing officer calls witnesses, the inmate may submit questions directed toward such witnesses to the hearing officer. The hearing officer shall pose such questions to the witness if relevant and not redundant, and when doing so would not jeopardize the safety, security, or good order of the facility. The hearing officer may restate such question if it is unclear or in improper form. A hearing officer's determination that a particular question is irrelevant, redundant, or will jeopardize the safety, security, or good order of the facility shall be documented in the hearing record.

(f) The inmate may be excluded from the hearing during the interview of witnesses in accordance with subdivision (e) of this section. The contents of such interview shall be provided to the

inmate, except for such information that, if provided, would jeopardize the safety, security, or good order of the facility.

(g) No charges other than those contained in the misbehavior report shall be presented during the course of the hearing. Any additional charges brought against the inmate shall be treated as new charges and shall be subject to the requirements of this Part.

(h) A disposition shall be reached within five business days after conclusion of the hearing. The disposition shall be supported by substantial evidence and shall be in writing and shall contain the following:

- (1) a finding of guilt or innocence on each charge of misbehavior;
- (2) the evidence relied upon by the hearing officer in reaching such finding; and
- (3) the sanction imposed, if any.

A copy of the disposition shall be provided to the inmate.

(i) Nothing contained in this Part shall preclude the use of plea bargaining.

7006.9 Disciplinary sanctions. (a) If the charges against the inmate are affirmed as a result of the hearing, one or more of the following sanctions may be imposed based upon the inmate's past record and the severity of the offense:

- (1) counsel or reprimand;
- (2) loss of one or more specified privileges for a period consistent with the facility rules of inmate conduct for the particular offense(s);
- (3) restitution for the loss or damage of property made from existing or future funds in the inmate's account;
- (4) confinement to a cell, room, or in special housing for a period consistent with the facility rules of inmate conduct for the particular offense(s);
- (5) loss of a specified period of good behavior allowance, subject to restoration pursuant to applicable laws and regulations; and/or
- (6) loss of up to one hour of weekly visitation for a period

consistent with the facility rules of inmate conduct for the particular offense.

(b) The hearing officer may hold the commencement of a sanction in abeyance for a period up to 30 days in order to assess the behavioral adjustment of the inmate. At the conclusion of such period, the hearing officer shall determine whether the sanction shall commence in whole or in part or shall be suspended in whole or in part.

(c) If an inmate is found guilty of a charge of misbehavior, a disciplinary surcharge not to exceed \$5 may be imposed upon the inmate in addition to the sanctions authorized pursuant to subdivision (a) of this section. All moneys collected shall be deposited in the county general fund and not specifically allocated to the facility.

7006.10 Appeal procedures. (a) The inmate shall have the right to appeal the hearing officer's disposition and any sanction to the chief administrative officer. Such appeal shall be submitted in writing within two business days of the inmate's receipt of the disposition, specifying the grounds for the appeal.

(b) All appeals shall be reviewed and decided within five business days after receipt and each inmate shall be notified in writing of the results.

(c) The chief administrative officer may reduce or suspend all or part of the sanction, but not increase it.

7006.11 Recordkeeping. (a) A disciplinary record shall be maintained by the facility which shall include the misbehavior report; the investigation report, if prepared; the formal disposition; sanctions imposed, if any; and the appeal documents.

(b) Records generated pursuant to a disciplinary hearing in which an inmate is found not guilty of charges brought against him, after either the hearing or an appeal, shall be kept confidential and shall not be considered in making decisions pertaining to the inmate's participation in programs, services, or local conditional release, or in the granting or withholding of good behavior credits.

PART 7007

GOOD BEHAVIOR ALLOWANCES AGAINST DEFINITE SENTENCES
AND CERTAIN CIVIL COMMITMENTS

(Statutory authority: Correction Law, §45[6])

Sec.

7007.1 Good behavior allowances against definite sentences and certain civil commitments

Section 7007.1 Good behavior allowances against definite sentences and certain civil commitments. (a) Every person confined in a local correctional facility serving a definite sentence of imprisonment may receive time allowances as discretionary reductions of the term of sentence, as provided by law.

(b) Every person confined in an institution serving a civil commitment for a fixed period of time, whose release is not conditional upon any act within his power to perform, may receive time allowances as discretionary reductions of the term of his commitment, as provided by law.

(c) Recordkeeping rules and regulations--good behavior allowances. (1) In conjunction with the maintenance of other records and accounts as required by law, a written record shall be kept of every person confined in a local correctional facility who may be eligible to receive a discretionary reduction of a definite sentence or sentences, or who may be eligible to receive a discretionary reduction of the term or terms of civil commitment by reason of the application of good behavior allowances.

(2) The record shall indicate the manner in which the discretionary good behavior allowances were calculated and applied to the term of the sentence, sentences, or civil commitment imposed by the court, to establish the date of discharge.

(3) Whenever such good behavior allowance or any part thereof is withheld, forfeited or cancelled in whole or in part, or whenever such good behavior allowance or any part thereof is restored, a notation to that effect shall be entered in the record with a suitable explanation for the action taken.

(4) Upon commencement of any definite sentence or civil commitment, the term of which is not conditional upon any act within the subject's power to perform, the provisions of this section shall

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be furnished to the inmate serving such sentence or civil commitment and the meaning of the same shall be fully explained by an officer designated for such purpose, and such inmate shall be required to acknowledge in writing that such explanation was made.

PART 7008

VISITATION

(Statutory authority: Correction Law, §45[6])

Sec.

- 7008.1 Policy
- 7008.2 Visiting area
- 7008.3 Availability of visits
- 7008.4 Initial visit
- 7008.5 Visitor identification and registration
- 7008.6 Contact visits
- 7008.7 Visitation security and supervision
- 7008.8 Limitation of visitation

Section 7008.1 Policy. (a) All prisoners confined in local correctional facilities are entitled to receive periodic visits.

(b) Consistent with the requirements of this Part, visits shall be permitted upon the request of a prisoner or a prospective visitor with the prisoner's consent.

7008.2 Visiting area. (a) A visiting area of sufficient size to meet the requirements of this Part shall be established and maintained in each facility.

(b) The visiting area shall be designed so as to allow physical contact between prisoners and their visitors.

7008.3 Availability of visits. (a) Except as provided in Part 7006 of this Title, each prisoner shall be entitled to at least two hours of visitation each week. Each visit shall be at least 30 minutes.

(b) The chief administrative officer shall establish and publish a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week.

(c) Prisoners shall be permitted to visit with more than one visitor at the same time, with the maximum number of visitors to be determined by the chief administrative officer.

7008.4 Initial visit. Each prisoner shall be entitled to receive a noncontact visit within 24 hours after his admission to a facility and arrangements shall be made to ensure the initial visit, upon the prisoner's request.

7008.5 Visitor identification and registration. (a) Consistent with the requirements of this Part, any properly identified person shall, with the prisoner's consent, be permitted to visit that prisoner.

(b) As used in this section, the term properly identified person shall mean a person who presents adequate proof as to his identity.

(c) Each visitor shall be required to provide the following information to facility staff:

- (1) his name;
- (2) his address;
- (3) the date;
- (4) the time of entry;
- (5) the name of the prisoner or prisoners to be visited; and
- (6) the time of exit.

(d) A prospective visitor who is under 18 years of age may be restricted from visiting a prisoner if he is not accompanied by a parent or legal guardian, or the chief administrative officer may require a prospective visitor under 18 years of age not accompanied by a parent or legal guardian to provide written permission from a parent or legal guardian approving such visit. Oral permission from a parent or legal guardian may be acceptable in the discretion of the chief administrative officer. A prospective visitor under 18 years of age shall be required to provide the following information to facility staff, in addition to the information required by subdivision (c) of this section:

- (1) his age; and
- (2) the name, address and telephone number of his parents or legal guardian.

7008.6 Contact visits. (a) Physical contact shall be permitted between a prisoner and his visitors.

(b) Prisoners and their visitors shall be required to conduct themselves in a manner consistent with reasonable standards of public decency.

7008.7 Visitation security and supervision. (a) All prisoners, prior and subsequent to each visit, may be searched solely to ensure that they possess no contraband.

(b) All prospective visitors may be searched solely to ensure that they possess no contraband.

(c) Personal effects, including but not limited to handbags or packages possessed by any prospective visitor, shall be searched or checked with the visiting area supervising officer.

(d) A search of the visiting area shall be conducted prior and subsequent to each visiting period.

7008.8 Limitation of visitation. (a) Consistent with the requirements of this Part, the visitation of a prisoner with a particular visitor may be denied, revoked or limited only when it is determined that such visitation would cause a threat to the safety, security or good order of the facility or the safety, security or health of the prisoners.

(b) Contact visits as provided for in section 7008.6 of this Part may be denied, revoked or limited only when it is determined that such visits constitute a threat to the safety, security or good order of a facility. Should a determination be made to deny, revoke or limit a prisoner's contact visits, alternative arrangements for affording the prisoner visits shall be made, including but not limited to noncontact visits.

(c) Any determination to deny, revoke or limit a prisoner's visitation pursuant to subdivisions (a) and (b) of this section shall be made by the chief administrative officer in writing, and shall state the specific facts and reasons underlying such determination. A copy of this determination shall be given to any person affected by the determination.

PART 7009

FOOD SERVICES

(Statutory authority: Correction Law, §45(6))

Sec.

- 7009.1 Policy
- 7009.2 Nutritional adequacy
- 7009.3 Medical diets
- 7009.4 Religious diets
- 7009.5 Food service personnel
- 7009.6 Meals
- 7009.7 Food storage

Section 7009.1 Policy. (a) Consistent with the requirements of this Part, each local correctional facility shall maintain a facility food service program sufficient to satisfy the daily nutritional needs of each prisoner.

(b) All food service areas, including but not limited to kitchens, dining areas and food storage areas, shall be maintained in accordance with the provisions of section 7015.2 of this Title.

(c) A food service organization which provides food services for a local correctional facility must comply with the requirements of this Part and with the requirements of the State Sanitary Code as contained in 10 NYCRR Part 14.

7009.2 Nutritional adequacy. (a) The food service program in each local correctional facility shall ensure that all prisoners are provided with an appropriate level of nutrients and calories. Such appropriate level of nutrients and calories shall be based upon current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council.

(b) The person responsible for the supervision of the facility food service program shall plan and prepare written and dated menus. Such menus shall be reviewed at least annually by a nutritionist or dietician certified by the State Education Department to ensure that they provide an appropriate level of nutrients and calories.

7009.3 Medical diets. The chief administrative officer shall ensure that any medical diet prescribed for a prisoner by a physician or other authorized facility health services staff member

is provided such prisoner.

7009.4 Religious diets. Pursuant to the requirements of section 7024.6 of this Title, prisoners are entitled to observe reasonable dietary laws established by their religion. Each facility shall provide prisoners with food items sufficient to meet such reasonable religious dietary laws.

7009.5 Food service personnel. (a) The chief administrative officer shall designate an individual who shall be responsible for the supervision of the facility food service program. Such person shall be responsible for:

- (1) the preparation of menus consistent with the requirements of section 7009.2 of this Part; and
- (2) the supervision, preparation and service of all meals.

(b) Only persons who have been found to be in good health and free from communicable diseases by a physician licensed to practice medicine in New York State shall be assigned to or permitted to work in the facility food service program.

(c) Consistent with the requirements of section 7015.2 of this Title, all persons employed in the food service program of a local correctional facility shall maintain high levels of cleanliness and conform to hygienic practices while performing such facility functions.

7009.6 Meals. (a) Each prisoner in a local correctional facility shall be served at least three meals in each 24-hour period. Such meals shall be scheduled so that:

- (1) the morning meal is served at a regularly scheduled time between the hours of 5 a.m. and 9 a.m.;
- (2) the noon meal is served at a regularly scheduled time between the hours of 11 a.m. and 2 p.m.; and
- (3) the evening meal is served at a regularly scheduled time between the hours of 4 p.m. and 7 p.m.

(b) The person responsible for the supervision of the food service program shall establish policies and procedures designed to ensure that food is served at proper temperatures. At least one of the three regularly scheduled meals in a 24-hour period shall be served hot.

(c) Notwithstanding the requirements of subdivision (b) of this

section, an inmate confined in special housing, as that term is defined in subdivision (h) of section 7013.2, who engages in unhygienic acts, such as spitting or throwing feces or urine, or who uses food or food service equipment in a manner that is a threat to the safety, security, or good order of the facility, or the health or safety of any person, may be provided with alternative meals subject to the following conditions:

(1) the determination to provide alternative meals shall be made by the chief administrative officer in writing and shall state the specific facts and reasons underlying such determination, a copy of which shall be given to the inmate;

(2) alternative meals shall supply an appropriate level of nutrients and calories and shall be approved by a certified nutritionist or dietician;

(3) the provision of alternative meals shall not exceed seven days, although alternative meals may be reinstated at a future time if the inmate's use of food or food service equipment again presents a threat to the safety, security, or good order of the facility, or the health or safety of any person; and

(4) an inmate placed on alternative meals shall be examined by facility health staff at least every twenty-four hours in accordance with section 137 of the Correction Law.

7009.7 Food storage. All food stored in a local correctional facility shall be maintained in such a manner so as to protect against spoilage or contamination. Such foods shall be stored in compliance with the requirements of the State Sanitary Code as contained in the Public Health Law or any rules or regulations promulgated by the New York State Department of Health.

PART 7010

HEALTH SERVICES

(Statutory authority: Correction Law, §45[6][15])

Sec.

7010.1 Policy

7010.2 Health services

7010.3 Possession of medication by inmates

7010.4 Storage of medication

7010.5 Return of unused medications

7010.6 Report concerning the condition of inmates kept apart from the general population

Section 7010.1 Policy. (a) In order to provide adequate medical care for incarcerated persons, the chief administrative officer of each local correctional facility shall develop and implement written policies and procedures consistent with this Part.

(b) Prompt screening is essential to identify serious or life-threatening medical conditions requiring immediate evaluation and treatment. Appropriate medical appraisal of inmates is necessary to reduce the risk that a serious physical deficiency or medical emergency will be obscured by drug or alcohol ingestion.

7010.2 Health services. (a) The county legislature, board of supervisors or similar county governing unit shall appoint a properly registered physician for the local correctional facility.

- (1) Each prisoner shall be examined by a physician licensed to practice in the State of New York or by medical personnel legally authorized to perform such examinations at the time of admission or as soon thereafter as possible, but no later than 14 days after admission.
- (2) Documented evidence of an examination by a physician or other authorized medical personnel within the six month period prior to admission shall satisfy the requirements of this subdivision. Such documentation shall be reviewed and follow-up treatment initiated as necessary.

(c) Every inmate who at the time of admission appears to be physically incapacitated due to drug or alcohol intoxication shall be examined immediately by a physician.

(d) Every inmate who at the time of admission appears to be intoxicated by alcohol or drugs shall be subject to increased supervision as determined pursuant to section 7003.3 (h) of this Title. If, after 12 hours from admission, the inmate still appears to be intoxicated by alcohol or drugs, the inmate shall be immediately examined by a physician.

(e) No medication or medical treatment shall be dispensed to an inmate except as authorized or prescribed by the facility physician.

(f) Facility personnel shall receive training and maintain certification in approved first aid and emergency life saving techniques including the use of emergency equipment.

(g) Definite arrangements shall be made to insure the prompt transportation of an inmate to a hospital or other appropriate medical facility in emergency situations.

(h) Each facility shall provide the necessary security and supervision during the period of hospitalization and in the course of transportation to and from a medical facility.

(i) The chief administrative officer shall make maximum use of community medical and mental health facilities, services, and personnel.

(j) Adequate health service and medical records shall be maintained which shall include but shall not necessarily be limited to such data as: date, name(s) of inmate(s) concerned, diagnosis of complaint, medication and/or treatment prescribed. A record shall also be maintained of medication prescribed by the physician and dispensed to a prisoner by a staff person.

7010.3 Possession of medication by inmates. (a) Under no circumstances shall a supply of medicine or medication be issued to or be allowed to be in the possession of an inmate.

(b) Any jurisdiction may request a waiver of the requirements of this section by applying for such waiver to the Commission of Correction. The Commission shall make a determination regarding such request based upon the facts and circumstances described therein.

7010.4 Storage of medications. (a) All medications shall be stored in a safe and secure manner consistent with the requirements of this section to insure control only by authorized personnel designated by the facility physician.

(b) Each facility shall store all drugs and biologicals in sanitary, locked compartments under proper temperature controls.

(c) Each facility shall store controlled drugs and other drugs subject to abuse in separately locked, permanently affixed, compartments and in accordance with article 33 of the Public Health Law and 10 NYCRR Part 80. Adequate records of dispensing of such drugs, including perpetual inventory record, shall be maintained.

(d) Poisons and medications for "external use only" shall be kept in a locked cabinet and separate from other medications.

(e) Medications whose shelf life has expired or which are otherwise no longer in use shall be disposed of or destroyed in accordance with State and Federal laws and regulations.

7010.5 Return of unused medications. (A) Any jurisdiction may apply to the Commission for certification to return to the vendor pharmacy from which it was purchased certain unused medications or drugs.

(b) Certification to return certain unused medications or drugs to the vendor pharmacy shall be permitted only under the following conditions:

- (1) the facility employs a licensed health care professional; and
- (2) access to drugs and biologicals is permitted only by authorized licensed health care professionals designated by the facility physician.

(c) An authorized licensed health care professional designated by the facility physician of a facility certified by the Commission shall be permitted to return unused medications to the vendor pharmacy under the following conditions:

- (1) a copy of the Commission's certification permitting the return of medications is filed with the vendor pharmacy;
- (2) all medication to be returned must be:
 - (i) stored in accordance with section 7010.4 of this Part;
 - (ii) sealed in unopened, individually packaged units; and
 - (iii) within the recommended period of shelf life for the purpose of redispensing;

- (3) drug products which may be returned are limited to:
 - (i) oral and parenteral medication in single-dose hermetically sealed containers; and
 - (ii) parenteral medication in multiple-dose hermetically sealed containers from which no doses have been withdrawn;
- (4) the drug products returned show no obvious sign of deterioration;
- (5) drug products packaged in manufacturer's unit-dose packages may be returned for redispensing provided that they are redispensed in time for use before the expiration date, if any, indicated on the package;
- (6) drug products repackaged by the pharmacy into unit-dose or multiple-dose "blister packs" may be returned to the pharmacy for redispensing provided that:
 - (i) the date on which the drug product was repackaged, its lot number and expiration date are indicated clearly on the package;
 - (ii) not more than 90 days have elapsed from the date of the repackaging;
 - (iii) a repackaging log is maintained by the pharmacy in the case of drug products repackaged in advance of immediate needs;
- (7) partially used "blister packs" may be redispensed only as returned to the pharmacy;
- (8) partially used "blister packs" may not be emptied and repackaged;
- (9) additional units of medication may not be added to partially used "blister packs;"
- (10) no drug product dispensed in bulk in a dispensing container may be returned;
- (11) no medication or drug product defined as a controlled substance in section 3306 of the Public Health Law may be returned; and
- (12) no drug which is self-administered by an inmate, has been offered for delivery to an inmate, or has been in an

inmate's possession may be returned.

