

Information about double-celling in DOCS' custody

This memorandum contains information about double-celling, double-bunking and overcrowding in prisons. Please note that there are somewhat different regulations and issues pertaining to inmates who are double-celled while in general population, as contrasted to those who are double-celled while in keeplock/SHU status. There are, however, some similar issues. We do not enclose information about how to bring a lawsuit to challenge your status.

Double celling for general population inmates

Double-celling is now permitted as set forth in the enclosed regulations promulgated by the Department of Correctional Services and the State Commission of Corrections. If these regulations are being violated, you can file a grievance challenging their implementation. Once you have exhausted your administrative remedies (by taking your grievance to the Central office level) you may be able to challenge the implementation of these regulations by an Article 78 proceeding.

Double-celling issues generally

First, you should read the regulations closely that are applicable to your situation (which depends if you are in general population or in an S-block). If these regulations are being violated, please let us know and we may be able to contact the facility. Please be as specific as possible in describing the problems. ***Because of staff shortages we will not necessarily be able to contact DOCS on your behalf. We will only do so if you have a serious and ongoing problem and if our staffing permits us to do so.***

Second, we are aware of situations where inmates do not object to being double-celled, but object to their specific cell mate. If you believe you are at risk from your cell mate, you should file a grievance immediately, setting forth the reasons why you believe you are in danger, such as citing specific threats that you have received. (Also, if you are in general population, you should, again, check the regulations to see if they are being followed as there are some limitations on the background and status of which inmates can be double-celled.) . If you do not receive a timely and adequate response, please let us know the details of your situation. Again, ***we will only contact DOCS if you have a serious and ongoing problem and if our staffing permits us to do so.*** Because of staffing shortages, you should not wait to contact us but should advise DOCS immediately if you believe you are at risk.

The law on double celling

We are enclosing some general information about the issue of overcrowding in prisons and jails.

You should note that it is difficult to challenge overcrowding successfully. See Rhodes v. Chapman. In addition, you should look at the 1998 opinion in Bolton v. Goord, 992 F. Supp. 604 (S.D.N.Y. 1998), in which the court rejected a challenge by inmates at Woodbourne Correctional Facility, a medium-security facility, to DOCS's policy of double celling.

We are enclosing some general information about the issue of overcrowding in prisons and jails. You should note that it is difficult to challenge overcrowding successfully. See Rhodes v. Chapman. In addition, you should look at the 1998 opinion in Bolton v. Goord, 992 F. Supp. 604 (S.D.N.Y. 1998), in which the court rejected a challenge by inmates at Woodbourne Correctional Facility, a medium-security facility, to DOCS's policy of double celling. In May 2006, a class-action lawsuit was decided by the Southern District of New York, rejecting the plaintiffs' challenge to double-celling on First Amendment and Eighth Amendment grounds. Jones v. Goord, 435 F. Supp. 2d 221 (S.D.N.Y. 2006). The class members claimed that double-celling violated the Eighth Amendment rights of any inmate housed in a double-cell, by placing them at greater risk of inmate-on-inmate assault and cancer from being exposed to second-hand smoke. The class members claimed that their First Amendment rights were violated by virtue of the double-celling's effect on their freedom of religion-- specifically, that the greater burden of double-celling on the practice of Islam violated their First Amendment rights. The suit failed at the summary judgment stage, because the plaintiffs: 1) had not presented any evidence that they were at greater risk of physical harm, 2) had not shown a direct enough effect between the double-celling and a restriction on ability to practice religion, and 3) had not presented any evidence that they were widely burdened in their religious exercise.

The class in Jones v. Goord was composed of everyone who is, has been, or will ever be double celled at any of 13 DOCS maximum-security facilities: Attica, Auburn, Clinton, Coxsackie, Downstate, Eastern, Elmira, Great Meadow, Green Haven, Shawangunk, Sing Sing, Sullivan, and Wende. Thus, the decision does not cover inmates housed at Bedford Hills, Five Points, Southport, or Upstate. However, if a comparable suit was brought by inmates from those facilities the Jones case would be a strong precedent against their success.