(e) As used in this section, "licensed health care professional" shall mean a physician, nurse practitioner, registered nurse, physician's assistant or licensed practical nurse.

7010.6 Report concerning the condition of inmates kept apart from the general population.

The report required by section 500-k and paragraph (d) of subdivision (6) of section 137 of the Correction Law concerning the condition of inmates kept apart from the general population shall be submitted to the sheriff or, in local correctional facilities not under the custody and control of the sheriff, to the commissioner of correction or other person in charge of such facility.

PART 7013

CLASSIFICATION

(Statutory authority: Correction Law, §§45, 500-b)

Sec.

- 7013.1 Policy
- 7013.2 Definitions
- 7013.3 Facility policies and procedures
- 7013.4 Classification categories
- 7013.5 Classification during an emergency overcrowding condition
- 7013.6 Authorized commingling
- 7013.7 Initial screening and risk assessment
- 7013.8 Assignment to facility housing areas
- 7013.9 Classification review
- 7013.10 Staff training
- 7013.11 Inmate screening and classification records
- 7013.12 Quarterly classification report

Section 7013.1 Policy. In order to provide for the effective management of inmate populations and facility housing units in a safe and secure correctional environment, the chief administrative officer of each local correctional facility shall establish, implement and maintain a formal and objective system for the consistent classification of all inmates. Compliance with this Part shall ensure that each facility develops and implements a classification system that provides a mechanism for inmate screening, assessment and classification review to identify the special needs and security and supervision requirements of inmates in order to determine appropriate housing assignments.

7013.2 Definitions. As used in this Part, the following definitions shall apply to the terms listed below:

(a) "Classification" shall mean the process of assigning inmates to appropriate housing by determining security and supervision requirements and inmate special needs based on screening and risk assessment and pursuant to New York State Correction Law.

(b) "Formal and objective system" shall mean a procedure for determining an inmate's appropriate housing assignment which utilizes a point scale, decision tree or other method capable of quantifiable analysis or computation.

(c) "Initial screening" shall mean a risk assessment and

preliminary determination of an inmate's special needs and security and supervision requirements upon his/her admission to the facility.

(d) "Primary housing assignment" shall mean the housing assignment of an inmate which is made after the initial screening and classification process.

(e) "Inmate records" shall have the same meaning as set forth in section 7033.2 of this Chapter.

(f) "Inmate medical and psychiatric records" shall have the same meaning as set forth in section 7033.2 of this Chapter.

(g) "Classification review" shall mean any classification status assessment made subsequent to an inmate's primary housing assignment.

(h) "Special housing" shall include, but not be limited to: admissions/orientation housing; medical/mental health observation; and punitive or other administrative segregation.

(i) "Staffing substantial non-compliance" shall mean a condition whereby the actual daily staffing pattern, averaged weekly for at least a four-week period, is below the number of staff necessary to perform the required functions and tasks on a 24-hour basis, exclusive of the full coverage factor, as determined by the Commission pursuant to section 7041.2 of this Chapter.

(j) "Security substantial non-compliance" shall mean a violation of any of the following requirements:

- (1) section 7003.3(a)-(e) and (h)-(i) of this Chapter, supervision of prisoners in facility housing areas;
- (2) section 7003.6(a) of this Chapter, requirements of facility staff members prior to assuming responsibilities in an assigned facility area; and
- (3) section 7041.2(a)(1) of this Chapter, supervisory staff levels.

(k) "Capacity substantial non-compliance" shall mean a condition whereby the average daily in-house inmate count, averaged quarterly, exceeds the maximum facility capacity as established by the Commission or judicial order.

(l) "Emergency overcrowding" shall mean an unforeseen condition which causes a facility to exceed its maximum facility capacity as established by the Commission after the facility has:

- (1) implemented measures of inmate classification pursuant to section 7013.4(c) of this Part; and
- (2) made a reasonable attempt to find and utilize substitute jail housing pursuant to Part 7300 of this Chapter and section 504 of the Correction Law.

7013.3 Facility policies and procedures. (a) The chief administrative officer of each correctional facility shall develop and implement written policies and procedures which provide for the assessment and classification of inmates and comply with the requirements of this Part. Such policies and procedures shall include, but are not limited to:

- (1) staff responsibilities for functions relative to classification;
- (2) completion of initial screening and risk assessment including, but not limited to, the determination of security and supervision requirements and inmate special needs;
- (3) use of formal risk assessment instruments and other appropriate admissions forms in the classification process;
- (4) classification assessments made subsequent to initial screening for the assignment of inmates to appropriate facility housing areas;
- (5) inmate notification of all classification determinations made subsequent to initial screening and risk assessment;
- (6) procedures governing the disclosure of information contained in the detailed summaries of inmate medical and psychiatric records by the facility medical director pursuant to section 7013.10 of this Part; and
- (7) review and revision of such policies and procedures.

(b) Such policies and procedures shall be made available to all facility staff members.

(c) The chief administrative officer shall review the policies and procedures on an annual basis and make revisions as necessary.

(d) The chief administrative officer shall verify in writing that such policies and procedures have been reviewed and updated. Such verification shall consist of:

- (1) a list of any revisions made to the policies and procedures;
- (2) the date(s) of all reviews completed; and
- (3) the signature of the chief administrative officer.

7013.4 Classification categories. (a) Except as otherwise provided in this Part, there shall be 12 classification categories for the purpose of housing inmates within each correctional facility. Such classification categories are derived from three basic categories:

- (1) serving sentence;
- (2) civil process or contempt; and
- (3) criminal process, trial or examination, material witness.

(b) Each basic category contains the following four subcategories:

- (1) male adults, ages 19 and over;
- (2) male minors, ages 16 to 18 inclusive;
- (3) female adults, ages 19 and over; and
- (4) female minors, ages 16 to 18 inclusive.

(c) The chief administrative officer may reduce the 12 classification categories specified in subdivisions (a) and (b) of this section to four categories, provided the following conditions are met:

- (1) the county has a Division of Probation and Correctional Alternatives-approved Alternatives to Incarceration Service Plan pursuant to Executive Law, article 13-A; and
- (2) the commission determines, pursuant to section 7013.2 of this Part, the facility is not in substantial noncompliance with:
 - (i) staffing requirements;
 - (ii) security requirements; and
 - (iii) maximum facility capacity requirements.

(d) Correctional facilities meeting the requirements of subdivision (c) of this section may be permitted to reduce from 12 classification categories to the following four categories:

- (1) male adults, ages 19 and over;
- (2) male minors, ages 16 to 18 inclusive;
- (3) female adults, ages 19 and over; and

(4) female minors, ages 16 to 18 inclusive.

(e) Except as otherwise provided in section 7013.6(a)(1) of this Part, inmates of one classification category as specified under subdivision (a), (b) or (d) of this section shall not be confined in the same housing areas with inmates of other categories.

7013.5 Classification during an emergency overcrowding condition. (a) When, in the opinion of the chief administrative officer, an emergency overcrowding condition exists in a county correctional facility which is already classifying its inmates according to the four classification categories specified in section 7013.4(d) of this Part and is caused in part by the prohibition against commingling minors and adults, such officer may apply to the commission to commingle minors and adults within facility housing areas for a period not to exceed 30 days as provided in this section.

(b) The chief administrative officer shall contact the commission by telephone, which shall serve as the application, and provide the commission with the following initial summary information:

- (1) the nature and extent of the emergency overcrowding condition;
- (2) attempts made to secure substitute jail housing space within or outside the county; and
- (3) a description of any areas within the facility which could provide safe and secure inmate housing on a temporary basis.

(c) A chief administrative officer's application to commingle adults and minors shall be denied if the commission determines one or more of the following conditions exists:

- (1) an emergency overcrowding condition does not exist as defined in section 7013.2(1) of this Part;
- (2) the facility is in substantial non-compliance with Commission staffing requirements; or
- (3) such commingling would present a danger to the health, safety or welfare of inmates within the facility.

(d) The chief administrative officer shall be permitted to commingle minors and adults within facility housing areas for an initial period not to exceed seven days. Such period shall begin

when the initial telephone application is received by the officer of the day as designated by the commission unless such officer immediately denies the application.

(e) Provided the commission permits the chief administrative officer to commingle beyond the initial seven-day period, such commingling shall not exceed 30 days.

(f) The commingling of minors and adults shall cease immediately upon notification to the chief administrative officer of the commission's denial to commingle. Such denial shall be based on deficiencies and/or dangers cited by the commission.

(g) The chief administrative officer may correct such deficiencies and/or dangers delineated by the commission and reapply to the commission for permission to commingle minors and adults within facility housing areas. However, no commingling shall occur until the chief administrative officer receives certification from the commission that the facility has corrected the deficiencies cited by the commission.

(h) When such certification has been received by the chief administrative officer, the commingling may continue for 30 days, less any time during which minors and adults were commingled following the initial application to the commission.

(i) The chief administrative officer may apply to the commission a maximum of three times a year for permission to commingle adults and minors within facility housing areas. Such commingling shall be permitted for a maximum of 30 days per period in a given calendar year, pursuant to the requirements of this section.

(j) The chief administrative officer shall cease the commingling when either the overcrowding which necessitated the commingling no longer exists or the 30-day period has expired, whichever occurs first.

(k) Before any such commingling of adults and minors occurs, the chief administrative officer shall thoroughly review information related to initial screening and risk assessment and primary housing assignments pursuant to sections 7013.7(b) and 7013.8(c) and (e) of this Part concerning all inmates being considered for such commingling.

7013.6 Authorized commingling. (a) Nothing contained in this Part shall prevent the chief administrative officer from commingling inmates in different classification categories in the same area for purposes including, but not limited to:

- (1) special housing as defined in section 7013.2(h) of this Part;
- (2) meals served in dining areas located outside facility housing areas;
- (3) visitation;
- (4) recreation held in areas located outside facility housing areas;
- (5) educational/vocational programs;
- (6) work programs;
- (7) divine worship; or
- (8) any other organized facility program or activity.

(b) Males and females shall not be commingled in areas designated as special housing as defined in section 7013.2(h) of this Part.

7013.7 Initial screening and risk assessment. (a) Each inmate upon admission to a facility shall undergo an initial screening and risk assessment which shall consist of a screening interview, visual assessment and review of commitment documents. Such screening and risk assessment shall occur immediately upon an inmate's admission.

(b) A screening instrument(s) shall be utilized to elicit and record information on each inmate relating to the following:

- (1) visible injury/injuries;
- (2) medical conditions requiring immediate treatment;
- (3) mental or physical handicap(s);
- (4) history of mental illness or treatment;
- (5) potential for self-injury or suicide;
- (6) history of detention or incarceration, including but not limited to hostile relationships with other inmates;
- (7) medication currently being taken;
- (8) present appearance and behavior;
- (9) evidence of intoxication by alcohol or drugs or a history of alcohol or substance abuse;
- (10) criminal charge(s) and conviction(s); and
- (11) any other relevant information concerning the safety or welfare of the inmate.

(c) An immediate decision concerning the disposition of each inmate shall be made on the basis of information gathered during initial screening and risk assessment. Such disposition may include,

but is not limited to, referrals to outside medical and mental health service providers.

7013.8 Assignment to facility housing areas. (a) After initial screening and risk assessment is completed and prior to determining each inmate's primary housing assignment, the inmate shall be placed in a housing unit within a housing area(s) designated for classification purposes. Such housing area(s) may be utilized on a temporary or permanent basis, given the needs and physical plant limitations of each facility.

(b) Placement in such housing areas shall be temporary pending completion of the classification process, including the determination of appropriate housing which shall be completed within five business days of each inmate's admission to the facility. The chief administrative officer may extend the time to complete the classification process for a particular inmate up to an additional ten business days if he concludes that additional time is necessary to make a determination of appropriate housing.

(c) In arriving at a determination of each inmate's housing assignment, the chief administrative officer shall base his/her decision on the following information, if such information is available and accessible to the chief administrative officer:

- (1) criminal history;
- (2) propensity for victimization;
- (3) history of medical/mental illness;
- (4) history of sex offenses;
- (5) history of hostile relationship(s) with other inmates;
- (6) prior attempts at self-injury or suicide;
- (7) prior escapes and attempted escapes;
- (8) attitude and behavior during present and prior incarcerations(s), including any history of assaultive behavior during incarceration; and
- (9) any other information which may affect the safety and welfare of the inmate or facility staff.

(d) Each facility shall utilize a formal and objective system for inmate classification in order to fulfill the requirements of subdivisions (a)-(c) of this section and section 7013.9 of this

Part.

(e) In considering the information contained in subdivision (c) of this section, the chief administrative officer shall examine and verify the following:

- (1) records made available to such officer from the court or the delivering jurisdiction;
- (2) information obtained during an inmate's initial screening and risk assessment;
- (3) records, to the extent relevant and known to the chief administrative officer and which are accessible and available to the chief administrative officer which are maintained by:
 - (i) the Department of Correctional Services; or
 - (ii) any local correctional facility in this State, including inmate records provided to the chief administrative officer pursuant to Part 7033 of this Chapter;
- (4) information obtained from mental health treatment providers pursuant to Mental Hygiene Law, section 33.13(c) (9);
- (5) information contained in the detailed summaries of inmate medical and psychiatric records if disclosed by the facility medical director pursuant to section 7013.10 of this Part and sections 7064.7, 7064.8 and 7064.9 of this Chapter; and
- (6) any other relevant information concerning an inmate's condition brought to the attention of the chief administrative officer or any other facility staff member by any person.

(f) Within one business day after each classification determination is made, facility staff shall notify the inmate in writing of the determination and explain its implications.

7013.9 Classification review. (a) The chief administrative officer shall review and revise as necessary, pursuant to the requirements of section 7013.8(c)-(e) of this Part, an inmate's classification status when one or more of the following conditions occur:

- (1) the inmate is involved in a serious unusual incident or exhibits adjustment problems which threaten his/her

safety or the safety, security or good order of the facility;

- (2) a written request, including justification(s), is made by facility staff to alter or review the inmate's classification status based on new information or exhibited positive or negative behavior; and/or
- (3) the facility medical director discloses relevant information about the inmate pursuant to section 7013.10 of this Part which has not already been considered in determining the inmate's classification status.

(b) If an inmate's classification status is changed pursuant to this section, facility staff shall comply with the notification requirements of section 7013.8(f) of this Part.

7013.10 Confidentiality and disclosure of inmate medical and psychiatric records information. (a) Each facility shall adhere to the requirements of sections 7033.6 and 7064.7, 7064.8 and 7064.9 of this Chapter and the Public Health Law, article 27-F and Department of Health regulations pertaining thereto concerning the confidentiality of inmate records and inmate medical and psychiatric records.

(b) The facility medical director of each facility shall maintain all detailed summaries of inmate medical and psychiatric records in a separate confidential file.

(c) Except as otherwise prohibited or restricted by law, the facility medical director of each facility shall promptly disclose to the chief administrative officer information which he/she receives concerning an inmate which is or may be relevant in determining the inmate's classification status or may affect the life, safety or welfare of the inmate or any other person. The chief administrative officer shall then promptly disclose information as appropriate to facility staff responsible for making classification decisions.

7013.11 Staff training. (a) The chief administrative officer shall ensure that appropriate facility staff receive orientation to current facility policies and procedures relating to classification.

(b) All facility staff assigned to perform duties related to the administration and implementation of classification shall be trained in facility classification policies and procedures that pertain to their area(s) of responsibility.

(c) All facility staff assigned to perform duties related to

the administration and implementation of classification procedures pursuant to sections 7013.7, 7013.8 and 7013.9 of this Part shall be trained in classification theory and techniques by completing a training program approved by the Commission. Only facility staff who have completed such training shall perform duties related to the administration and implementation of classification procedures.

7013.12 Inmate screening and classification records. (a) All initial screening, risk assessment and any subsequent determinations of an inmate's classification status shall be made in writing and kept in the inmate's file.

(b) With the exception of detailed summaries of inmate medical and psychiatric records which shall be kept in a confidential file pursuant to section 7013.10 of this Part, the information to be retained in the inmate's file shall include, but is not limited to:

- (1) the inmate's classification category pursuant to section 7013.4(a)-(c) of this Part;
- (2) the inmate's criminal history;
- (3) the inmate's security and supervision requirements;
- (4) any special needs of the inmate;
- (5) the inmate's specific housing unit assignments, indicating the housing unit category, i.e., general housing, punitive segregation, medical/mental health observation, etc. and the specific cell or room location, i.e., 3rd floor west - cell #9;
- (6) facility staff responsible for making each classification determination;
- (7) dates when initial screening and each subsequent classification determination were made, including verification that the inmate was notified of such determinations and their implications; and
- (8) all screening instruments, forms or other information used to make or record initial screening, risk assessment and subsequent classification determinations.

(c) Either a copy or written summary on a form developed for this purpose of the information noted in subdivision (b) (2)-(4) and (8) of this section and all inmate records requested pursuant to Part 7033 of this Chapter shall be sent with every inmate when he/she is transferred to another correctional facility.

(d) Whenever a written summary is sent pursuant to the requirements of subdivision (c) of this section, the name(s) of the facility staff member(s) who prepared the summarized information shall be clearly identified on the form.

7013.13 Quarterly classification report. (a) On or before the 15th day of February, May, August and November of each year, the chief administrative officer shall forward a quarterly report relative to the housing and classification of inmates to the commission which reflects information pertaining to the preceding three-month period.

(b) Such report shall be prepared and submitted on forms required by the commission.

PART 7015

SANITATION

(Statutory authority: Correction Law, §45(6))

Sec.

7015.1 Policy

7015.2 General facility sanitation

7015.3 Local health department inspections

Section 7015.1 Policy. Consistent with the requirements of this Part, each local correctional facility shall establish and implement policies and procedures designed to ensure that such facility is maintained in a sanitary condition.

7015.2 General facility sanitation. (a) The chief administrative officer shall establish written procedures designed to ensure that all areas of the facility are maintained in a sanitary condition. Facility sanitation tasks shall be completed as necessary to maintain a clean and sanitary facility.

(b) Each local correctional facility shall maintain a sufficient inventory of sanitation equipment. Such equipment shall be maintained in good condition and stored in a safe and secure manner.

(c) The chief administrative officer may require prisoners to maintain their respective cells or individual housing areas in clean and sanitary condition. In the discretion of the chief administrative officer, sentenced prisoners may be required to perform facility sanitation tasks.

(d) The food service area of each facility, and all food preparation equipment and utensils, shall be maintained in a clean and sanitary condition consistent with the State Sanitary Code. All persons employed in the food service area shall conform to hygienic practices consistent with the State Sanitary Code.