For your convenience, we are enclosing information on filing a federal lawsuit challenging double celling. With respect to filing a federal lawsuit, be aware that you should read the enclosed memo describing the Prison Litigation Reform Act, a statute affecting the filing of federal lawsuits, as there may be important consequences to you in filing such a lawsuit. These include limitations on when you can file such a lawsuit (only after you exhaust administrative remedies by filing a grievance and appealing it to Central Office), how much it will cost you (you will have to pay the filing fee if you have any funds even if you are granted in forma pauperis status), and on your ability to proceed in forma pauperis (without prepayment of fees) if you have filed cases that have been dismissed as frivolous, malicious, or failed to state a claim. As noted above, you can also challenge your double celling as contrary to regulation or as arbitrary and capricious under State law in an Article 78 proceeding. In order to do so, you would again need to have exhausted your administrative remedies. We enclose information on Article 78 proceedings, please let us know. Finally, you can try to bring a lawsuit for damages based on a State law cause of action in the Court of Claims. If you would like information on the Court of Claims, please let us know.

Please be aware that the Prisoners' Rights Project will not be able to represent you in any lawsuit you may decide to file. Our office is a small test-case unit of the Legal Aid Society, and we focus our limited resources on class action litigation challenging unconstitutional conditions of confinement in New York City jails and New York State prisons. Moreover, we are not permitted to make a referral to a private attorney.

Double celling for kepplock/SHU inmates

Many inmates in keeplock/SHU are now double-celled, in the “S-block” units. We also enclose a copy of two letters that we sent to the Department of Correctional Services regarding some of the issues raised about these S-block units. In those letters we focused on those areas in which there appeared to be discrepancies between the SHU directive and S-block institutional orders, including raising the issue of the transfer of inmates to these S-block units who have been sentenced only to keeplock status. We also wrote about the failure to provide confidentiality in medical encounters. Since that time, however, DOCS has promulgated revised rules and regulations, a copy of which are enclosed. These changes address many of these issues that we raised in our letters. In addition, we have received a response from the Department of Correctional Services to our letters.

In all of the areas that we raised in our letters to DOCS, the law is not clear, and we do not know whether any of these arguments would be successful if litigated. Even without the revisions to the NYCRR, it appeared under 7 NYCRR § 253.7(a)(1)(iii) that an inmate could be sentenced to keeplock admission but confined in a special housing unit (“confinement to a special housing unit under keeplock admission”). In addition, Department of Correctional Services’ Directive 4933, concerning Special Housing Units, states that an inmate in a medium security facility may be admitted to an SHU at that facility as a keeplock admission. Directive 4933 at §III.E.1. Moreover, under this revision, at 7 NYCRR Section 301.6, an inmate in a medium or minimum security facility may be admitted to a special housing unit for confinement pursuant to a disciplinary hearing. Finally, under 7 NYCRR Section 301.6, an inmate in a medium or minimum security correctional facility or Upstate Correctional Facility can be housed in a special housing unit for reasons including while awaiting disposition of a Tier II or Tier III disciplinary hearing, or for confinement pursuant to a Tier II or Tier III disciplinary hearing. Also, under the revisions to the NYCRR, medical encounters must be kept confidential only “to the extent consistent with the safety and good order of the facility.” 7 NYCRR section 304.4(3).

You should read the revised rules carefully as they, unfortunately, make several changes about which we have received complaints. Not only do they have some impact on the issue of keeplock status (as contrasted with SHU) and medical confidentiality as described above but, for example, under the revised regulations, 7 NYCRR 303.1(a), the 30 day period before which some “privileges” are provided has been changed. It now reads so that the 30 day period must be completed at Southport or at a double-celled SHU, even if an inmate has already concluded a 30 day satisfactory adjustment period at another facility. There are many changes that affect life in these S-blocks so, again, please read these revised rules carefully. If you were to bring a lawsuit about these issues, a legal challenge based on the type of argument we made in our letter to DOCS would probably most appropriately be pursued via an Article 78 proceeding, for example by alleging that the S-block institutional orders go beyond the scope of DOCS’ authority.

We hope the enclosed information is helpful.

enc: Excerpt from Self Help Litigation Manual at 4th ed., pages 19-22

Section 1983 information

PLRA information

Article 78 proceedings

Letters to DOCS dated 8/18/98 and 12/4/98

Regulations re double celling: 9 NYCRR Sections 7621.5-7, 7 NYCRR §1701.1-7; 7 NYCRR Sections 253.7, 301.6, 304.4

NEW YORK CODES, RULES AND REGULATIONS

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH JULY 18, 2003 ***

TITLE 9. EXECUTIVE DEPARTMENT

SUBTITLE AA. STATE COMMISSION OF CORRECTION

CHAPTER V. MINIMUM STANDARDS AND REGULATIONS FOR MANAGEMENT OF STATE
CORRECTIONAL FACILITIES

PART 7621. MAXIMUM FACILITY CAPACITY

9 NYCRR § 7621.5 (2003)

§ 7621.5 Individual occupancy housing units

<< An individual occupancy housing unit is a housing unit with an individually controlled locking device secured from inmate access equipped to accommodate one inmate. 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 or has been rated for single occupancy by the commission.

(b) Except as otherwise provided in subdivision (c) of this section, each individual occupancy housing unit shall contain:

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

(c) The equipment required pursuant to subdivision (b) of this section may be modified or excluded for individual occupancy housing units used for short term medical/ mental health observation of inmates when the presence of such equipment may pose a threat to such inmates or to the safety or security of the facility.

(d) At least one functioning shower shall be available for each tier or section of individual occupancy housing units.

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

Statutory authority: Correction Law, § 45(6)

HISTORY:

renumbered 7621.4 to be 7621.5 on 9/03/97; amended 7621.5 (a) on 9/03/97.

9 NYCRR § 7621.6 (2003)

§ 7621.6 Double occupancy housing units originally designated for individual occupancy

<< A double occupancy housing unit originally designated for individual occupancy is a housing unit with an individually controlled locking device secured from inmate access that was originally designated for individual occupancy and which is equipped to accommodate two inmates. Each double occupancy housing unit originally designated for individual occupancy shall provide a minimum of 23 square feet of floor space per inmate.

(b) Each double occupancy housing unit originally designated for individual occupancy shall house no more than two inmates.

(c) Each double occupancy housing unit originally designated for individual occupancy shall contain the following:

- (1) one functioning toilet;
- (2) one functioning sink;

(3) one bed and mattress for each inmate; and

(4) one safe storage area for each inmate.

(d) At least one functioning shower shall be available for each tier or section in which double occupancy housing units originally designated for individual occupancy are located.

(e) In determining which inmates will be assigned to double occupancy housing units originally designated for individual occupancy, the department shall first consider those inmates newly transferred into the facility where units have been established.

(f) Each inmate shall undergo a screening and risk assessment, including a review of medical records, prior to being assigned to a double occupancy housing unit originally designated for individual occupancy. Only those inmates determined by the department to be suitable shall be assigned to double occupancy housing units originally designated for individual occupancy. The department shall adopt regulations setting forth the standards for determining an inmate's suitability for assignment to a double occupancy housing unit originally designated for individual occupancy. Such standards shall include, but not be limited to, the following factors:

(1) the physical characteristics of the inmate;

(2) the age of the inmate;

(3) the mental state of the inmate;

(4) the health of the inmate;

(5) the inmate's disciplinary and behavioral record; and

(6) the inmate's criminal history and the nature of the offense(s) for which the inmate is currently incarcerated.

(g) An inmate designated as OMH level I shall not be assigned to a double occupancy housing unit originally designated for individual occupancy.

(h) If an inmate is determined to be suitable for assignment to a double occupancy housing unit originally designated for individual occupancy, such inmate shall receive a physical assessment by facility health care staff prior to or within 48 hours of actual placement in a double occupancy housing unit.

(i) Only those inmates determined by the department to be compatible shall be housed together in a double occupancy housing unit originally designated for individual occupancy. The department shall adopt regulations setting forth standards for selecting which inmates of those determined to be suitable are to be housed together in a double occupancy housing unit originally designated for individual occupancy. Such standards shall include, but not be limited to, the following factors:

(1) whether two inmates have requested to be housed together;

(2) the ethnic and religious backgrounds of the inmates;

(3) the age of the inmates;

(4) the physical size of the inmates;

(5) the length of time left to be served by the inmates;

(6) the program or job assignment of the inmates;

(7) whether there is a familial relationship between the inmates;

(8) whether the inmates smoke; and

(9) known enemies of record.