(e) Each local correctional facility shall develop and implement procedures designed to eliminate insect and rodent infestation. Consistent with such policies and procedures:

- (1) The chief administrative officer may prohibit or establish limitations regarding the accumulation of food items in cells or individual housing areas; and

- (2) Any pesticide applied in the facility shall be used consistent with the manufacturer's recommendations and any applicable laws of regulations.

7015.3 Local health department sanitation inspections. The chief administrative officer shall request that the local health authority with jurisdiction over the facility perform annual inspections of the facility. The results of such inspection shall be recorded in writing, together with a summary of the action taken to address any deficiencies, and maintained on file at the facility.

PART 7016

COMMISSARY

(Statutory authority: Correction Law, §45(6))

Sec.

7016.1 Commissary

Section 7016.1 Commissary. (a) In the discretion of the sheriff or chief administrative officer, a commissary may be established, maintained and operated for the purpose of making available, for sale to prisoners, items deemed proper by such officials and consistent with the health and welfare of the prisoners and the security and general operation of the facility concerned.

(b) The prices of any items offered for sale shall be fixed by the sheriff, or official in charge, to the extent that the commissary operation will be self-supporting and will provide a modest return above costs.

(c) Profits resulting from commissary sales shall be deposited in a separate bank account and shall be utilized only for purposes of prisoner welfare and rehabilitation.

(d) Commissary accounts shall be maintained in a manner which will fully substantiate all purchases, sales and expenditures, and definite arrangements shall be made for periodic audit of the commissary accounts by the office of county auditor, county treasurer or other county officer in a similar capacity.

(e) Nothing in this section shall be construed as exempting commissary operations in a county jail or a county penitentiary from compliance with the provisions of any applicable county or State statute, resolution, rule, regulation, etc.

PART 7017

PERSONNEL STANDARDS

(Statutory authority: Correction Law, §45(6))

Sec.

7017.1 Personnel standards

7017.2 Briefing of new employees

Section 7017.1 Training. Full-time and part-time correction officers shall satisfactorily complete a correctional training program approved by the Commission. Such training shall be completed within one year following the date of appointment as a correction officer.

7017.2 Briefing of new employees. A manual of facility policies and procedures shall be made available to each facility employee at the time of appointment. The chief administrative officer shall insure that each correction officer, prior to assignment to active duty, is instructed with respect to the responsibilities and requirements of their position.

PART 7019

GIFTS AND GRATUITIES

(Statutory authority: Correction Law, §45[6])

Sec.

7019.1 Gifts and gratuities

Section 7019.1 Gifts and gratuities. Any trading or bartering with prisoners by any person associated with the operation of a county jail or a county penitentiary is strictly prohibited. No sheriff, warden or superintendent or any officer in charge, or any staff person shall receive a gift of any nature whatsoever from any prisoner, nor shall any person in charge, or any employee, be permitted to give anything whatsoever to a prisoner, or to buy anything from or sell anything to a prisoner, or to extend to a prisoner any favor of diet, clothing or of any other nature not common to all. These same prohibitions apply to relatives or friends of prisoners or to any other person acting in behalf of a prisoner.

PART 7022

REPORTABLE INCIDENTS

(Statutory authority: Correction Law, §45[6])

Sec.

- 7022.1 Policy
- 7022.2 Reportable incident categories
- 7022.3 Reporting incidents other than inmate deaths
- 7044.4 Reporting inmate deaths
- 7022.5 Availability of reportable incident guidelines information
- 7022.6 Maintenance of reportable incident information
- 7022.7 Review and assessment of reportable incidents

Section 7022.1 Policy. In order to provide a mechanism by which facility operations, policies and procedures can be monitored, evaluated and improved, each facility shall internally review and assess all incidents of a serious or potentially problematic nature and report incidents to the commission pursuant to the requirements of this Part.

7022.2 Reportable incident categories. (a) The following general categories of incidents shall be reported to the commission pursuant to the requirements of this Part:

- (1) assaults;
- (2) sexual assaults;
- (3) contagious illnesses;
- (4) contraband;
- (5) deaths;
- (6) major maintenance/service disruptions;
- (7) major disturbances;
- (8) minor disturbances;
- (9) individual inmate disturbances;
- (10) natural/civil emergencies;
- (11) escapes;
- (12) attempted escapes;
- (13) abscondences;
- (14) fires;
- (15) firearm discharges;
- (16) inmate group actions;
- (17) personnel group actions;
- (18) hostage situations;
- (19) attempted suicides;
- (20) self-inflicted injuries; and

(21) accidental injuries.

(b) Each facility shall report incidents to the commission pursuant to the requirements outlined in the commission's Reportable Incident Guidelines for County Correctional Facilities.

7022.3 Reporting incidents other than inmate deaths. (a) Except in the case of inmate deaths, whenever a reportable incident occurs, each facility shall initially report such incident by telephone to the commission's Albany office, regardless of the time of day or day of the week, pursuant to the following requirements:

- (1) all major disturbances, escapes, inmate group actions, personnel group actions, hostage situations, firearm discharges, natural/civil emergencies, and major maintenance/service disruptions shall be reported by telephone immediately upon occurrence or discovery; and
- (2) all other reportable incidents shall be reported by telephone within 24 hours of occurrence or discovery.

(b) The initial telephone report required pursuant to subdivision (a) of this section shall include all information required in the commission's Reportable Incident Guidelines for County Correctional Facilities.

(c) Except in the case of inmate deaths, each facility shall prepare follow-up reports for specified incidents as required in the commission's Reportable Incident Guidelines for County Correctional Facilities.

(d) Such follow-up reports shall be submitted in writing to the commission's Albany office as soon as practicable, but no later than 30 days following the initial telephone report.

(e) When additional facts of an important or critical nature are discovered about an incident after a facility has submitted the follow-up report to the commission, such information shall be forwarded in writing to the commission as soon as practicable, but no later than 14 days following discovery.

7022.4 Reporting inmate deaths. (a) Each facility shall report the death of any inmate listed on its official count of inmates to:

- (1) the coroner or medical examiner of the county in which the facility is located, within one hour of pronouncement of death;
- (2) the commission by telephone, within six hours of

pronouncement of death, regardless of the time of day or day of the week, in a form and manner prescribed by the commission's medical review board as described in the commission's Reportable Incident Guidelines for County Correctional Facilities.

(b) Within three hours after the pronouncement of an inmate's death, the next of kin of the deceased shall be notified. If, due to extenuating circumstances, the next of kin cannot be located within this time period, facility staff shall document in writing all attempts to make such notification and shall complete the notification as soon as possible.

(c) Within three days after the pronouncement of an inmate's death, a copy of the deceased's entire correctional medical record shall be forwarded to the commission.

(d) Such copy shall be certified as being a true copy of such record by the authority responsible for maintaining the record.

(e) Within 10 days after the pronouncement of an inmate's death, each facility medical director/jail physician shall forward a follow-up report in writing to the commission which shall include, but not be limited to:

- (1) a narrative medical history of the deceased covering the period 90 days prior to death;
- (2) the deceased's primary medical and/or psychiatric diagnosis and the therapy provided, if any, as a result of such diagnosis; and
- (3) a narrative description of the terminal event occurring immediately prior to the pronouncement of death.

(f) In addition, such follow-up report shall include information required by the commission's medical review board as described in the commission's Reportable Incident Guidelines for County Correctional Facilities and any other information specified by the commission.

(g) When additional facts of an important or critical nature are discovered about an incident after the facility has submitted the follow-up report to the commission, such information shall be forwarded in writing to the commission as soon as practicable, but no later than 14 days following discovery.

7022.5 Availability of reportable incident guidelines information. (a) A copy of the commission's Reportable Incident

Guidelines for County Correctional Facilities shall be made available to all facility staff designated by the chief administrative officer to be responsible for reporting incidents to the commission.

(b) A sufficient number of such guidelines shall be maintained in locations within the facility which are accessible to all facility staff.

(c) Copies of the reportable incident guidelines manual are available, pursuant to the Freedom of Information Law, upon request from the New York State Commission of Correction, Executive Park Tower, Stuyvesant Plaza Albany, NY 12203-3764. All such requests should specify the item sought as *Reportable Incident Guidelines for County Correctional Facilities*. The guidelines manual consists of a soft-bound, indexed booklet 192 pages in length. A copy of these guidelines has been filed with the Department of State.

7022.6 Maintenance of reportable incident information. A copy of all completed reports and supplementary information prepared by facility staff pertaining to reportable incidents, including copies of all information forwarded to the commission pursuant to the requirements of this Part, shall be maintained on file.

7022.7 Review and assessment of reportable incidents. (a) The chief administrative officer shall develop and implement procedures for the review, investigation and assessment of reportable incidents.

(b) The chief administrative officer and/or other designated supervisory staff shall regularly review all reports prepared by facility staff resulting from the review and/or investigation of reportable incidents, including pertinent facility log entries.

PART 7023

ACCESS TO MEDIA

(Statutory authority: Correction Law, §45(6))

Sec.
7023.1 Policy

Section 7023.1 Policy. (a) Consistent with the requirements of this Part, prisoners are entitled to present their views to the public through the media.

(b) As used in this Part, the term media shall mean any printed or electronic means of conveying information to any portion of the public, and shall include, but is not limited to, newspapers, magazines, books or other publications, and licensed radio and television stations.

(c) Media/prisoner interviews in the facility shall be subject to the provisions of Part 7008 of this Title.

(d) The chief administrative officer may, in his discretion, restrict or prohibit the use of cameras and recording devices by the media.

PART 7024

RELIGION

(Statutory authority: Correction Law, §45(6))

Sec.

- 7024.1 Policy
- 7024.2 Congregate religious activities
- 7024.3 Religious advisors
- 7024.4 Celebration of religious holidays or festivals
- 7024.5 Supervision of prisoners exercising their religious beliefs
- 7024.6 Religious dietary laws
- 7024.7 Change of religion
- 7024.8 Religious articles
- 7024.9 Exercise of religious beliefs by prisoners in segregation
- 7024.10 Recognition of a religious group or organization
- 7024.11 Limitations on the exercise of religious beliefs

Section 7024.1 Policy. (a) Prisoners have an unrestricted right to hold any religious belief, and to be a member of any religious group or organization.

(b) Prisoners are entitled to exercise their religious beliefs in any manner that does not constitute a threat to the safety, security or good order of a local correctional facility, or the health of any individual.

(c) No person shall be permitted to proselytize or to seek to convert any prisoner without the consent of such prisoner, nor shall any prisoner be compelled to or dissuaded from exercising any religious belief.

(d) Equal status and protection shall be afforded all prisoners in the exercise of their religious beliefs, except when such exercise results in facility expenditures which are unreasonable or disproportionate to those extended to other prisoners for similar purposes.

7024.2 Congregate religious activities. (a) Consistent with the requirements of section 7024.1(b) of this Part, all prisoners shall be permitted to congregate for the purpose of religious worship and other religious activities.

(b) Each facility shall provide all prisoners access to an appropriate area for congregate religious worship and other

religious activities. This area shall be made available to prisoners in accordance with the tenets of their religion, at times not unduly disruptive of facility routine.

7024.3 Religious advisors. (a) As used in this Part, the term religious advisor shall mean a person other than a prisoner whose ecclesiastical credentials have been approved by the chief administrative officer.

(b) Religious advisors shall be permitted to conduct congregate religious activities at least once per week at a time approved by the chief administrative officer. When no religious advisor is available, the chief administrative officer may permit a member of a prisoner religious group to conduct legitimate religious activities.

(c) Consistent with the requirements of section 7024.1(b) of this Part, prisoners shall be permitted confidential consultation with their religious advisors at times not unduly disruptive of facility routine.

7024.4 Celebration of religious holidays or festivals. Consistent with the requirements of section 7024.1(b) of this Part, prisoners shall be permitted to celebrate religious holidays or festivals on an individual or congregate basis.

7024.5 Supervision of prisoners exercising their religious beliefs. Each facility shall maintain supervision sufficient to ensure that the exercise of religious beliefs by prisoners does not constitute a threat to the safety, security or good order of a correctional facility, or the health of any individual.

7024.6 Religious dietary laws. Prisoners are entitled to observe reasonable dietary laws established by their religion. Each facility shall provide prisoners with food items sufficient to meet such reasonable religious dietary laws.

7024.7 Change of religion. A prisoner shall be permitted to change his religious affiliation upon application to the appropriate religious authority. The prisoner and the appropriate religious authority shall notify the chief administrative officer of such change.

7024.8 Religious articles. Consistent with the requirements of section 7024.1(b) of this Part, prisoners shall be entitled to wear and possess religious medals or other religious articles.

7024.9 Exercise of religious beliefs by prisoners in

segregation. Prisoners confined in administrative or punitive segregation shall not be prohibited from exercising their religious beliefs consistent with the requirements of section 7024.1(b) of this Part.

7024.10 Recognition of a religious group or organization. (a) Prisoner requests to exercise the beliefs of religious groups or organizations not generally well known shall be made to the chief administrative officer.

(b) In determining requests made pursuant to subdivision (a) of this section, the chief administrative officer shall consider the following factors among others as indicating a religious foundation for the belief:

- (1) whether there is substantial literature supporting the belief as related to religious principle;
- (2) whether there is formal, organized worship by a recognizable and cohesive group sharing the belief;
- (3) whether there is an informal association of persons who share common ethical, moral or intellectual views supporting the belief; and
- (4) whether the belief is deeply and sincerely held by the prisoner.

(c) In determining requests made pursuant to subdivision (a) of this section, prisoners shall be permitted to present evidence to the chief administrative officer indicating a religious foundation for the belief.

(d) The procedures outlined in section 7024.11 of this Part shall apply when the chief administrative officer denies a prisoner request made pursuant to subdivision (a) of this section.

7024.11 Limitations on the exercise of religious beliefs. Any determination made by the chief administrative officer to limit the exercise of the religious beliefs of any prisoner shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination shall be given to any person affected by the determination.

PART 7025

PACKAGES

(Statutory authority: Correction Law, §45(6))

Sec.

7025.1 Policy

7025.2 Incoming prisoner packages

7025.3 Outgoing prisoner packages

7025.4 Inspection of incoming prisoner packages

Section 7025.1 Policy. Consistent with the requirements of this Part, prisoners shall be permitted to receive packages from and send packages to any person.

7025.2 Incoming prisoner packages. (a) The chief administrative officer shall maintain a list of items prisoners may receive.

(b) As used in this section, the term contraband shall mean any item in an incoming prisoner package which constitutes a threat to the safety, security or good order of a facility, or the health of any individual, or any item not permitted pursuant to subdivision (a) of this section or any item which may constitute a criminal offense or may be the fruits or instruments of a crime shall constitute contraband.

(c) Upon admission to the facility, prisoners shall be provided with a copy of the list referenced in subdivision (a) of this section.

7025.3 Outgoing prisoner packages. (a) Any items which a prisoner sends from a facility shall be packaged in the presence of the prisoner and under the supervision of facility staff.

(b) The costs incurred in sending any outgoing prisoner packages shall be borne by the prisoner.

7025.4 Inspection of incoming prisoner packages. (a) All incoming prisoner packages may be inspected solely to ensure that they contain no contraband. Any contraband found in an incoming prisoner package shall be forwarded to the chief administrative officer for the following disposition:

- (1) If the contraband found may involve a criminal offense, it shall be forwarded to the appropriate law enforcement

authority.

- (2) If the contraband does not involve a potential criminal offense, it shall be returned to the sender or retained with the prisoner's secured property for return upon the prisoner's departure.
- (3) Contraband that presents a threat to facility sanitation or health may, upon order of the chief administrative officer, be destroyed.
- (4) The chief administrative officer shall give written notice of any determination made pursuant to this subdivision to any person affected by the determination. This written notice shall include:
 - (i) the name and address of the sender;
 - (ii) the nature of the contraband; and
 - (iii) a statement of the specific facts and reasons underlying the determination.
- (5) All other items contained in an incoming prisoner package from which contraband has been removed shall be forwarded to the intended prisoner recipient.

(b) Upon receipt at the facility, prisoner personal property shall be inventoried, unless returned to the sender, and a copy of the inventory shall be provided to the prisoner.

(c) Cash, checks or money orders delivered to the local facility shall be deposited in the personal cash account of the intended prisoner recipient or delivered to the chief administrative officer for disposition in accordance with facility rules and regulations. The prisoner shall be notified of all amounts received and the disposition of such.

PART 7026

PRINTED MATERIAL AND PUBLICATIONS

(Statutory authority: Correction Law, §45(6))

Sec.

7026.1 Policy

7026.2 Facility review of incoming printed material and publications

7026.3 Limitation of incoming printed material and publications

Section 7026.1 Policy. Consistent with the requirements of this Part, prisoners are entitled to receive any printed material or publication that is generally available to the public. Prisoners shall be permitted to receive such material:

(a) from any source, including but not limited to family, friends or publishers;

(b) as a gift, or pursuant to order or subscription.

7026.2 Facility review of incoming printed material and publications. (a) Incoming printed material and publications may be read and reviewed.

(b) Incoming printed material and publications may be censored only when it is determined that an item of printed material or a publication constitutes a threat to the safety, security or good order of a local correctional facility.

(c) As used in this Part, the term censor shall mean the exclusion of any printed material or publication, or any portion thereof.

(d) Consistent with the requirements of this Part, printed material and publications may not be censored solely because they:

(1) criticize a correctional facility, its staff, or the correctional system;

(2) espouse unpopular ideas, including ideas that facility staff deem not conducive to rehabilitation or correctional treatment; or

(3) contain ideas supporting ethnic or racial militancy.

(e) When the introduction into a facility of any printed material or publication is thought to constitute a threat to the safety, security or good order of the facility, such printed material or publication shall be forwarded to the chief administrative officer. The chief administrative officer shall read and review such printed material and shall make a determination as to whether it shall be censored.

(f) Any determination made by the chief administrative officer pursuant to this Part to censor an item of printed material or a publication shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of such determination shall be given to the sender and the intended prisoner recipient.

(g) Any reading, review or determination made pursuant to this section shall be completed within seven days after the receipt of the printed material or publication at the facility. When the printed material or publication is a periodical, any reading, review or determination made pursuant to this section shall be completed within 48 hours after the receipt of the printed material or publication at the facility.

(h) When any incoming printed material or publication may involve a criminal offense, it shall be forwarded by the chief administrative officer to the appropriate authority for criminal prosecution.

(i) Except as provided in subdivision (h) of this section, the deletion of any portion of any printed material or publication that has been censored pursuant to subdivision (e) of this section shall be permitted only when the intended prisoner recipient consents to such deletion, in which case the censored portion of the printed material or publication shall be deleted and the remainder forwarded to the intended prisoner recipient. When the intended prisoner recipient does not consent to such deletion, the entire printed material or publication at issue shall be returned to the sender.