(j) Inmates shall be moved on the basis of seniority from double occupancy housing units originally designated for individual occupancy to individual or multiple occupancy housing units as such units become available; subject however to the facility's needs and the program assignments of the affected inmates. No inmate shall be confined in a double occupancy housing unit originally designated for individual occupancy for a period of more than 60 days unless such inmate volunteers to remain in such unit for a longer period of time. At the expiration of the 60 days, if an inmate does not volunteer to remain in a double occupancy housing unit originally designated for individual occupancy he shall be moved to an individual or multiple occupancy housing unit at either his current facility or a new facility.

(k) No individual occupancy housing unit may be converted by the department to a double occupancy housing unit originally designated for individual occupancy without the approval of the commission. The factors the commission shall consider in determining whether to approve the conversion of an individual occupancy housing unit to a double occupancy housing unit originally designated for individual occupancy shall include, but not be limited to, the following:

(1) the proximity of the unit to a security station or to security staff;

(2) whether the unit will comply with the requirements of subdivisions (a), (b), (c), and (d) of this section;

9 NYCRR ' 7621.6

and

(3) the effect conversion will have on the facility's ability to provide programs and services.

(1) If the commission approves conversion of an individual occupancy housing unit to a double occupancy housing unit originally designated for individual occupancy, the department shall reformulate the affected facility's maximum facility capacity consistent with sections 7621.9 and 7621.10 of this Part.

Statutory authority: Correction Law, § 45(6)

HISTORY:

renumbered 7621.5 to be 7621.6 on 9/03/97; added 7621.6 on 9/03/97; redesignated 7621.6 to be 7621.6-a on 1/17/01; amended 7621.6-a on 1/17/01.

9 NYCRR § 7621.7 (2003)

§ 7621.7 Double occupancy housing units originally designated and constructed for double occupancy

<< A double occupancy housing unit originally designated and constructed for double occupancy is a housing unit with an individually controlled locking device secured from inmate access that was originally designated and constructed to accommodate two inmates. Each double occupancy housing unit originally designated and constructed for double occupancy shall provide a minimum of 50 square feet of floor space per inmate.

(b) Each double occupancy housing unit originally designated and constructed for double occupancy shall house no more than two inmates.

(c) Each double occupancy housing unit originally designated and constructed for double occupancy shall contain the following:

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

(d) Each inmate housed in a double occupancy housing unit originally designated and constructed for double occupancy shall have available one safe storage area.

(e) At least one functioning shower shall be available for each tier or section in which double occupancy housing units originally designated and constructed for double occupancy are located.

(f) Each inmate shall undergo a screening and risk assessment, including a review of medical records, prior to being assigned to a double occupancy housing unit originally designated and constructed for double occupancy. Only those inmates determined by the department to be suitable shall be assigned to double occupancy housing units originally designated and constructed for double occupancy. The department shall adopt written policies and procedures, which shall be filed with the commission, setting forth the standards for determining an inmate's suitability for assignment to a double occupancy housing unit originally designated and constructed for double occupancy. Such standards shall include, but not be limited to, the following factors:

- (1) the physical characteristics of the inmate;
- (2) the mental state of the inmate;
- (3) the health of the inmate;
- (4) the inmate's disciplinary and behavioral record; and
- (5) the inmate's criminal history and the nature of the offense(s) for which the inmate is currently incarcerated.

(g) An inmate designated as OMH level I shall not be assigned to a double occupancy housing unit originally designated and constructed for double occupancy.

(h) Only those inmates determined by the department to be compatible shall be housed together in a double occupancy housing unit originally designated and constructed for double occupancy. The department shall adopt written policies and procedures, which shall be filed with the commission, setting forth standards for selecting which inmates of those determined to be suitable are to be housed together in a double occupancy housing unit originally designated and constructed for double occupancy. Such standards shall include, but not be limited to, the following factors:

- (1) the ethnic and religious backgrounds of the inmates;

- (2) the physical capabilities of the inmates;
- (3) whether the inmates smoke; and
- (4) known enemies of record.

Statutory authority: Correction Law, § 45(6)

HISTORY:
<ed 7621.7 on 1/17/01.

TITLE 7. DEPARTMENT OF CORRECTIONAL SERVICES

CHAPTER X. FACILITY ADMINISTRATION

PART 1701. DOUBLE-CELL HOUSING IN EXISTING CORRECTIONAL FACILITIES

7 NYCRR § 1701.1 (2003)

@ 1701.1 Purpose

<<provide protocols for the management of double-cell housing constructed before 1996 in existing maximum and medium security facilities where approval has been granted by the State Commission of Correction (SCOC).

Statutory authority: Correction Law, § 112

HISTORY:

Added 1701.1 on 9/03/97.

7 NYCRR § 1701.2 (2003)

@ 1701.2 Definitions

<<used in this Part, double-cell housing shall mean a maximum or medium security cell (i.e., an individual self-contained space with a controlled locking device secured from inmate access) originally designated to accommodate a single inmate that has been equipped to accommodate two inmates and has been inspected and approved by the SCOC for conversion to double-cell use.

Statutory authority: Correction Law, § 112

HISTORY:

Added 1701.2 on 9/03/97.

7 NYCRR § 1701.3 (2003)

@ 1701.3 Cell Selection

<< The commissioner or deputy commissioner for correctional facilities shall establish the specific number of proposed double-cells within a correctional facility.

(b) The Superintendent shall designate specific cells within the facility for proposed conversion to double-cell housing. Such cells should be distributed as evenly as possible between cell tiers in general population and located as close to an officer's station as feasible. Cells within designated special housing units may not be considered for double-cell housing without approval from the commissioner or deputy commissioner for correctional facilities.

(c) Upon approval by the commissioner or deputy commissioner for correctional facilities, the facility double-cell housing plan shall be submitted for authorization to the SCOC in accordance with Part 7621 of this Title.

Statutory authority: Correction Law, § 112

HISTORY:

Added 1701.3 on 9/03/97.

7 NYCRR § 1701.4 (2003)

1701.4 Double-cell housing equipment

<< Inmates assigned to double-cell housing shall be afforded all rights and privileges specified in Part 1704 of this Title, except that the equipment provided in a double-cell shall be in accordance with this section.

(b) Each double-cell shall contain:

(1) Lighting equal to at least 20 foot candles at desk level and in the personal grooming area (each cell will be equipped with one permanent light fixture and, if electrical capacity permits, one clip-on light for the bottom bunk bed);

(2) One sink;

(3) One toilet;

(4) One bed, mattress and pillow for each inmate;

(5) One locker for each inmate;

(6) One audio signal "splitter" for those cells equipped with a functioning audio outlet; and

(7) One bar of antibacterial soap for each inmate, in addition to personal hygiene items and flatwork normally provided.

(c) In double-cells less than eighty (80) square feet:

(1) the cells shall also contain one electric fan (plastic casing and blades), electrical capacity permitting; and

(2) inmates shall be permitted to place a privacy curtain, approved by the deputy superintendent of security, between the toilet and bed while the toilet is in use. The curtain shall not obstruct the view of either inmate from the front of the cell.

Statutory authority: Correction Law, § 112

Added 1701.4 on 9/03/97; amended 1701.4(a) on 9/05/01.

7 NYCRR § 1701.5 (2003)

§ 1701.5 Selection of Inmates for Double-cell housing

<< Responsibility. The deputy superintendent of security shall be responsible for the selection of inmates for double-cell housing. The deputy superintendent of security or designee shall conduct a risk assessment using the eligibility, suitability and compatibility criteria set forth in subdivisions (b), (c) and (d) of this section.

(b) Eligible Population. In determining which inmates shall be considered for assignment to double-cell housing, the facility shall first consider those inmates newly transferred into the facility; provided, however:

(1) an inmate temporarily moved to attend an outside court, a death bed/funeral visit or to receive outside medical/psychiatric treatment may not be assigned to double-cell housing upon return to the facility, unless the inmate was assigned to double-cell housing prior to such move; or

(2) a general population inmate transferred for non-disciplinary reasons may not be assigned to double-cell housing in general confinement at the receiving facility, if the inmate meets all of the following criteria:

(i) the inmate has been with the department for at least two years following initial reception/classification and transfer to a permanent facility;

(ii) the inmate has had no Tier II or III disciplinary determinations of guilt within the last two years;

(iii) the inmate has not volunteered for double-cell housing (a transfer sought by an inmate may be conditioned upon the inmate volunteering to be housed in a double-cell at the receiving facility); and

(iv) the inmate is not being transferred to Woodbourne Correctional Facility.