7026.3 Limitation of incoming printed material and publications. The chief administrative officer shall adopt rules and regulations which may limit the amount of printed material and other paper materials retained within a prisoner's living area, in furtherance of the safety, security and good order of the facility, especially safety from the risk of fire.

PART 7028

EXERCISE

(Statutory authority: Correction Law, §45(6))

Sec.

7028.1 Policy

7028.2 Exercise periods

7028.3 Exercise within inmate housing units, cell corridors and day rooms

7028.4 Exercise areas and equipment

7028.5 Exercise area searches

7028.6 Limitation of exercise

Section 7028.1 Policy. Exercise is essential to good health and contributes to reducing tensions within a facility. Pursuant to the requirements of this Part, the chief administrative officer of each correctional facility shall maximize the provision of exercise activities for inmates.

7028.2 Exercise periods. (a) All exercise periods shall be held in the outdoor exercise area, except during inclement weather when exercise periods must be held in the indoor exercise area and may, at the discretion of the chief administrative officer, also be held in the outdoor exercise area. The determination to cancel outdoor exercise due to inclement weather shall be based upon factors related to the safety, security, or good order of the facility including, but not limited to, weather conditions that impair visibility, precipitation, and accumulation of snow or ice. Such determination shall be made by the chief administrative officer in writing and shall state the specific facts and reasons underlying the determination.

(b) All inmates who have completed the classification process pursuant to sections 7013.7 and 7013.8 of this Title, except as otherwise provided in subdivision (c) of this section or section 7028.6 of this Part, shall be entitled to exercise periods which, at the discretion of the chief administrative officer, shall consist of:

- (1) at least 1-1/2 hours during each of five days per week;
or
- (2) at least one hour seven days a week.

(c) For reasons of facility safety and security, inmates who have not yet completed the facility's classification process pursuant to sections 7013.7 and 7013.8 of this Title may be denied exercise periods. Any denial of exercise pursuant to this subdivision shall be limited to the time required to complete the facility classification process, but in no case shall such denial be for more than five days, excluding weekends and legal holidays.

(d) Inmates who do not have access to inmate cell corridors or day rooms because of physical plant limitations or disciplinary actions shall be entitled to a exercise period of at least one hour seven days a week.

(e) For the purposes of compliance with subdivisions (b) and (d) of this section, exercise periods shall commence when all inmates have entered the exercise area and shall conclude when all inmates are instructed to cease exercise activities.

(f) Each facility shall maintain a record of the dates and times when exercise periods are held pursuant to the requirements of this section.

7028.3 Exercise within inmate housing units, cell corridors and day rooms. Any exercise periods taking place within housing units and available cell corridors and day rooms shall not fulfill the requirements of providing exercise periods pursuant to this Part. However, exercise periods taking place in direct supervision housing units shall fulfill the requirements of this Part.

7028.4 Exercise areas and equipment. (a) Each facility shall establish and maintain one or more outdoor exercise areas of sufficient size and design to enable inmates to engage in exercise.

(b) Each facility shall provide a minimum total of 1,500 square feet of area for outdoor exercise.

(c) Each facility shall provide inmates upon request with appropriate outer garments when they participate in outdoor exercise from November through March and, if applicable, during inclement weather.

(d) Each facility shall establish and maintain one or more areas of sufficient size and design to enable inmates to engage in indoor exercise.

7028.5 Exercise area searches. Searches of exercise areas shall be conducted prior and subsequent to each exercise period.

7028.6 Limitation of exercise. (a) The exercise periods of a prisoner may be denied, revoked, or limited when it is determined that such exercise period would cause a threat to the safety, security, or good order of the facility, or the safety, security, or health of the prisoner or other prisoners.

(b) Any determination to deny, revoke, or limit a prisoner's exercise period pursuant to this section shall be made by the chief administrative officer in writing, and shall state the specific facts and reasons underlying such determination. A copy of this determination shall be given to the prisoner.

PART 7030

NONDISCRIMINATORY TREATMENT

(Statutory authority: Correction Law, §45(6))

Sec.

7030.1 Policy

7030.2 Non-English speaking prisoners

Section 7030.1 Policy. Each local correctional facility shall employ policies and procedures designed to ensure that prisoners are not subject to unlawful discriminatory treatment in any facility decision making process, including but not limited to work assignment, classification, disciplinary or grievance decisions or when being considered for any available facility program, including but not limited to educational, religious, vocational or temporary release programs, based upon the race, religion, nationality, sex, sexual orientation including homosexuality, age or political beliefs of such prisoners.

7030.2 Non-English speaking prisoners. Each local correctional facility shall employ procedures designed to reasonably ensure that non-English speaking prisoners understand all written and oral communications from facility staff members, including but not limited to orientation procedures, health services procedures, facility rules and disciplinary procedures, and the provisions of this Subtitle.

PART 7031

LEGAL SERVICES

(Statutory authority: Correction Law, §45(6) (15))

Sec.

- 7031.1 Policy
- 7031.2 Access to legal counsel
- 7031.3 Mutual prisoner legal assistance
- 7031.4 Access to legal reference material
- 7031.5 Notary public
- 7031.6 Limitation on legal services

Section 7031.1 Policy. (a) Each prisoner confined in a local correctional facility is entitled to legal services for purposes of:

- (1) legal preparation with respect to any civil or criminal action or proceeding; and
- (2) except as otherwise provided in subdivision (d) of this section, legal preparation with respect to any other matter, including but not limited to:
 - (i) disciplinary charges; and
 - (ii) complaints or grievances.

(b) As used in this Subtitle, legal services shall include access to:

- (1) legal counsel;
- (2) legal reference materials and supplies;
- (3) a notary public; and
- (4) other legal assistance.

(c) As used in this Subtitle, the term legal counsel shall mean:

- (1) any attorney authorized to practice law in New York State or in any jurisdiction where a prisoner has a legal action, proceeding or other legal matter pending; and
- (2) a law student, law clerk, or paralegal acting under the supervision of and with the written authorization of an attorney who meets the requirements of paragraph (1) of this subdivision.

(d) Except as otherwise provided in Part 7006 of this Subtitle, in the discretion of the chief administrative officer, prisoners may be entitled to representation by legal counsel at disciplinary proceedings, or other facility decision-making processes.

(e) Legal counsel to which prisoners are entitled or permitted pursuant to the provisions of this Part need not be provided at facility expense.

7031.2 Access to legal counsel. (a) Consistent with the requirements of this Part, all prisoners shall have access to legal counsel. Such access shall include telephone communications and visits between prisoners and their legal counsel at times not unduly disruptive of facility routine.

(b) Visits or telephone communications between prisoners and their legal counsel shall not be monitored except visually.

(c) Visits or telephone communications between prisoners and their legal counsel shall not be considered compliance with or satisfaction of any:

- (1) visiting a prisoner is entitled to pursuant to Part 7008 of this Subtitle or other applicable provisions of law; or
- (2) telephone calls to a prisoner may be entitled to pursuant to the provisions of any other part of this Subtitle or other applicable provisions of law.

(d) All prisoners shall be entitled to make that number of completed telephone calls necessary to contact and retain legal counsel. Indigent prisoners shall be entitled to make such calls at facility expense.

(e) Except as otherwise provided by law, long distance telephone calls for the purpose of retaining or consulting with legal counsel shall be made collect, except that, in the discretion of the chief administrative officer, arrangements may be made to permit prisoners to bear the cost of such calls or to allow such calls to be made at facility expense.

7031.3 Mutual prisoner legal assistance. (a) Prisoners shall be permitted to meet for the purpose of discussing and preparing legal matters at times not unduly disruptive of facility routine. The chief administrative officer may establish reasonable guidelines for such mutual prisoner legal assistance.

(b) No prisoner shall receive payment, benefit or consideration

in any form from a prisoner for providing such prisoner legal assistance. Any prisoner found to be in violation of the provisions of this subdivision may be subject to disciplinary action.

(c) Consenting prisoners shall be allowed to exchange personal legal materials. Prior to such exchange, the chief administrative officer may require prisoners to consent in writing to the exchange of such legal materials.

7031.4 Access to legal reference material. (a) Consistent with the requirements of this Part, each local correctional facility shall provide prisoners access to current legal reference materials.

(b) Each local correctional facility shall establish and maintain within the facility legal reference materials with supplements, including but not limited to, for every 100 prisoners or fraction thereof confined in the facility:

- (1) one copy of New York State Correction Law Annotated;
- (2) one copy of New York State Penal Law Annotated;
- (3) one copy of New York State Criminal Procedure Law Annotated; and
- (4) one copy of Title 9 of the Official Compilation of Codes Rules and Regulations of the State of New York Subtitle AA.

(c) Irrespective of the prisoner population of any local correctional facility, a facility need not provide more than two copies of any facility legal reference materials listed in subdivision (b) of this section.

(d) Each local correctional facility shall maintain within the facility at least one copy, with supplements, of the following legal reference materials, including but not limited to:

- (1) a legal dictionary;
- (2) form books for use in conjunction with:
 - (i) New York State Criminal Procedure Law;
 - (ii) New York State Civil Practice Law and Rules; and
 - (iii) title 42, sections 1981-1988, and title 18, sections 4001-4321, of the United States Code Annotated;
- (3) a treatise with respect to:
 - (i) New York State Civil Practice Law and Rules;
 - (ii) New York State Penal Law;
 - (iii) New York State Criminal Procedure Law; and
 - (iv) actions commenced pursuant to title 42 of the United

States Code, section 1983;

- (4) a New York State case law digest dealing with:
 - (i) criminal law; and
 - (ii) prisoners and prisons;
- (5) The United States and New York State Constitutions;
- (6) a treatise on prisoner's legal rights and remedies;
- (7) New York State Civil Practice Law and Rules Annotated;
- (8) title 42 of the United States Code Annotated, sections 1981-1988;
- (9) title 18 of the United States Code Annotated, sections 4001-4321; and
- (10) a treatise on legal research.

(e) Each local correctional facility shall provide prisoners access to legal reference materials, including but not limited to:

- (1) United States Code Annotated;
- (2) New York State Consolidated Laws;
- (3) reported decisions of the Courts of New York from 1960 to date;
- (4) reported decisions of Federal District Courts, Federal Circuit Courts of Appeals, and the United States Supreme Court from 1960 to date;
- (5) a Federal case law digest;
- (6) a New York State case law digest;
- (7) Shepard's; and
- (8) Federal and New York State legal forms.

(f) The legal reference materials listed in subdivision (e) of this section shall be made available to prisoners:

- (1) within the facility; or
- (2) from a source outside the facility pursuant to a prisoner request made in accordance with subdivision (g) of this section.

(g) Prisoner requests for legal reference materials not available within a facility or from a prisoner's legal counsel shall be made in writing and shall include the:

- (1) name of the requesting prisoner;
- (2) date of the request;
- (3) name of the facility staff member receiving the request;
and
- (4) material requested.

(h) Legal reference materials requested pursuant to subdivision (g) of this section shall be made available within a reasonable time after any such request.

(i) The chief administrative officer may require that requests made pursuant to subdivision (g) of this section include with respect to the material requested:

- (1) citations;
- (2) section references; or
- (3) any other specific delineation of the requested portion of a legal reference volume.

(j) The chief administrative officer may comply with prisoner requests for legal reference material not available within the facility, including but not limited to that material listed in subdivision (e) of this section by:

- (1) providing specific volumes of requested legal reference material from a community library or any other source; or
- (2) providing photocopies of requested portions of a legal reference volume.

(k) Legal reference material photocopied pursuant to paragraph (j) (2) of this section shall for indigent prisoners be photocopied at facility expense. The costs attendant to photocopying such material for prisoners other than indigent prisoners may, in the discretion of the chief administrative officer, be charged to such prisoners. Legal reference material photocopied at facility expense may be retained by the facility for prisoner use.

(l) With respect to legal reference material requested pursuant to subdivision (g) of this section, the chief administrative officer may establish reasonable limitations on:

- (1) the amount of legal reference material prisoners may request at any one time; and
- (2) the number of requests for legal reference material a

prisoner may make each week.

(m) Indigent prisoners shall be provided at facility expense with supplies necessary for the preparation of legal matters, including:

- (1) pens or pencils; and
- (2) paper.

(n) All prisoners shall be permitted to have access to typewriters for the purpose of preparing legal documents.

(o) Prisoners shall be permitted to use legal reference materials in any area specifically designated for legal work. If such an area is not available, prisoners shall be permitted to use legal reference material in facility housing areas. In the discretion of the chief administrative officer, prisoners may be permitted to use legal reference materials in both a specifically designated area and in facility housing areas.

(p) The chief administrative officer shall establish written guidelines for the use of all legal reference materials and supplies. Such guidelines shall be designed to ensure that prisoners have daily and equal access to such materials and supplies.

(q) Any prisoner who is found, in accordance with the provisions of Part 7006 of this Subtitle, to have intentionally damaged any legal reference materials or supplies available pursuant to this Part may be subject to disciplinary action including restitution.

7031.5 Notary public. The services of a notary public or commissioner of deeds shall be made available to prisoners within one business day after a prisoner's request for the notarization or attestation of his signature.

7031.6 Limitation on legal services. (a) Except as provided in subdivision (b) of this section, a prisoner's access to legal services shall not be denied, revoked or limited solely as a result of disciplinary action, including a prisoner's:

- (1) confinement in an individual housing unit for disciplinary reasons; or
- (2) confinement in administrative or punitive segregation.

(b) The chief administrative officer may limit a prisoner's access to facility legal reference materials or supplies when such prisoner has been found to have intentionally damaged any such item.

CURRENT AS OF 4/11/01

PART 7032

GRIEVANCE PROGRAM

(Statutory authority: Correction Law, §45 (6))

Sec.

- 7032.1 Policy
- 7032.2 Definitions
- 7032.3 Facility policies and procedures
- 7032.4 Facility program requirements
- 7032.5 Appeal to the Commission of Correction
- 7032.6 Grievance program forms
- 7032.7 Continuation and termination of grievances
- 7032.8 Grievance coordinator responsibilities
- 7032.9 Assistance to inmates
- 7032.10 Recordkeeping
- 7032.11 Staff orientation
- 7032.12 Applicability

Section 7032.1 Policy. In order to provide an effective and impartial procedure for the timely resolution of inmate complaints, the chief administrative officer of each local correctional facility shall establish, implement and maintain a formal inmate grievance program. Every effort shall be made to resolve inmate complaints in an informal manner.

7032.2 Definitions. As used in this Part, the following definitions shall apply to the terms listed below:

(a) "Grievance" shall mean a written inmate complaint concerning either written or unwritten facility policies, procedures, rules, practices, programs or the action or inaction of any person within the facility. Dispositions, surcharges, and sanctions resulting from disciplinary hearings and administrative segregation housing decisions shall not be the subject of a grievance.

(b) "Grievant" shall mean an inmate who has filed a grievance pursuant to this Part.

7032.3 Facility Policies and procedures. (a) The chief administrative officer of each local correctional facility shall ensure the development and implementation of written policies and procedures consistent with this Part.

(b) Such policies and procedures shall include, but are not

limited to:

- (1) a detailed description of grievance program operations including steps, timelines, investigative processes and available internal and external appeal procedures;
- (2) staff responsibilities for functions relative to the grievance program;
- (3) procedures to ensure grievance program accessibility to inmates;
- (4) steps to be taken to encourage staff to informally resolve inmate complaints;
- (5) a statement regarding safeguards for inmates against reprisals for having filed a grievance;
- (6) procedures for orientation to the grievance program for all facility staff;
- (7) procedures for corrective action to be taken when a grievance is found to have merit; and
- (8) an annual review of such policies and procedures and revision, if necessary.

7032.4 Facility program requirements. (a) Any inmate incarcerated in a local correctional facility shall be provided access to the facility's grievance program.

(b) Instructions for filing a grievance shall be included in the facility rules and information as required by paragraph (15) of subdivision (a) of section 7002.9 of this Chapter.

(c) Each inmate at any facility shall be advised in writing as to the availability of grievance forms upon admission.

(d) Facility staff shall make forms readily available so that an inmate may file a grievance. An inmate must file a grievance within five days of the date of the act or occurrence giving rise to the grievance.

(e) The chief administrative officer of each local correctional facility shall designate a staff member (s) to act as grievance coordinator(s).

(f) The chief administrative officer or his designee shall ensure that each grievance is investigated to the fullest extent

necessary by an impartial person who was not personally involved in the circumstances giving rise to the grievance; provided, however, that a grievance that is too vague to understand or fails to set forth supporting evidence or information may be returned to the inmate. Failure to supply sufficient information or evidence within two days shall be cause to deny the grievance.

(g) At a minimum, each investigation of an inmate grievance shall include gathering and assessing the following information:

- (1) a description of the facts and issues underlying the circumstances of the grievance;
- (2) summaries of all interviews held with the grievant and with all parties involved in the grievance;
- (3) copies of pertinent documents; and
- (4) any additional relevant information.

(h) Grievances regarding dispositions or sanctions from disciplinary hearings, administrative segregation housing decisions, issues that are outside the authority of the chief administrative officer to control, or complaints pertaining to an inmate other than the inmate actually filing the grievance are not grievable and may be returned to the inmate by the grievance coordinator. Such grievances may not be appealed to the chief administrative officer or the Citizens' Policy and Complaint Review Council.

(i) Within five business days of the receipt of a grievance, the grievance coordinator shall issue a written determination. Such determination shall specify the facts and reasons underlying the coordinator's determination. A copy of such determination shall be provided to the grievant.

(j) Within two business days after receipt of the grievance coordinator's written determination, the grievant may appeal to the chief administrative officer or his designee.

(k) Within five business days after receipt of a grievance appeal, the chief administrative officer shall issue a determination on the grievance appeal and provide a copy of such determination to the grievant.

(l) If the chief administrative officer finds merit in a grievance, he/she shall direct in writing that appropriate remedies or meaningful relief be provided to the grievant and for all others similarly situated.

7032.5 Appeal to the Commission of Correction. (a) Within three business days of the receipt of the chief administrative officer's determination, any grievant may appeal any grievance denied by the facility administrator, in whole and in part, to the State Commission of Correction by indicating his/her desire to appeal on the inmate grievance form in the space provided for such purpose.

(b) Within three business days after receipt of the grievant's notice of appeal, the grievance coordinator shall mail the appeal, the accompanying investigation report and all other pertinent documents to the Commission's Citizens' Policy and Complaint Review Council.

(c) The grievance coordinator shall provide the grievant with a receipt indicating the date the appeal was submitted to the Citizens' Policy and Complaint Review Council.

(d) (1) Except as provided in paragraph (2) of this subdivision, the Citizens' Policy and Complaint Review Council shall issue a written determination to the appeal within 45 business days of receipt, copies of which shall be sent to the grievant, the chief administrative officer and the grievance coordinator. If such determination is in favor of the grievant as a matter of law, the chairperson of the Citizens' Policy and Complaint Review Council shall direct the chief administrative officer to comply with the grievance and provide an appropriate remedy.