(c) Assessment of Suitability.

(1) Information Assessment. When determining an inmate's suitability for a double-cell assignment, the deputy superintendent of security or designee shall review the information contained in the inmate population

management system and other records as deemed appropriate to determine if factors exist that would preclude such assignment.

(2) Physical status.

(i) Size. Any inmate over 6'5" or currently weighing over 299 pounds shall be precluded from a double-cell assignment.

(ii) Age. Except for volunteers, any inmate 70 years of age or over shall be precluded from a double-cell assignment.

(iii) Health. Any inmate with a communicable disease or physical disability who facility medical staff conclude should not be housed in a double-cell, based on screening, see paragraph (6) of this subdivision, shall be precluded from a double-cell assignment (e.g., confinement to a wheelchair or receiving "directly observed therapy" for treatment of Tuberculosis - so long as the inmate is on active treatment).

(3) Mental Status.

(i) Level 1. Any inmate currently classified as Level 1 by OMH staff shall be precluded from a double-cell assignment;

(ii) Levels 2 and 3. If an inmate is classified as Level 2 or 3 by Office of Mental Health ("OMH") staff, the inmate's record must be closely scrutinized prior to assignment to a double-cell. Factors that may preclude such an assignment would be:

(a) Extremely poor disciplinary adjustment;

(b) Input from OMH staff specifically recommending a single-cell assignment; or

(c) Any other documented behavior that, when coupled with such OMH designation, would lead the deputy superintendent of security or designee to determine that the inmate would not be an appropriate doublecelling candidate.

(4) History and Behavior. The following inmates shall not be approved for double-cell housing, except in accordance with paragraph (5) of this subdivision:

(i) Victim prone. Inmates currently in "voluntary protective custody" or "involuntary protective custody" status in accordance with Part 330 of this Title. In addition, any inmate with a pattern of being victimized by other inmates resulting in serious physical injury or sexual abuse;

(ii) Assaultive inmates. Inmates with a pattern of predatory assaults on other inmates by the use of contraband weapons or where the assaults resulted in serious physical injury to the victims;

(iii) Criminal histories of extreme violence. Inmates whose criminal histories involve a pattern of acts of violence resulting in serious physical injury to victims, or inmates whose crime(s) of commitment involve acts of violence resulting in serious physical injuries to multiple victims or intentional and depraved infliction of extreme physical pain resulting in serious physical injury to any one victim; or

(iv) Homosexual behavior. Inmates found guilty at facility disciplinary hearings of engaging in homosexual acts while incarcerated.

Note: Notwithstanding the provisions of subparagraphs (i) and (iv) of this paragraph, inmates in the special protective custody unit at Oneida Correctional Facility may be housed together so long as it is determined that the inmates do not pose a threat to each other.

(5) Since the assessment of an inmate's ineligibility for double-celling is based upon a history of demonstrated behavior in paragraph (4) of this subdivision and it is possible for the inmate to positively change such behavior, the deputy superintendent of security may exercise a limited amount of flexibility when determining double-cell assignments. For this reason, an "override factor" has been included in the screening process and may be utilized when more recent history and behavior by the inmate show a positive adjustment factor mitigating in favor of doublecell housing despite earlier events. Whenever the override factor is utilized, the deputy superintendent of security must provide the specific reason on the Double-Cell Information Sheet (see section 1701.9 of this Part.

(6) Medical screening.

(i) Medical records screening. The deputy superintendent of security or designee shall provide a list of inmates under consideration for double-cell housing to the facility health services director or designee. The facility health staff shall conduct a medical records review prior to possible double-cell assignment and advise the deputy superintendent of security or designee of the existence of a medical condition that would preclude double-cell housing, require placement in a bottom bunk bed or require an inmate to be housed in a cell with a nonsmoker.

(ii) Physical assessment. Either prior to or within forty-eight (48) hours after an inmate's placement in a

7 NYCRR § 1701.5

double-cell, a physical assessment will be conducted. If facility health staff determine that a change in the inmate's current housing is required, that information shall be conveyed to the deputy superintendent of security or designee and the appropriate change in housing shall be made.