(2) The chairperson of the Council may issue written determinations to appeals of classes of grievances as determined by the Council. Such determinations shall be issued within ten business days of receipt and copies shall be provided to the grievant, the chief administrative officer, and the grievance coordinator. A copy shall also be given to the members of the Council for their review. If such determination is in favor of the grievant as a matter of law, the chairperson of the Citizens' Policy and Complaint Review Council shall direct the chief administrative officer to comply with the grievance and provide an appropriate remedy.

(e) The chief administrative officer shall submit verification of compliance with the Citizens' Policy and Complaint Review Council's determination as directed by such Council. Such verification shall be filed with the grievance.

7032.6 Grievance program forms. Each facility shall utilize both an inmate grievance form and an investigation report form as provided by the Commission of Correction.

7032.7 Continuation and termination of grievances. (a) If a

grievant is released or transferred from a facility prior to the resolution of a grievance, the chief administrative officer shall cause a determination to be made on such grievance pursuant to the requirements of this Part.

(b) If the chief administrative officer denies such grievance, he or she shall submit the grievance to the Citizens' Policy and Complaint Review Council as set forth in section 7032.5 of this Part.

7032.8 Grievance coordinator responsibilities. The grievance coordinator shall act as a liaison between the grievant, the chief administrative officer and the Commission of Correction in all matters that pertain to the inmate grievance program.

7032.9 Assistance to inmates. If a grievant is non-English speaking, illiterate or if the complexity of the issue(s) makes it unlikely that the inmate will be able to adequately present the substance of the grievance, upon the grievant's request the grievance coordinator shall ensure that the grievant is assisted in the preparation of the written grievance and at other stages of the grievance process in which assistance is needed. A grievant may seek the assistance of other inmates with the approval of the chief administrative officer.

7032.10 Recordkeeping. Each chief administrative officer shall develop a centralized record of all grievances.

7032.11 Staff orientation. All facility staff shall receive an orientation to the grievance program.

7032.12 Applicability. The requirements of this Part shall not apply to local correctional facilities operated in cities with a population of one million or more.

PART 7033

TRANSFER OF RECORDS

(Statutory authority: Correction Law, §§45(6), (15), 601)

Sec.

7033.1 Policy

7033.2 Facility policies and procedures

7033.3 Definitions

7033.4 Transfer of inmate records

7033.5 Transfer of detailed summaries of inmate medical and psychiatric records

7033.6 Confidentiality

Section 7033.1 Policy. In order to comply with Correction Law, section 500-b, to afford appropriate precautions for the personal safety and welfare of persons in custody, and to foster the safety, security and good order of the local correctional facility, it is essential that accurate information be available to corrections administrators.

7033.2 Facility policies and procedures. Each correctional facility shall develop and implement policies and procedures consistent with this Part for the exchange of information with other correctional facilities.

7033.3 Definitions. As used in this section, the following definitions shall apply to the terms listed below:

(a) Information source facility shall mean any correctional facility or health care provider to which a request for inmate records or detailed summaries of inmate medical or psychiatric records is made pursuant to this Part.

(1) Whenever a facility transfers an inmate to another facility, the receiving facility shall be deemed to have made such a request at the time of the transfer.

(2) Material to be provided pursuant to this Part shall be provided at the time of the transfer.

(b) Receiving facility shall mean any correctional facility to which an inmate is committed.

(c) Inmate records shall mean:

- (1) records or information or summaries thereof, except inmate medical and psychiatric records, relevant to fulfilling the requirements of Part 7013 of this Title and section 500-b of the Correction Law.
- (2) information and records, except inmate medical and psychiatric records, required pursuant to section 601(a) of the Correction Law. Such information shall include, but is not limited to:
 - (i) a certified copy of the sentence;
 - (ii) a copy of the probation officer's investigation and report or a detailed statement covering the facts relative to the crime and previous history;
 - (iii) a copy of the inmate's fingerprint records; and
 - (iv) reports relating to assaults, or other violent acts, attempts at suicide or escape by the inmate while in the custody of the sending facility.

(d) Inmate medical and psychiatric records shall mean any information or record of a medical or psychiatric nature pertaining to an inmate in the possession of a health care provider.

7033.4 Transfer of inmate records. (a) The chief administrative officer of a receiving facility shall request inmate records necessary and relevant for compliance with Part 7013 of this Title and sections 500-b and 601 of the Correction Law from the chief administrative officer of an information source facility to the extent such sources are relevant and known to the requesting facility.

7033.5 Transfer of detailed summaries of inmate medical and psychiatric records. (a) A receiving facility shall request detailed summaries of inmate medical and psychiatric records necessary and relevant for compliance with this Part or for the timely and effective medical evaluation or treatment of an inmate, from health care providers to the extent such sources are relevant and known of the receiving facility.

(b) Upon such request, the health care provider shall make a detailed summary of all inmate medical and psychiatric records and information in its possession.

(c) Whenever detailed summaries of inmate medical and psychiatric records are requested pursuant to this Part, the information source facility shall send such detailed summaries only to the attention of the facility medical director.

7033.6 Confidentiality. (a) Information, however received,

pursuant to this Part which is confidential as required by law shall be kept confidential by the party receiving such information and any limitation on the release of such information imposed by law upon any party furnishing the information shall also apply to the party receiving such information.

(b) Any disclosure of confidential material made pursuant to this Part shall be limited to that information which is necessary in light of the reason for disclosure.

(c) The chief administrative officer and the medical director of each local correctional facility shall develop and implement policies and procedures to ensure the safe keeping of all confidential records.

PART 7039

FIRE PREVENTION AND SAFETY

(Statutory authority: Correction Law, §45 (6))

Sec.

7039.1 Policy

7039.2 Policies and procedures

7039.3 Fire prevention code requirements

7039.4 Fire and safety inspections

7039.5 Fire prevention and safety practices and training

Section 7039.1 Policy. In order to safeguard the lives and property of all occupants within each local correctional facility and to minimize the possibility of fire emergencies or other similar hazards, each facility shall practice proper fire prevention and safety measures.

7039.2 Policies and procedures. The chief administrative officer of each facility shall develop and implement written policies and procedures to ensure compliance with this Part.

7039.3 Fire prevention code requirements. (a) Each facility shall comply with all applicable provisions of the the State Uniform Fire Prevention and Building Code, Subchapter C of Chapter I of Subtitle S of Title 9 NYCRR and any applicable local laws, codes, rules, or regulations.

7039.4 Fire and safety inspections. The chief administrative officer of each facility shall request the appropriate authority having code enforcement jurisdiction to conduct an annual fire and safety inspection. A copy of the report based on such inspection together with a detailed statement of steps taken or to be taken to correct any deficiencies set forth in such report shall be maintained on file.

7039.5 Fire prevention and safety practices and training. (a) The chief administrative officer of each facility shall appoint one or more staff members to conduct regular inspections of all areas of the facility to determine whether a fire hazard exists and shall take the necessary action to remove such hazard.

(b) Such inspections shall be conducted at weekly intervals or more frequently in the discretion of the chief administrative officer, and the results of such inspections shall be entered in a

facility log maintained for this purpose.

(c) Prior to assuming such duties, such appointed staff member(s) shall have successfully completed a fire protection seminar approved by the Office of Fire Prevention and Control.

PART 7040

MAXIMUM FACILITY CAPACITY

(Statutory Authority: Correction Law, §45 (6))

Sec.

7040.1 Policy

7040.2 Definition

7040.3 Facility population limitation

7040.4 Individual occupancy housing units

7040.5 Multiple occupancy housing units

7040.6 Medical housing units and treatment areas

7040.7 Formulating maximum facility capacity

7040.8 Applying for a change in maximum facility capacity

Section 7040.1 Policy. In order to promote a safe, secure, and healthy correctional environment, there shall be a limit on the total number of inmates confined at any given time within each local correctional facility.

7040.2 Definition. As used in this Part, the term "maximum facility capacity" shall mean the greatest number of inmates that may be confined at one time within each correctional facility, as formulated by the Commission pursuant to the requirements of this Part.

7040.3 Facility population limitation. The total number of inmates confined within each correctional facility shall not exceed the maximum facility capacity of such facility.

7040.4 Individual occupancy housing units. (a) Except as otherwise provided in subdivision (a) of section 7040.6 of this Part, each individual occupancy housing unit shall contain at least 60 square feet of floor space; however, an individual occupancy housing unit may contain less than 60 square feet of floor space if such unit was originally constructed for single occupancy prior to the effective date of this Part.

(b) Each individual occupancy housing unit shall contain:

- (1) one bed and mattress;
- (2) one functioning toilet; and
- (3) one functioning sink.

(c) Sufficient showers shall be available to permit each inmate

to shower daily, pursuant to the requirements of section 7005.2 of this Title.

(d) Each individual occupancy housing unit shall house only one inmate.

(e) Each tier or section of individual occupancy housing units constructed after the effective date of this Part shall provide dayroom space adjacent and accessible to such tier or section.

7040.5 Multiple occupancy housing units. (a) Each multiple occupancy housing unit shall provide a minimum of 50 square feet of floor space per inmate in the sleeping area, except as otherwise provided in section 7040.6(b) of this Part.

(b) Each multiple occupancy housing unit shall house no more than 60 inmates.

(c) Each multiple occupancy housing unit shall have a bed and mattress for each inmate and have available:

- (1) at least one functioning toilet for every twelve inmates;
- (2) at least one functioning shower for every fifteen inmates; and
- (3) at least one functioning sink for every twelve inmates.

(d) Each multiple occupancy housing unit shall provide dayroom space immediately adjacent and accessible to the sleeping area.

7040.6 Medical housing units and treatment areas. (a) Each individual occupancy housing unit used to house inmates apart from the general population for purposes of medical observation or treatment shall have a minimum of 80 square feet of floor space.

(b) Each multiple occupancy housing unit used to house inmates apart from general population for purposes of medical observation or treatment shall have a minimum of 80 square feet of floor space per inmate in the sleeping area.

7040.7 Formulating maximum facility capacity. (a) Consistent with the requirements of this Part, the Commission shall formulate in writing the maximum facility capacity of each correctional facility.

(b) In formulating the maximum facility capacity of a facility, the Commission shall determine the maximum number of inmates that can be housed in each individual and multiple occupancy housing unit pursuant to the requirements of this Part. Such determination shall be based on the following:

- (1) the number of properly equipped individual occupancy housing units, including the number of properly equipped admissions, medical and mental health, and any other special housing units;
- (2) the number of properly equipped multiple occupancy housing units, including the number of properly equipped admissions, medical and mental health, and any other special housing units; and
- (3) the facility's ability to provide required programs and services and to comply with other rules and regulations of this Chapter which are related to facility capacity.

(c) Upon determination of the maximum facility capacity of each correctional facility, the Commission shall forward a written copy of such determination to the chief administrative officer of such facility.

(d) Within 60 days after receipt of such determination, the chief administrative officer of such facility may appeal for a revision to the maximum facility capacity formulation.

(e) Any such appeal shall be made in writing and include the specific facts, reasons, or special circumstances underlying the appeal.

(f) The Commission shall respond to such appeal within 60 days after its receipt and shall either sustain or amend its original formulation.

(g) The Commission's determination shall be made in writing and shall state the specific facts and reasons underlying its decision. A copy of such determination shall be forwarded to the chief administrative officer.

7040.8 Applying for a change in maximum facility capacity. (a) Upon a change in any of the factors delineated in subdivision (b) of section 7040.7 of this Part, the chief administrative officer may apply to the Commission for a revision of the maximum facility capacity.

(b) Such application shall be made in writing and include the specific facts, reasons, or special circumstances underlying the request.

(c) Within 60 days after receipt, the Commission shall review such application and forward its determination in writing to the chief administrative officer.

PART 7041

STAFFING REQUIREMENTS

(Statutory authority: Correction Law, §45(6))

Sec.

7041.1 Policy

7041.2 Facility functions and formulation of daily staffing needs

1041.3 Formulation of the full coverage factor

7041.4 Formulation of the minimum facility staffing requirement

Section 7041.1 Policy. (a) Each local correctional facility shall employ that number of persons necessary to provide care, custody and control for all prisoners and to perform all other necessary facility functions. In no case shall the number of such persons be less than the minimum facility staffing requirement as determined by the State Commission of Correction in accordance with the provisions of the Part.

(b) As used in this Part, the term minimum facility staffing requirement shall mean the number of persons necessary to provide care, custody and control for all prisoners and to perform all other necessary facility functions.

7041.2 Facility functions and formulation of daily staffing needs. (a) The State Commission of Correction shall, in determining the minimum facility staffing requirement for each local correctional facility, ascertain the functions to be performed by facility staff including, but not limited to:

- (1) general facility administration and management;
- (2) control room operation;
- (3) general housing area supervision;
- (4) special housing area supervision;
- (5) medical services;
- (6) visitation;
- (7) correspondence;
- (8) recreation;
- (9) facility maintenance;
- (10) library;
- (11) commissary;
- (12) religious services;
- (13) prisoner transportation; and
- (14) any other facility program or service.

(b) The State Commission of Correction shall, in determining the minimum facility staffing requirement for each local correctional facility, consider the following factors, among others:

- (1) the physical plant of the facility;
- (2) the maximum prisoner capacity of such facility established pursuant to Part 7040 of this Subtitle; and
- (3) any other factors including those unique to a particular facility.

(c) The State Commission of Correction shall, upon compliance with subdivisions (a) and (b) of this section, determine the number of man hours necessary to perform each facility function during each shift regularly scheduled within a 24-hour period. Upon making such determination, the State Commission of Correction shall determine the total number of persons necessary to perform such functions during each such shift.

7041.3 Formulation of the full coverage factor. (a) As used in this Part, the term full coverage factor shall mean a figure arrived at in accordance with the provisions of this Part, designed to ensure that a sufficient number of persons are employed to perform facility functions 365 days per year.

(b) As used in this section, the term estimated on-duty days shall mean the number of days per year a facility employee is available for duty.

(c) The State Commission of Correction shall, in determining the estimated on-duty days, subtract from 365 days the total estimated number of off-duty days. The total estimated number of off-duty days shall be determined by totaling the following for a 365-day period:

- (1) normal days off;
- (2) holidays;
- (3) personal leave;
- (4) vacation leave;
- (5) average sick leave; and
- (6) other short-term leave.

(d) The full coverage factor shall be computed by dividing 365 days by the estimated on-duty days.

7041.4 Formulation of the minimum facility staffing requirement. To determine the minimum facility staffing requirement, the number of persons necessary to perform facility functions during each shift regularly scheduled within a 24-hour period as determined pursuant to section 7041.2 of this Part, shall be multiplied by the

full coverage factor.

PART 7050

VARIANCES

(Statutory authority: Correction Law, §45(6))

Sec.

7050.1 Policy

7050.2 Application for a variance

7050.3 Review of application for a variance

Section 7050.1 Policy. (a) The chief administrative officer of a local correctional facility may apply to the State Commission of Correction for a variance when:

- (1) full compliance with a specific rule or regulation of this Subtitle or any provision thereof cannot be achieved or maintained by or subsequent to the effective date of such rule or regulation; or
- (2) compliance is to be achieved in a manner other than that which is specified in such rules and regulations.

(b) The State Commission of Correction may grant a variance only upon a determination that:

- (1) full compliance with a specific rule or regulation of this Subtitle or a provision thereof would create extreme practical difficulties or excessive hardships as a result of circumstances which are unique to a particular local correctional facility; or
- (2) compliance is to be achieved in an alternative manner sufficient to meet the intent of such rule or regulation.

7050.2 Application for a variance. (a) Any application for a variance shall be made in writing by the chief administrative officer and shall state:

- (1) the specific rule, regulation or provision thereof at issue;
- (2) when the application is made pursuant to section 7050.1(a)(1) of this Part for a variance from full compliance with a specific rule or regulation, the specific plans, provisions and timetables for achieving

- full compliance with the rule or regulation at issue and any other appropriate supportive material; or
- (3) when the application is made pursuant to section 7050.1(a)(2) of this Part for a variance, in that compliance is to be achieved in a manner other than that which is specified in the provisions of this Subtitle, specific plans fully explaining and supporting such alternative manner of compliance; and
 - (4) where applicable, the time period for which the variance is requested.

7050.3 Review of application for a variance. (a) The State Commission of Correction shall issue a written determination upon any application made pursuant to this Part. Such written determination shall include the specific facts and reasons underlying the determination. If the variance is granted, the New York State Commission of Correction shall stipulate:

- (1) where applicable, the time period for which the variance is granted; and
- (2) any requirements imposed by the State Commission of Correction as conditions upon the variance.

(b) The State Commission of Correction shall issue the written determination required pursuant to subdivision (a) of this section within 30 days after receipt of an application for a variance made pursuant to this Part.

PART 7051

FUNERAL AND DEATHBED VISITS

(Statutory authority: Correction Law, §§45(6), 504)

Sec.

- 7051.1 Policy
- 7051.2 Definitions
- 7051.3 Facility policies and procedures
- 7051.4 Legal requirements and eligibility
- 7051.5 Assessment and processing of visit requests
- 7051.6 Security and supervision requirements
- 7051.7 Food, lavatory and lodging stops
- 7051.8 Facility staff conduct and inmate attire
- 7051.9 Duration of visits
- 7051.10 Reportable incidents
- 7051.11 Records

Section 7051.1 Policy. Pursuant to Correction Law, section 509, in order to provide inmates incarcerated in local correctional facilities the opportunity to visit family members when death is imminent and/or after death has occurred, at the discretion of the chief administrative officer, inmates shall be permitted to visit the deathbed of and/or attend the funeral of designated family members pursuant to the requirements of this Part.

7051.2 Definitions. As used in this Part, the term funeral visit shall mean attendance at one or more of the following at the discretion of the chief administrative officer:

- (a) the wake;
- (b) the church or other appropriate memorial service held at the gravesite or any other location; and/or
- (c) the interment.

7051.3 Facility policies and procedures. Each local correctional facility shall develop written policies and procedures concerning funeral and deathbed visits consistent with Correction Law, section 509, and the requirements of this Part.

7051.4 Legal requirements and eligibility. (a) At the discretion of the chief administrative officer, an inmate shall be permitted to attend the funeral of his/her father, mother, guardian

or former guardian, child, brother, sister, husband, wife, grandparent, grandchild, ancestral uncle or ancestral aunt, or to visit such individual during his/her illness if death be imminent.

(b) Such visits shall be permitted only within New York State.

7051.5 Assessment and processing of visit requests. (a) The chief administrative officer of each local correctional facility shall develop and implement a procedure for the expeditious review, assessment and approval of requests made by an inmate or other person asking that an inmate be permitted to visit the deathbed of and/or attend the funeral of a designated family member.

(b) Prior to approving any such request, the chief administrative officer shall verify:

- (1) that the person to be visited is one of the persons specified in section 7051.4(b) of this Part;
- (2) that the funeral arrangements or claim of imminent death are legitimate; and
- (3) that the inmate wishes to have such a visit, if the request was initiated by another person.

(c) Prior to approving such visit, the chief administrative officer shall assess the potential security risk associated with the visit by considering, at a minimum, the following factors:

- (1) offense for which the inmate is incarcerated and circumstances surrounding the offense;
- (2) criminal history of the inmate, including a history of escape or attempted escape;
- (3) whether the inmate's presence at the visit may constitute a threat to the inmate or any other person present because of:
 - (i) the involvement of a member of the inmate's family in the offense committed by the inmate; and/or
 - (ii) other persons who may be present at the funeral or deathbed visit;
- (4) mental stability of the inmate, including the inmate's mental health history and the potential effect of the visit on the inmate;
- (5) medical condition of the inmate;

- (6) method of transport or escort required; and
- (7) any other relevant circumstances specific to the inmate or situation.

(d) After considering the factors specified in subdivision (c) of this section, the chief administrative officer shall approve or deny the visit. Such determination shall be made as soon as possible given the circumstances surrounding the funeral or deathbed visit.

(e) After such determination has been made, the inmate and/or other person requesting the visit shall be immediately informed of the decision.

(f) If the visit is denied, the inmate and/or other person requesting the visit shall be:

- (1) informed in writing of the facts and circumstances surrounding the denial; and
- (2) given an opportunity to respond to the chief administrative officer concerning the determination within 24 hours.

(g) At the discretion of the chief administrative officer, an inmate may be permitted both to visit the deathbed of and to attend the funeral of those persons with whom inmates are authorized to visit pursuant to section 7051.4(b) of this Part.

7051.6 Security and supervision requirements. (a) Consistent with the requirements of section 7003.7(a) of this Title, an inmate shall be under constant supervision at all times during his/her absence from the facility due to a funeral or deathbed visit, unless such inmate is participating in a release program pursuant to Correction Law, articles 22-A and 27.

(b) Based on the factors to be considered pursuant to section 7051.5(c) of this Part, prior to any such visit the chief administrative officer shall determine and specify in writing the specific security measures and/or other special instructions to be followed during the visit.

(c) Such written determination shall include, but need not be limited to, the following information:

- (1) the appropriate number of facility staff who will be assigned to accompany the inmate on the visit;
- (2) the vehicle to be used and method of transportation;

- (3) if restraint equipment is to be used, the type of equipment to be employed and procedures, if any, for removing restraints while the visit is taking place;
- (4) special procedures which are necessary due to the medical condition or mental health of the inmate and the specific steps to be followed;
- (5) the route to be followed and itinerary for the trip; and
- (6) any other special instructions concerning the visit.

(d) Prior to the funeral or deathbed visit, facility staff assigned to supervise such visit shall be thoroughly briefed concerning such security measures and special instructions and shall be given all pertinent information regarding the family and circumstances surrounding the visit.

(e) Prior to the funeral or deathbed visit, the inmate shall be thoroughly instructed regarding forbidden conduct during the visit and, if appropriate, advised concerning the use of restraints.

(f) At least one facility staff member accompanying the inmate on a funeral or deathbed visit shall be the same sex as the inmate.

(g) Facility staff assigned to accompany an inmate on a funeral or deathbed visit shall adhere to security and supervision requirements regarding transportation of inmates as specified in Part 7003 of this Title.

(h) Facility staff shall only escort an inmate to destinations approved by the chief administrative officer for the trip.

(i) During a funeral or deathbed visit, no inmate shall be permitted to obtain food, beverages or any gifts, including money, from his/her family or any member of the public.

7051.7 Food, lavatory and lodging stops. (a) Inmates participating in funeral or deathbed visits shall be given the opportunity to eat during regularly scheduled meal times.

(b) Lavatory stops shall be made only as the need arises and as security permits. Whenever possible, such stops shall be made at law enforcement facilities.

(c) If it is not possible to utilize a law enforcement facility for lavatory stops, every attempt shall be made to utilize facilities with as little public presence and/or access as possible.

(d) If a funeral or deathbed visit requires an inmate's absence from a facility overnight, the inmate shall be housed in a local correctional facility or other suitable place designated pursuant to Correction Law, section 504.

7051.8 Facility staff conduct and inmate attire. (a) While accompanying an inmate on a funeral or deathbed visit, facility staff shall conduct themselves in a professional and courteous manner toward the public and the inmate in their custody, causing as little public display as possible.

(b) When security considerations permit, searches of the inmate and/or the use of restraint by facility staff during funeral or deathbed visits shall be carried out in a manner which minimizes any public attention.

(c) At no time shall facility staff accept food, beverages or any gifts, including money, from the inmate's family or any member of the public pursuant to Part 7019 of this Title.

(d) Inmates shall be permitted to wear their own personal clothing during funeral or deathbed visits. If the inmate has no suitable clothing at the facility, the inmate shall be permitted to make arrangements to receive such clothing prior to the visit.

7051.9 Duration of visits. (a) Except as otherwise provided in subdivisions (b) and (c) of this section, inmates attending a deathbed or funeral visit shall be permitted to visit family members for a minimum of 30 minutes per visit, excluding time taken to transport the inmate to and from the visit. However, at the discretion of the chief administrative officer or facility staff supervising an inmate on such a visit, a longer visit may be permitted.

(b) If a determination is made by the attending physician or other health services staff that a deathbed visit would jeopardize the health of the ill family member or the inmate and/or if hospital regulations restrict the length of the visit, such visit may be denied or modified as so recommended or required.

(c) The chief administrative officer or designated facility staff shall have the authority to limit such visit to less than 30 minutes or terminate such visit before the prescribed period if, in their opinion, a 30-minute visit will threaten the safety or welfare of the inmate, facility staff or any member of the public.

7051.10 Reportable incidents. If a reportable incident occurs while an inmate is absent from the facility to attend a funeral or deathbed visit, facility staff shall report such incident to the

Commission of Correction pursuant to the requirements of Part 7022 of this Title.

7051.11 Records. A written record of all requested funeral and deathbed visits shall be maintained by each local correctional facility.

PART 7063

CHEMICAL AGENTS

(Statutory authority: Correction Law, §45[6])

Sec.

7063.1 Policy

7063.2 Authorized chemical agents

7063.3 Authorization for the use of chemical agents

7063.4 Use of chemical agents

7063.5 Training in the use of chemical agents

7063.6 Storage and maintenance of chemical agents

7063.7 Recording the use of chemical agents

Section 7063.1 Policy. The use of chemical agents in a correctional facility shall be controlled and reasonably applied only when necessary to protect the safety, security and good order of the facility. Chemical agents used appropriately by trained facility staff under certain conditions have proven to be an effective method in preventing the loss of authority without resorting to physical contact or deadly physical force.

7063.2 Authorized chemical agents. (a) The only chemical agents which shall be stored or used in a correctional facility shall be oleoresin capsicum (OC), chloroacetophenone (CN) and orthochlorobenzalmalonitrile (CS).

(b) Chemical agents shall be administered only by the use of grenades, projectiles, aerosols and fogging devices approved by the chief administrative officer.

(c) Devices such as tear gas billies, pens or other small caliber devices of similar design shall be strictly prohibited.

7063.3 Authorization for the use of chemical agents. (a) No chemical agents shall be used by facility staff without proper authorization pursuant to the requirements of this section.

(b) Authorization for the use of chemical agents shall emanate from the highest authority available within the facility. Except as otherwise provided in subdivision (c) of this section, only facility staff in a supervisory position who have been designated in writing by the chief administrative officer and have been trained in the use of chemical agents shall have the authority to order the use of such agents.

(c) In emergency cases, when a delay in the use of chemical agents presents an immediate threat of death or serious injury or severely threatens the safety or security of the correctional facility, facility staff trained in the use of chemical agents shall have the authority to use chemical agents without authorization.

7063.4 Use of chemical agents. (a) Chemical agents shall not be used as a means of punishment.

(b) The use of any chemical agent shall be supervised by a supervisory staff member who has been trained in the use of chemical agents, except in emergency cases when a delay in the use of such agents presents an immediate threat of death or serious injury or severely threatens the safety or security of the facility.

(c) Prior to the use of chemical agents, the person authorizing such use shall notify facility health services staff, except in emergency cases when a delay in the use of such agents presents an immediate threat of death or serious injury or severely threatens the safety or security of the facility.

(d) Prior to the use of chemical agents, facility health services staff who are trained in the medical consequences of the use of such agents shall make reasonable efforts to inform the authorizing officer whether such administration may aggravate any existing injuries, illnesses or other physical conditions of any person who may be exposed.

(e) Prior to the use of chemical agents, facility staff shall consider:

- (1) the safety hazards such agents can produce when used under certain conditions for certain periods of time in enclosed areas;
- (2) the safety hazards presented by the use of burning-type grenades and projectiles in the vicinity of combustible materials; and
- (3) the distinctive characteristics of each type of agent and how these characteristics will affect the situation for which they are being considered for use.

(f) Information pertaining to the requirements of this section shall be included in the training program required pursuant to section 7063.5 of this Part.

(g) No chemical agent shall be used on any person if a determination has been made pursuant to subdivision (d) of this

section that the use of such agent may aggravate any existing injuries, illnesses or other physical conditions of any recipient, unless such use is reasonable to prevent death, serious injury or a serious threat to the safety or security of the facility.

(h) Whenever possible, prior to the use of any chemical agent, all reasonable efforts shall be made to evacuate all persons for whom the administration of such agent is not intended.

(i) Whenever possible, prior to the use of any chemical agent, such use shall be announced to the inmates for whom the administration of such agent is intended.

(j) In all cases of exposure to any chemical agent, facility health services staff shall examine and treat all persons exposed to such chemical agent as soon as possible. Treatment for exposure shall begin with those persons most seriously affected.

(k) All facility health services staff shall be properly trained in the treatment of persons exposed to chemical agents.

(l) Appropriate decontamination of persons and area cleanup procedures shall be completed as soon as possible after the use of any chemical agent.

(m) No chemical agent munitions or devices shall be used after they have passed the predetermined expiration date established by the manufacturer.

7063.5 Training in the use of chemical agents. (a) All facility staff who have the authority to order the use of chemical agents pursuant to section 7063.3 of this Part, supervise such use pursuant to section 7063.4 of this Part or use such agents shall have successfully completed a chemical agents training program approved by the commission.

(b) Such training program shall incorporate accepted practices in the use of chemical agents and shall be submitted to the commission for approval before delivery to facility staff.

(c) All facility staff who have the authority to order the use of chemical agents pursuant to section 7063.3 of this Part, supervise such use pursuant to section 7063.4 of this Part or use such agents shall also receive additional commission-approved training on an annual basis to ensure continued proficiency in chemical agent issues.

7063.6 Storage and maintenance of chemical agents. (a) All chemical agent equipment, munitions or devices stored within a

facility shall be maintained in a safe and secure manner. Such storage shall ensure that only persons trained in the use of such articles have access to them.

(b) Quarterly inspections of all such equipment, munitions or devices shall be conducted.

(c) A written record of all such inspections shall be maintained which shall include, but need not be limited to:

- (1) the name of the person(s) inspecting the articles;
- (2) the date of inspection;
- (3) the type and quantity of articles stored and inspected; and
- (4) a description of their condition.

(d) Munitions and devices which have passed their predetermined expiration date shall be stored separately from the useful stock.

(e) Such munitions and devices shall be disposed of in compliance with accepted practices or used for training purposes only.

7063.7 Recording the use of chemical agents. (a) A written record of all incidents of chemical agent use, except when such agents are used for training purposes, shall be maintained.

(b) Such record shall include, but need not be limited to:

- (1) the date and time of use;
- (2) the location of the incident within the facility;
- (3) the facts and circumstances surrounding the use of the agent;
- (4) the name of the person authorizing the use of the agent;
- (5) the name(s) of any person(s) on whom the agent was used;
- (6) the name(s) of any facility staff involved in the use of the agent;
- (7) the brand name of the agent used;
- (8) the approximate amount of agent used;
- (9) the approximate length of time each person was exposed to the agent from the use of the agent to initiation of decontamination procedures;
- (10) the name and professional title of facility health services staff providing medical advice and assistance pursuant to the requirements of section 7063.4(d) of this Part and any treatment provided; and
- (11) any adverse physical reactions of any person(s) to the use of the agent.

PART 7064

HUMAN IMMUNODEFICIENCY VIRUS AND AIDS
RELATED INFORMATION -- CONFIDENTIALITY

(Statutory authority: Correction Law, §45 (6);
Public Health Law, §2786)

Sec.

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Section 7064.1 Policy. Recognizing that maximum confidentiality protection for information related to human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome (AIDS) is an essential public health measure and that HIV infection and AIDS issues are of particular concern to correctional professionals, and in order to retain the full trust and confidence of persons at risk, each correctional facility shall ensure that HIV-related information is not improperly disclosed, shall establish clear and certain rules for the disclosure of such information, and provide safeguards to prevent discrimination, abuse, or other adverse actions directed toward protected individuals.

7064.2 Definitions. As used in this Part, the following definitions shall apply to the terms listed below:

(a) "HIV infection" means infection with the human immunodeficiency virus or any other agent identified as a probable cause of AIDS.

(b) "AIDS" means acquired immune deficiency syndrome, as may be defined from time to time by the Centers for Disease Control of the United States Public Health Service.

(c) "HIV-related illness" means any clinical illness that may result from or be associated with HIV infection.

(d) "HIV-related test" means any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent whatsoever, thought to cause or to indicate the presence of HIV infection.

(e) "Capacity to consent" means an individual's ability, determined without regard to such individual's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure, and to make an informed decision concerning such service, treatment or procedure.

(f) "Protected individual" means a person who is the subject of an HIV-related test or who has been diagnosed as having HIV infection, AIDS or HIV-related illness.

(g) "Confidential HIV-related information" means any information, in the possession of a person who provides health or social services or who obtains the information pursuant to a release of confidential HIV-related information, concerning whether an individual has been the subject of an HIV-related test, or has HIV infection, HIV-related illness or AIDS, or information which identifies or reasonably could identify an individual as having one or more of such conditions, including information pertaining to such individual's contacts.

(h) "Health or social service" means any public or private care, treatment, clinical laboratory test, counseling or educational service for adults or children, and acute, chronic, custodial, residential, outpatient, home or other health care; public assistance, including disability payments available pursuant to the Social Security Act; employment related services, housing services, foster care, shelter, protective services, day care, or preventive services; services for the mentally disabled, probation services, parole services, correctional services; and detention and rehabilitative services, all as defined in section 2780(8) of the Public Health Law, and including local correctional facilities.

(i) "Health facility" means a hospital as defined in section 2801 of the Public Health Law, blood bank, blood center, sperm bank, organ or tissue bank, clinical laboratory, or facility providing care or treatment to persons with a mental disability.

(j) "Health care provider" means any physician, nurse, provider of services for the mentally disabled or other person involved in providing medical, nursing, counseling, or other health care or mental health service including those associated with, or

under contract to, a health maintenance organization or medical services plan, including local correctional facility medical service providers.

(k) "Contact" means an identified spouse or sex partner of the protected individual or a person identified as having shared hypodermic needles or syringes with the protected individual.

(l) "Person" includes any natural persons, partnership, association, joint venture, trust, public or private corporation or state or local government agency.

(m) "Release of confidential HIV-related information" means a written authorization for disclosure of confidential HIV-related information which is signed by the protected individual, or if the protected individual lacks capacity to consent, a person authorized pursuant to law to consent to health care for the individual. Such release shall be dated and shall specify to whom disclosure is authorized, the purpose for such disclosure and the time period during which the release is to be effective. A general authorization for the release of medical or other information shall not be construed as a release of confidential HIV-related information, unless such authorization specifically indicates its dual purpose as a general authorization and an authorization for the release of confidential HIV-related information and complies with this definition.

7064.3 Facility policies and procedures. (a) The medical director of each local correctional facility in conjunction with the chief administrative officer shall develop and implement written policies and procedures consistent with the requirements of this Part and article 27-F of the Public Health Law.

(b) Such policies and procedures shall include, but are not limited to, the following:

- (1) safeguards to prevent discrimination, abuse, or other adverse actions against protected individuals;
- (2) provisions establishing a schedule for training all facility staff regarding the requirements of Public Health Law article 27-F and this Part;
- (3) provisions for safeguarding the confidentiality of all medical records and information concerning HIV testing or HIV-related information as required by Public Health Law article 27-F and this Part;
- (4) provisions specifically setting forth those persons having access to HIV testing and HIV-related information when

such access is necessary for appropriate medical or psychiatric diagnosis or treatment consistent with the provisions of 10 NYCRR section 63.8;

- (5) provisions for handling requests by other parties for confidential HIV-related information; and
- (6) provisions to protect individuals in contact with protected individuals when such contact creates a significant risk of contracting or transmitting HIV infection through the exchange of body fluids, as provided for in section 7064.4 of this Part.

7064.4 Significant risk of contracting or transmitting HIV infection. (a) The three factors necessary to create a significant risk of contracting or transmitting HIV infection are:

- (1) the presence of a significant risk body substance;
- (2) a circumstance which constitutes significant risk for transmitting or contracting HIV infection; and
- (3) the presence of an infectious source and a non-infected person.

(b) "Significant risk body substances" are blood, semen, vaginal secretions, breast milk, tissue and the following body fluids: cerebrospinal, amniotic, peritoneal, synovial, pericardial and pleural.

(c) Circumstances which constitute "significant risk of transmitting or contracting HIV infection" are:

- (1) sexual intercourse (vaginal, anal, oral) which exposes a non-infected individual to blood, semen or vaginal secretions of an infected individual;
- (2) sharing of needles and other paraphernalia used for preparing and injecting drugs between infected and non-infected individuals;
- (3) the gestation, birthing or breast feeding of an infant when the mother is infected with HIV;
- (4) transfusion or transplantation of blood, organs, or other tissues from an infected individual to an uninfected individual, providing such blood, organs or other tissues have not tested negatively for antibody or antigen and have not been rendered non-infective by heat or chemical

treatment;

- (5) other circumstances not identified in paragraphs (1) through (4) of this subdivision during which a significant risk body substance (other than breast milk) of an infected individual contacts mucous membranes (e.g., eyes, nose, mouth), non-intact skin (e.g., open wound, skin with a dermatitis condition, abraded areas) or the vascular system of a non-infected person. Such circumstances include, but are not limited to, needlestick or puncture wound injuries and direct saturation or permeation of these body surfaces by the infectious body substance.

(d) Circumstances that involve "significant risk" shall not include:

- (1) exposure to urine, feces, sputum, nasal secretions, saliva, sweat, tears or vomitus that does not contain blood that is visible to the naked eye;
- (2) human bites where there is no direct blood to blood, or blood to mucous membrane contact;
- (3) exposure of intact skin to blood or any other body substance;
- (4) occupational settings where individuals use scientifically accepted barrier techniques and preventive practices in circumstances which would otherwise pose a significant risk.

7064.5 Applicability. These regulations apply to all administrators, personnel, employees, consultants, independent contractors and service providers, whether paid or volunteer, of local correctional facilities; to persons who order an HIV-related test; to persons who receive confidential HIV-related information in the course of providing any health or social service or who receive confidential HIV-related information pursuant to a release; and to providers and facilities providing health care. These regulations do not apply to information which is received by the Commissioner of Health under Title 10 NYCRR Part 24-1 and protected from disclosure pursuant to Public Health Law section 206(1)(j).

7064.6 HIV-related testing. (a) Except as noted in paragraph (3) of this subdivision, no physician or other person authorized pursuant to law may order an HIV-related test without first obtaining written informed consent.

- (1) Informed consent shall include providing pretest

counseling to the person to be tested or, if such person lacks capacity to consent, to the person lawfully authorized to consent to health care for such person. In situations in which a person other than the test subject consents to the test, pretest counseling shall also be provided to the subject to the extent that the person ordering the test deems that the test subject will benefit from counseling. Pretest counseling shall include:

- (i) explanations regarding the nature of HIV infection and HIV-related illness, an explanation of the HIV-related test, including a description of the procedure to be followed, meaning of the test results, and the benefits of taking the test, including early diagnosis and medical intervention;
 - (ii) an explanation that discrimination problems may result as a result of disclosure of HIV-related information and that legal protections exist which prohibit discrimination and unauthorized disclosures;
 - (iii) information on preventing exposure or transmission of HIV infection, including behavior which poses a risk of HIV transmission;
 - (iv) an explanation that the test is voluntary, that consent may be withdrawn at any time, and that anonymous testing is available, including the location and telephone numbers of anonymous test sites, and that for the purpose of insurance coverage, confidential as opposed to anonymous testing is required;
 - (v) information regarding psychological and emotional consequences of receiving the test result.
- (2) Written informed consent must be executed on a form developed by the Department of Health or on another form approved specifically by the Department of Health. Upon the request of the test subject, a copy of the signed informed consent form must be provided to the test subject.
- (3) Informed consent is not required in the following situations:
- (i) for court ordered testing pursuant to Civil Practice Law and Rules section 3121;
 - (ii) when testing without informed consent is otherwise

specifically authorized or required by state or federal law;

- (iii) for testing related to procuring, processing, distributing or use of a human body or human body part, including organs, tissues, eyes, bones, arteries, blood, semen or other body fluids for use in medical research or therapy, or for transplantation to persons, provided that if the test results are communicated to the tested persons, post test counseling is required;
- (iv) for research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;
- (v) for testing of a deceased to determine cause of death or for epidemiological purposes.

(b) In addition to an explanation of the test result, the person who orders the test shall be responsible for ensuring that post-test counseling or referrals as appropriate with respect to a positive or negative test result shall be provided to the person who consented to the test. In situations in which a person other than the test subject consents for the test, post-test counseling and referrals should also be provided to the test subject, to the extent the person ordering the test deems that the test subject will benefit from counseling. Such post-test counseling and referrals must include specific referral information and must address:

- (1) coping emotionally with the test results;
- (2) discrimination issues relating to employment, housing, public accommodations, health care and social services;
- (3) information on the ability to release or revoke the release of confidential HIV-related information;
- (4) information on preventing exposure to or transmission of HIV infection;
- (5) the need to notify contacts to prevent transmission, including information on state or county assistance in voluntary and non-voluntary contact notification, if appropriate; and
- (6) information on the availability of medical evaluation and treatment, including use of HIV chemotherapeutics for prophylaxis and treatment and peer group support.

(c) A physician or other person authorized pursuant to law to order an HIV-related test shall certify on a laboratory requisition form that informed consent has been obtained. Authorized employees or agents of the New York State Department of Health or of the New York City Department of Health may order HIV-related tests and certify, as appropriate, with respect to obtaining informed consent in approved anonymous testing sites.

7064.7 Disclosure pursuant to a release. (a) No confidential HIV-related information shall be disclosed pursuant to a general release except to insurance companies. Disclosure is permitted for HIV-related information pursuant to a specific release form for a limited time period which has been developed or approved by the New York State Department of Health. The release must be signed by the protected individual, or if the protected individual lacks capacity to consent, by a person authorized pursuant to law to consent to health care for the individual.

(b) All written disclosures of confidential HIV-related information shall be securely packaged and be accompanied by a statement prohibiting redisclosure. The statement shall include the following language or substantially similar language: "This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not, except in limited circumstances set forth in this Part, sufficient authorization for further disclosure. Disclosure of confidential HIV-related information that occurs as the result of a general authorization for the release of medical or other information will be a violation of the state law and may result in a fine or a jail sentence or both."

(c) If oral disclosures are necessary, they must be accompanied or followed as soon as possible, but no later than ten days, by the statement required by subdivision (b) of this section.

(d) The statement required by subdivisions (b) and (c) of this section is not required for release to the protected person or when a person lacks the capacity to consent, to a person authorized pursuant to law to consent to health care for the person, for releases made by a physician or public health officer to a contact, or for releases made by a physician to a person authorized pursuant to law to consent to the health care of the protected person when the person has been counseled and the disclosure is medically necessary pursuant to Public Health Law section 2782(4)(e). For

disclosures of confidential HIV-related information from the patient's medical record to persons who are permitted access to this information pursuant to section 7064.8(a)(3), (4), (6), (7), (9) and (10) and (e) and (f) of this Part, it shall be sufficient for the statement required by subdivisions (b) and (c) of this section to appear in the medical record itself.

7064.8 Confidentiality and disclosure. (a) No person who obtains confidential HIV-related information in the course of providing any health or social service or pursuant to a release of confidential HIV-related information may disclose or be compelled to disclose such information, except to the following:

- (1) the protected individual or, when the protected individual lacks capacity to consent, a person authorized pursuant to law to consent to health care for the individual;
- (2) any person to whom disclosure is authorized pursuant to a release of confidential HIV-related information in accordance with section 7064.7(a) of this Part;
- (3) an agent or employee of a health facility or health care provider if:
 - (i) the agent or employee is authorized to access medical records;
 - (ii) the health facility or health care provider itself is authorized to obtain the HIV-related information; and
 - (iii) the agent or employee provides health care to the protected individual or maintains or processes medical records for billing or reimbursement.
- (4) a health care provider or health facility when knowledge of the HIV-related information is necessary to provide appropriate care or treatment to the protected individual or a child of the individual;
- (5) a health facility or health care provider in relation to the procurement, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical education, research, therapy, or for transplantation to individuals;
- (6) health facility staff committees, or accreditation or oversight review organizations authorized to access medical records, provided that such committees or

organizations may only disclose confidential HIV-related information:

- (i) back to the facility or provider of a health or social service;
 - (ii) to carry out the monitoring, evaluation, or service review for which it was obtained, or
 - (iii) to a federal, state or local government agency for the purposes of and subject to the conditions provided in subdivision (e) of this section;
- (7) a federal, state, county or local health officer when such disclosure is mandated by federal or state law;
 - (8) authorized agencies as defined by section 370(10) of the Social Services Law and corporations incorporated or organized to receive children for adoption or foster care in connection with foster care or adoption of a child. Such agency shall be authorized to redisclose such information only pursuant to the provisions of article 27-F of the Public Health Law or in accordance with the provisions of section 373-A of the Social Services Law;
 - (9) third party reimbursers or their agents to the extent necessary to reimburse health care providers, including health facilities, for health services, provided that an otherwise appropriate authorization for such disclosure has been secured;
 - (10) an insurance institution, for other than the purpose set forth in subdivision (a)(9) of this section, provided the insurance institution secures a dated and written authorization that indicates that health care providers, health facilities, insurance institutions, and other persons are authorized to disclose information about the protected individual, the nature of the information to be disclosed, the purposes for which the information is to be disclosed and which is signed by:
 - (i) the protected individual;
 - (ii) if the protected individual lacks the capacity to consent, such other person authorized pursuant to law to consent for such individual; or
 - (iii) if the protected individual is deceased, the beneficiary or claimant for benefits under an insurance policy, a

health services plan, or an employee welfare benefit plan as authorized in article 27-F of the Public Health Law;

- (11) to a funeral director upon taking charge of the remains of a deceased person when such funeral director has access in the ordinary course of business to HIV-related information on the death certificate of the deceased individual as authorized by Public Health Law section 4142;
- (12) any person to whom disclosure is ordered by a court of competent jurisdiction pursuant to section 2785 of the Public Health Law;
- (13) an employee or agent of the Division of Parole, Division of Probation and Correctional Alternatives or local probation department, or Commission of Correction, to the extent the employee or agent is authorized to access records containing such information in order to carry out his or her agency's functions, powers, and duties with respect to the protected individual, pursuant to each agency's regulations promulgated in accordance with article 27-F of the Public Health Law;
- (14) a medical director of a local correctional facility in accordance with the policies and procedures of the correctional facility; and
- (15) an employee or agent of a provider of health or social services, including but not limited to the Department of Correctional Services and local correctional facilities, when reasonably necessary to provide supervision, monitoring or administration of services and when these employees or agents have access in the ordinary course of business to records relating to the care, treatment, or provision of a health or social service, and in accordance with such provider's regulations promulgated in accordance with article 27-F of the Public Health Law. Disclosure to an employee or agent of a local correctional facility pursuant to this paragraph shall be consistent with section 601 of the Correction Law and Part 7033 of this Chapter and shall be authorized only when such disclosure is necessary to:
 - (i) enable the chief administrative officer to appropriately maintain custody and supervision of the protected person or provide for the safety and protection of the protected person or provide for the safety and protection of staff, other inmates, or the facility; and

(ii) the medical director reasonably believes that without disclosure circumstances will exist creating a significant risk of contracting or transmitting HIV infection.

(b) A state, county or local health officer may disclose confidential HIV-related information when:

(1) disclosure is specifically authorized or required by federal or state law; or

(2) disclosure is made pursuant to a release of confidential HIV-related information; or

(3) disclosure is requested by a physician pursuant to section 7064.10 of this Part; or

(4) disclosure is authorized by court order pursuant to the provisions of section 2785 of the Public Health Law.

(c) A physician may disclose the confidential HIV-related information during contact notification pursuant to section 7064.10 of this Part.

(d) A physician may, upon the consent of a parent or guardian, disclose confidential HIV-related information to a state, county, or local health officer for the purpose of reviewing the medical history of a child to determine the fitness of the child to attend school.

(e) Confidential HIV-related information may be disclosed to a governmental agency or to authorized employees or agents of a governmental agency pursuant to the regulations of the governmental agency when the person providing health services is regulated by the governmental agency or when the governmental agency supervises or administers the health program or a social service program and when such employees or agents have access to records in the ordinary course of business and when access is reasonably necessary for supervision, monitoring, administration or provision of services. Such authorized employees or agency may include attorneys authorized by a government agency when access occurs in the ordinary course of providing legal services and is reasonably necessary for supervision, monitoring, administration or provision of services. Such authorized employees or agents may also include public health officers as required for conducting epidemiological or surveillance investigations pursuant to the State Sanitary Code.

(f) Confidential HIV-related information may be disclosed to authorized employees or agents of a provider of health or social services when such provider is either regulated by a governmental agency or when a governmental agency administers the health or

social service program, and when such employees or agents have access to records in the ordinary course of business and when access is reasonably necessary for supervision, monitoring, administration or provision of services and when such employee or agent has been authorized by law. Such authorized employees or agents may include attorneys authorized by persons providing health services when access occurs in the ordinary course of providing legal services and is reasonably necessary for supervision, monitoring, administration or provision of services.

(g) A physician may disclose confidential HIV-related information pertaining to a protected individual to a person, known to the physician, authorized pursuant to law to consent to the health care for a protected individual when the physician reasonably believes that:

- (1) disclosure is medically necessary in order to provide timely care and treatment for the protected individual; and
- (2) after appropriate counseling as to the need for such disclosure the protected individual will not inform a person authorized by law to consent to health care; provided, however, that the physician shall not make such disclosure if, in the judgment of the physician:
 - (i) the disclosure would not be in the best interest of the protected individual; or
 - (ii) the protected individual is authorized pursuant to law to consent to such care and treatment.
- (3) A physician's decision to disclose pursuant to this paragraph, and the basis for that decision, shall be recorded in the medical record.

(h) No person to whom confidential HIV-related information has been disclosed shall disclose the information to another person except as authorized by this Part, provided, however, that the provisions of this Part shall not apply to the protected individual or a natural person who is authorized pursuant to law to consent to health care for the protected individual.

(i) Nothing in this section shall limit a person's or agency's responsibility or authority to report, investigate, or redisclose child protective and adult protective services information in accordance with Title 6 of article 6 and Titles 1 and 2 of article 9-B of the Social Services Law, or to provide or monitor the provision of child and adult protective or preventive services.

(j) Confidential HIV-related information shall not be disclosed to a health care provider or health care facility if the sole purpose of disclosure is infection control precautions when such provider or facility is regulated under Public Health Law and required to implement such precautions pursuant to Department of Health regulation. This restriction shall not limit access to HIV-related information by a health care provider's infection control personnel for purposes of fulfilling their designated responsibilities.

(k) Confidential HIV-related information shall not be released pursuant to a subpoena. A court order pursuant to Public Health Law section 2785 is required.

(l) Confidential HIV-related information disclosed pursuant to this subdivision shall be securely packaged and shall contain the redisclosure statement required by subdivision (b) of section 7064.7 of this Part.

7064.9 Documentation of HIV-related information and disclosures. (a) Confidential HIV-related information shall be recorded in the medical record such that it is readily accessible to provide proper care and treatment.

(b) All disclosures of confidential HIV-related information must be noted in the record, except:

- (1) only initial disclosures to insurance institutions must be noted;
- (2) notation is not required for disclosure to agents or employees of health facilities or health care providers authorized under section 7064.8(a)(3) of this Part;
- (3) notation is not required for persons engaged in quality assurance, program monitoring or evaluation, nor for governmental payment agents acting pursuant to contract or law.

(c) Confidential HIV-related information shall be noted, as appropriate in a certificate of death, autopsy report or related documents prepared pursuant to article 41 of the Public Health Law or other laws relating to documentation of cause of death.

(d) The protected person shall be informed of disclosures of HIV related information upon request of the protected person;

(e) Confidential HIV-related information shall not be

disclosable pursuant to Public Officers Law, article 6, "The Freedom of Information Law."

7064.10 Contact notification. (a) A physician may disclose HIV-related information, without the protected person's consent, to a contact or to a public health officer when:

- (1) the physician reasonably believes disclosure is medically appropriate and a significant risk of infection exists; and
- (2) the protected person has been counseled to notify his/her contacts and the physician reasonably believes the protected person will not inform the contacts.

(b) The physician must inform the protected person of the physician's intent to disclose and inform the protected person that he or she may choose whether the physician or public health officer will notify the contact. The physician shall honor the protected person's choice. All notification shall be in person, except where circumstances compel otherwise.

(c) The identity of the protected person shall not be disclosed to the contact.

(d) When a public health officer is requested to notify contacts, the officer may, in his or her own discretion, meet with the protected person to counsel and verify information prior to any notification of such person's contacts. Local health units must provide HIV contact notification services.

(e) The person notifying the contact shall provide counseling or make referrals for counseling as appropriate. Such counseling must address coping emotionally with potential exposure to HIV, an explanation regarding the nature of HIV infection and HIV-related illness, availability of anonymous and confidential testing, information on preventing exposure or transmission of HIV infection, information regarding problems that might occur as the result of disclosure of HIV-related information, and the legal protections against such disclosures.

(f) If a protected person is now deceased and the physician reasonably believes the protected person had not informed his/her contacts and reasonably believes disclosure is medically appropriate and that a significant risk of infection exists, the physician may notify the contact or request the public health officer to notify the contact. All such notifications shall be in person, except where circumstances reasonably prevent doing so, and the identity of the deceased shall not be disclosed.

(g) A physician shall have no obligation to identify or locate any contact.

7064.11 Penalties and immunities. (a) Any person who shall:

- (1) perform, permit, or procure the performance of an HIV-related test in violation of section 2781 of the Public Health Law; or
- (2) disclose, compel another person to disclose, or procure the disclosure of confidential HIV-related information in violation of section 2782 of the Public Health Law shall be subject to a civil penalty not to exceed five thousand dollars for each occurrence. Such penalty may be recovered in the same manner as the penalty provided in section 12 of the Public Health Law.

(b) Any person who willfully commits an act enumerated in subdivision (a) of this section shall be guilty of a misdemeanor and subject to the penalties provided in section 12-b of the Public Health Law.

7064.12 Approved forms; informed consent, release. (a) Each local correctional facility shall maintain an adequate supply of forms approved by the New York State Department of Health for the purpose of informed consent relative to any HIV-related test and authorization for release of confidential HIV-related information.

(b) Such forms shall be used pursuant to the requirements of article 27-F of the Public Health Law and this Part.

PART 7070

EDUCATIONAL SERVICES FOR YOUTH

(Statutory authority: Correction Law,
§45(6); Education Law, §3202(7))

Sec.

- 7070.1 Policy
- 7070.2 Definitions
- 7070.3 Facility/school district planning and coordination
- 7070.4 Procedures for providing educational services to eligible youth
- 7070.5 Instructor orientation
- 7070.6 Scheduling of instructional time
- 7070.7 Restriction or denial of educational services
- 7070.8 Program continuity following transfer

Section 7070.1 Policy. In cooperation with the appropriate school district, each local correctional facility shall provide all eligible youth the opportunity to participate in educational services pursuant to section 3202(7) of the Education Law. Eligible youth are entitled to receive such educational services and shall be encouraged to become involved in an educational program provided by the school district so that they may obtain those skills and credentials necessary to function more productively both during incarceration and after release.

7070.2 Definitions. As used in this Part, the following definitions shall apply to the terms listed below:

(a) Eligible youth shall mean an inmate who:

- (1) is under 21 years of age;
- (2) has not received a high school diploma; and
- (3) has been incarcerated in a local correctional facility for 10 or more calendar days or who, in the judgment of the chief administrative officer, can reasonably be expected to be incarcerated for a period of 10 or more calendar days.

(b) Educational services shall mean those services made available to an eligible youth by the school district in which each local correctional facility is located pursuant to section 3202(7)

of the Education Law and 8 NYCRR 118.3 and 118.4. Such services shall include:

- (1) an evaluation of each eligible youth to determine individual educational needs; and
- (2) individual or small group instruction designed to meet the identified educational needs of each such youth.

(c) School day shall mean any day of the year when school is in session, excluding July and August, as determined by the school district in which each local correctional facility is located.

7070.3 Facility/school district planning and coordination. (a) The chief administrative officer of each local correctional facility shall designate an individual who shall act as a liaison with education personnel and be responsible for coordinating the delivery of educational services to eligible youth within the facility pursuant to the requirements of this Part.

(b) The individual designated by the chief administrative officer pursuant to subdivision (a) of this section shall consult with the school district in which the facility is located to establish written policies and procedures for the delivery of educational services to eligible youth within the facility.

(c) At a minimum, such policies and procedures shall address the following issues:

- (1) allocation and maintenance of classroom space within the facility which promotes safe and effective learning environments and accommodates the needs of education personnel and eligible youth;
- (2) instructor orientation pursuant to the requirements of section 7070.5 of this Part;
- (3) scheduling of instructional time for eligible youth participating in educational services;
- (4) supervision of classroom areas by facility staff as deemed appropriate by the chief administrative officer while inmates are receiving educational instruction;
- (5) procedures for escorting inmates to and from the program by facility staff;
- (6) provision of a secure area within the facility for the storage of instructional materials, equipment and records,

if education personnel or facility staff determine such an area is necessary;

- (7) pursuant to section 3202(7)(d) of the Education Law, procedures for apprising eligible youth who are being released or discharged that further educational services may be available through the school district in which such youth reside or in which the youth are otherwise entitled to attend school;
- (8) procedures for how the school district shall assist the facility to provide such information to eligible youth pursuant to 8 NYCRR 118.2;
- (9) circumstances under which it is permissible for eligible youth to be absent from educational instruction;
- (10) denial or restriction of eligible youth participation in educational services pursuant to the requirements of section 7070.7 of this Part;
- (11) pursuant to the requirements of section 7070.7(a) and (b) of this Part, provision of educational services to eligible youth confined in special housing units; and
- (12) delineation of specific facility and education staff roles and responsibilities concerning program implementation.

(d) A copy of the current written policies and procedures required pursuant to this section shall be provided to the school district in which each facility is located, and maintained on file within the facility.

7070.4 Procedures for providing educational services to eligible youth. (a) During the admissions process the chief administrative officer of each local correctional facility shall determine which inmates within the facility are eligible youth as defined in section 7070.2(a) of this Part.

(b) Except as otherwise provided in subdivision (c) of this section, during the admissions process facility staff shall provide each eligible youth with the following information concerning the educational services program:

- (1) advise the youth that he/she may attend this program during incarceration in a local correctional facility as long as he/she has not received a high-school diploma, is under the age of 21 and is likely to be incarcerated for 10 days or more;

- (2) advise the youth that the educational program shall:
 - (i) consist of small group or individual instruction and will be designed to fit his/her educational needs;
 - (ii) be designed to increase his/her level of achievement in reading, mathematics and written and oral communication and to prepare a student to pass the high-school equivalency diploma examination;
 - (iii) if necessary, be designed to provide special assistance in speaking or writing English;
 - (iv) enable him/her to continue with studies if he/she plans to return to school or a BOCES program after release; or
 - (v) provide employment preparation education, which may include identifying his/her skills and assisting him/her on how to search for employment and how to develop positive work habits;
- (3) advise the youth that if he/she chooses to participate in the program, he/she will be in class for at least three hours each day when school is in session in the school district in which the facility is located, and the importance of regular class attendance; and
- (4) advise the youth how he/she can request to participate in the program at any later time during incarceration pursuant to the facility's procedures.

(c) Whenever an eligible youth is admitted to a facility and such youth's physical or mental condition is such that facility staff determine it would be more appropriate to delay providing the youth with information on the program pursuant to the requirements of this section, the requirements of subdivisions (b), (d) and (e) of this section shall be completed as soon as possible, but in no case later than three days after such youth is admitted to the facility.

(d) Facility staff shall make reasonable efforts to assist all eligible youth, including those who may be non-English speaking, to understand the information provided concerning the educational services program pursuant to subdivision (b) of this section.

(e) Except as otherwise provided in subdivision (c) of this section, during the admissions process each eligible youth shall be asked if he/she does or does not wish to participate in such program.

(f) After the admissions process has been completed, all eligible youth shall be permitted to request access to educational services at any time during the period of their incarceration by following procedures established by the facility pursuant to the requirements of this Part.

(g) Whenever an eligible youth indicates his desire to access educational services during incarceration by following the facility's procedures for requesting to participate in the program, facility staff shall submit a request for such services to the school district in which the facility is located by the end of the next school day.

(h) Such request shall be made in writing and on a form prescribed by the State Education Department.

(i) Facility staff shall also forward a copy of such form to the State Education Department by the end of the next school day after the form has been completed.

(j) A copy of such completed form shall be placed and retained in each eligible youth's facility file.

(k) Pursuant to section 3202(7)(d) of the Education Law, each local correctional facility shall apprise each eligible youth upon release or discharge from the facility that further educational services may be available through the school district in which the youth resides or in which the youth is otherwise entitled to attend school.

(l) Whenever an eligible youth who is being released or discharged indicates the desire to access educational services after release or discharge, facility staff shall consult with the school district in which the facility is located, if necessary, to determine the school district in which such youth will be eligible to attend school after release or discharge.

(m) Within three school days after such eligible youth indicates the desire to access such services after release or discharge, facility staff shall notify in writing the appropriate school district that such youth has indicated he/she wishes to access educational services after release or discharge.

(n) Each local correctional facility shall maintain written records verifying that the specific procedures required in subdivisions (a)-(m) of this section have been completed.

(o) A written record concerning participation in the educational services program by eligible youth shall be maintained

by facility staff in each local correctional facility.

(p) Such record shall include, but need not be limited to:

- (1) the dates and times when educational services were provided;
- (2) a daily list of all eligible youth participating in such services;
- (3) the dates and times when educational services were restricted or denied due to an emergency situation pursuant to section 7070.7(c)(2) of this Part, including an explanation why such action was necessary; and
- (4) a list of all eligible youth restricted or denied from participating in educational services pursuant to section 7070.7(c)(1) of this Part.

7070.5 Instructor orientation. (a) Before education personnel provide instruction to eligible youth pursuant to the requirements of this Part, facility staff shall provide education personnel with a brief orientation program on facility policies and procedures.

(b) Such orientation program shall:

- (1) provide education personnel with information and instructions concerning security procedures to be followed while they are in the facility;
- (2) provide education and facility staff an opportunity to discuss and resolve issues related to program implementation; and
- (3) be designed to facilitate delivery of the education program within the correctional setting.

7070.6 Scheduling of instructional time. (a) Pursuant to 8 NYCRR 118.4(b), the program schedule within each local correctional facility shall provide a minimum of three hours of instructional time per student each school day.

(b) The scheduling of instructional time for educational services within each local correctional facility shall be determined in conjunction with education personnel from the school district in which the facility is located.

(c) Each local correctional facility's daily schedule of activities, programs and services shall be organized so that no

eligible youth who participates in educational services at the facility is denied the opportunity to also participate in the following programs or services because of attendance at educational instruction:

- (1) exercise, pursuant to Part 7028 of this Title;
- (2) legal services, pursuant to Part 7039 of this Title;
- (3) religious services, pursuant to Part 7024 of this Title;
- (4) visitation, pursuant to Part 7008 of this Title; and
- (5) health services, pursuant to Part 7010 of this Title.

7070.7 Restriction or denial of educational services. (a) Eligible youth confined in special housing units shall not be denied access to educational services solely on the basis of their classification status.

(b) An eligible youth's participation in educational services shall not be restricted or denied as a result of such youth's involvement in a disciplinary matter unrelated to the youth's participation in the facility's educational program, except when such involvement demonstrates that the youth's presence in such program presents a clear threat pursuant to paragraph (c) (1) of this section.

(c) An eligible youth's participation in educational services may only be denied or restricted by the chief administrative officer under the following conditions:

- (1) the chief administrative officer has determined that the presence of such youth in the educational program presents a clear threat to himself/herself, the safety of other inmates and/or the safety of educational or facility staff; or
- (2) an emergency situation exists within the facility which temporarily prevents or significantly interferes with the delivery of such services.

(d) Whenever possible, prior to making a determination to restrict or deny educational services to an eligible youth pursuant to the requirements of paragraph (c) (1) of this section, the chief administrative officer shall discuss the matter with the youth's instructor(s).

(e) Any determination to restrict or deny an eligible youth's participation in educational services pursuant to paragraph (c) (1) of this section shall be made in writing.

(f) Such written determination shall include, but need not be

limited to:

- (1) the date of the determination;
- (2) the name of the eligible youth affected;
- (3) the date when services are to be denied and the date when services may be resumed, if applicable;
- (4) the nature of and/or time period for any restriction of services;
- (5) the specific facts and reasons underlying the decision;
- (6) comments and/or recommendations made by the youth's instructor(s), if solicited; and
- (7) the signature of the chief administrative officer.

(g) Whenever an eligible youth's participation in educational services is restricted or denied by the chief administrative officer pursuant to paragraph (c) (1) of this section, such youth shall be advised that at any time he/she may submit comments in writing to the chief administrative officer concerning this action.

(h) Whenever a determination is made to restrict or deny an eligible youth's participation in educational services pursuant to paragraph (c) (1) of this section, the chief administrative officer shall review such determination in writing within 14 days and at least every 14 days thereafter while such restriction or denial is in effect.

(i) Such written review shall include, but need not necessarily be limited to, the following information:

- (1) the date of the review;
- (2) comments submitted by the eligible youth, if available;
- (3) comments made by the youth's instructor(s);
- (4) justification for either continuing the denial or restriction of such services or for permitting the youth to resume participation in the program;
- (5) recommendations as appropriate; and
- (6) the signature of the chief administrative officer.

(j) Copies of each determination and review made pursuant to this section shall be distributed as follows by the end of the next school day following the date of the determination or review:

- (1) provided to each eligible youth;
- (2) placed and retained in the youth's facility file; and
- (3) forwarded to the youth's instructor(s).

7070.8 Program continuity following transfer. (a) Whenever an eligible youth who has either requested to participate or is already participating in educational services is transferred to another

local or State correctional facility, the chief administrative officer of the sending facility shall:

- (1) notify the youth's instructor(s) by the end of the next school day following the youth's transfer; and
- (2) if the form prescribed by the State Education Department has already been completed for the youth, provide the receiving facility with a copy of such form.

(b) During the admission of each such eligible youth to a receiving local correctional facility, facility staff shall complete the procedures specified in section 7070.4(a)-(e) of this Part.

PART 7300

SUBSTITUTE JAIL ORDERS

(Statutory authority: Correction Law, §504)

Sec.

- 7300.1 Purpose
- 7300.2 Definitions
- 7300.3 Designation of officer of the day
- 7300.4 Applicability
- 7300.5 Criteria
- 7300.6 Procedures
- 7300.7 Records to accompany inmates
- 7300.8 Notification to inmates
- 7300.9 Rights of transferred inmates
- 7300.10 Revocation

Section 7300.1 Purpose. The purpose of this Part shall be to provide a mechanism and procedures for the alternate housing of inmates when the facility to which they are confined becomes unfit or unsafe for their confinement.

7300.2 Definitions. (a) Commission means the State Commission of Correction.

(b) Commissioner means the Commissioner of the New York State Department of Correctional Services.

(c) Facility means a county jail or penitentiary or a correctional institution under the jurisdiction of the New York City Department of Correction.

(d) Facility administrator means the chief administrative officer of a county jail or penitentiary.

(e) Institution means a correctional facility under the jurisdiction of the New York State Department of Correctional Services.

(f) Suitable place means a building in the county which is capable of providing shelter and security for prisoners and which is designed and equipped to satisfy the requirements of State and local codes pertaining to sanitation, fire safety and public assembly.

(g) Extraordinary circumstances includes acts or substantial threats of acts of violence which threaten to breach the security of a facility, taking hostages, mass arrests, inmate disturbance, riot, escape or work stoppage.

(h) Civil disaster includes pestilential diseases, nuclear accidents and toxic chemical spills.

(i) Natural disaster includes fire, earthquake, flood, hurricane or landslide.

7300.3 Designation of officer of the day. The commission shall designate one of its members or administrators as the officer of the day. Such person shall be responsible for making decisions governing emergencies and the granting of substitute jail orders at such times when the commission is not assembled, when a determination by the commission is not obtainable, or at times when the commission deems appropriate.

7300.4 Applicability. The provisions of this Part shall affect the transfer of inmates:

(a) from a county jail or penitentiary to another suitable place in such county;

(b) from the county jail or penitentiary of one county to the county jail or penitentiary of another county;

(c) from a county jail or penitentiary to a facility under the jurisdiction of the New York City Department of Correction or to an institution under the jurisdiction of the New York State Department of Correctional Services;

(d) from the New York City Department of Correction to a county jail or penitentiary; or

(e) consistent with the provisions of section 7300.6(e) of this Part, in returning such inmates from a correctional institution under the jurisdiction of the New York State Department of Correctional Services to a county jail or penitentiary.

7300.5 Criteria. (a) The commission shall issue a substitute jail order authorizing the confinement of some or all of the inmates of a facility in another suitable place or facility, or upon the consent of the commissioner, an institution, under any of the following circumstances:

(1) when the facility in which the inmate or inmates are confined becomes unfit or unsafe for their continued

confinement, is unable to properly maintain its inmates or a group of inmates in proper classification, or when the inmate count of such facility reaches a level which renders it unsafe or imprudent for the confinement of the total inmate population, and a reduction in the number of inmates is deemed advisable;

- (2) when, as a result of natural or civil disaster, inmate disturbance or other factors which render it unsafe or unsound to house inmates in a given area, the evacuation of such inmates is required;
- (3) when the safety or security of an inmate or group of inmates is threatened by their confinement in a facility and the facility administrator reasonably believes that the public interest, as well as the safety of the inmates, would be better served by their being housed in another suitable place or facility;
- (4) when the facility is unable to provide vital services, such as medical, mental health and food services, and the facility administrator reasonably believes that such services are more readily available at another suitable place or facility; or
- (5) when, due to extraordinary circumstances, the facility administrator determines that the public interest and facility security would be served by the transfer of an inmate or group of inmates to another suitable place or facility.

(b) The commission may issue either an individual order authorizing the transfer of an inmate or group of inmates from one facility to another or an open order which authorizes the facility to transfer any inmate to another facility. All open orders shall be subject to review by the commission every 90 days.

7300.6 Procedures. (a) Prior approval of the commission shall precede the transfer of an inmate from one facility to another facility. Whenever a facility administrator determines that it is necessary to transfer an inmate or group of inmates to another suitable place or facility, he shall contact the commission by telephone or other means and request a substitute jail order. When such request is made at a time other than during the normal business hours of the commission, it shall be referred to the officer of the day assigned by the commission.

(b) It shall be the responsibility of the administrator of an affected facility to identify another facility or a suitable place

within the county which may be designated as a substitute jail for such facility. If such suitable place exists, he shall communicate its existence to the commission.

(c) If there is no suitable place in the county to which the inmate or group of inmates may be transferred, the facility administrator shall determine whether the county jail of another county is able to accommodate the inmate or group of inmates. The facility administrator shall take into account such factors as the ability of the county jail of another county to house the inmate or group of inmates in a manner consistent with applicable standards, the proximity of such county jail to the county jail or his county, the potential inconvenience to the family and friends of the inmate whose transfer is contemplated, access to legal counsel and other resources, and the ability of the receiving suitable place or facility to provide proper security and supervision of the inmates.

(d) The facility administrator shall provide the commission or its representative with all pertinent information needed to determine whether a substitute jail order should be granted. Upon the commission's approval for transfer and an assurance by the facility administrator of the receiving facility that he will house the inmates, the facility administrator of the sending facility shall make the necessary arrangements to effectuate the transfer.

(e) (1) Whenever due to extraordinary circumstances the facility administrator of a facility reasonably believes that the safety or security of an inmate or group of inmates committed to his custody cannot be maintained and that the public safety and security would be preserved by a transfer of the said inmate or group of inmates to an institution, the facility administrator shall make a written request to the commissioner to make available an institution for the confinement of such inmate or group of inmates. Upon the written determination of the commissioner that such institution is available for the confinement of such inmate or group of inmates, the facility administrator shall cause the said inmate or group of inmates to be transferred to the custody of the commissioner. The facility administrator shall provide immediate written notification to the commissioner of the transfer of the said inmate or group of inmates. The commissioner shall immediately forward to the commission a copy of the written transfer request and other papers upon which his determination was made, along with a copy of his written determination.

(2) The commissioner shall take custody of any inmate transferred pursuant to this Part and shall house such inmates in the most proximate available institution, taking into account the security needs of the inmates and of the community. The legal custody of the said inmates shall remain with the facility

administrator.

(3) The facility administrator shall assess the conditions of his facility and immediately request the commissioner to return the inmates to the sending facility once the facility is able to accommodate the inmates and their confinement in an institution is no longer needed. If the facility administrator determines that his facility is inappropriate for the return of the transferred inmates, he shall make every effort to find another suitable facility for the confinement of the said inmates. If such facility is available, he shall request the commission to designate it as a substitute jail, and the commission shall make the appropriate designation. If no suitable facility is available, the facility administrator shall notify the commissioner of this fact in writing within 30 days of the transfer of the inmate or group of inmates to his custody and shall request the commissioner to extend the transfer for an additional 30 days. The commissioner, in his discretion, shall consent in writing to the extension. If consent to the extension is granted, the commissioner shall send the request for such extension and his written consent to the commission. The commission shall approve such application if it is satisfied that a suitable facility is not available. Such application for extension may be made and approved at 30-day intervals thereafter until the said inmates are either transferred to a suitable facility or are released from the custody of the facility administrator of the sending facility.

7300.7 Records to accompany inmates. Whenever an inmate is transferred pursuant to this Part, the facility administrator of the sending facility shall deliver to the receiving facility or institution a copy of the inmate's commitment papers, a medical summary if one is available, a written notification of the reason for transfer, and any other information pertaining to the inmate which will be helpful to the receiving facility or institution in providing housing and treatment for the inmate.

7300.8 Notification to inmates. After the transfer of an inmate pursuant to this Part, the facility administrator of the receiving facility shall provide him immediately with a written notification of the reasons for his transfer.

7300.9 Rights of transferred inmates. Any inmate transferred pursuant to this Part shall be entitled to all the rights and privileges available to other inmates of the receiving facility; provided that the rights and privileges available to an inmate transferred to an institution shall be subject to the reasonable rules and regulations of the commissioner.

7300.10 Revocation. The commission may, at any time, revoke a substitute jail order upon a determination that the transfer of

inmates to a suitable place or another facility is no longer appropriate or necessary. Upon revocation of such order, the commission shall promptly notify the facility administrator of the sending and receiving facilities of its decision to revoke the order stating its reasons therefor, and shall cause to be filed with the county clerks of the respective counties an order of revocation.