(iii) The Form used. The facility health staff shall utilize the Screening and Physical Assessment for Placement in a Double-Cell form (see section 1701.9 of this Part) when both conducting the medical records screening review and physical assessment.

(d) Assessment of Compatibility. After an inmate's record has been appropriately screened and the deputy superintendent of security or designee has determined that the inmate is a suitable candidate, an assessment of compatibility with the other inmate assigned to the cell shall be made. The following criteria shall be used in making this determination:

(1) Volunteers. Whether two inmates have requested to be housed together.

(2) Ethnic or religious background. The facility should attempt to take into account the ethnic and religious background of both candidates for the same double-cell. It is not necessary, however, that they share the same ethnic or religious background.

(3) Language. The ability of inmates to communicate with each other.

(4) Size or other physical characteristics. The physical capabilities and needs of inmates (e.g., two inmates both requiring a bottom bunk should not be housed in the same cell).

(5) Age. The respective ages of the inmates.

(6) Criminal history/length of sentence. Years to earliest release and nature of crimes.

(7) Program/Job assignment. The inmates' program or job assignments (certain program and job assignments require inmates to house on the same location).

(8) Family relationship. Familial relationship between inmates (e.g., siblings or cousins).

(9) Known enemies. Inmates who are known enemies of record or who the department has otherwise determined should be kept apart.

(e) Double-Cell Information Sheet. The list of factors governing both suitability and compatibility is not exhaustive. Other factors may also be considered. The Double-Cell Information Sheet (see section 1701.9 of this Part) has been developed to properly record each step in the screening/risk assessment process. Each applicable section must be completed by the deputy superintendent of security or designee. "Health Service Review Results" and "Mental Health Status" sections may be completed based on verbal or written input from the appropriate areas. A copy of the completed form should be forwarded to the inmate records coordinator and the movement and control officer for each inmate approved for double-celling.

(f) Notwithstanding any other provision of this section, no inmate has a right to be housed in a double-cell or to be housed in a double-cell with a particular inmate. An inmate's request to be housed in a doublecell or to be housed in a double-cell with a particular inmate can be denied by the deputy superintendent for security or designee in the exercise of his or her sound discretion.

Statutory authority: Correction Law, § 112

Added 1701.5 on 9/03/97; repealed 1701.5(d)(10) on 9/05/01; added 1701.5(f) on 7/24/02.

7 NYCRR § 1701.6 (2003)

@ 1701.6 Personal property

<< Inmates will be responsible for proper storage of property and the neat and orderly appearance of their individual cell space.

(b) Double-cell property limit. Personal property possessed by each inmate in a double-cell shall be limited to the amount of property that will fit in three standard draft bags (including legal material). Personal property shall be stored in the individual locker. Any property beyond what can be stored in the individual locker may be stored in two draft bags provided by the department for storage of property. The floor space under the bottom bunk bed may be used by both inmates for storage of property. Of the total available space under the bottom bed, the half closest to the cell door will be utilized by the inmate assigned to the bottom bunk. The remaining space may be utilized by the inmate assigned to the top bunk.

7 NYCRR ' 1701.5

(c) Secure area storage. In addition to the property inmates may store in a double-cell, each inmate may elect to store up to two standard draft bags of personal property in a secure area designated by the Superintendent for the duration of his/her double-cell assignment. Form #2064 will be utilized to inventory all stored property. Upon written request, the inmate will be given access to such stored property once every 30 days to withdraw or store items.

(d) Inmate personal property beyond the amount permitted in the cell and the two bags held in storage, will be disposed of pursuant to the department's established procedure regarding the disposal of surplus or disallowed property.

Statutory authority: Correction Law, § 112

HISTORY:

Added 1701.6 on 9/03/97.

7 NYCRR § 1701.7 (2003)

@ 1701.7<ovement of Inmates after selection for double-cell housing

<< No inmate may refuse placement in double-cell housing.

(b) The movement of inmates out of double-cell housing shall be the responsibility of the deputy superintendent of security.

(c) The movement of an inmate out of double-cell housing shall be based upon the length of time in double-cell housing, the needs of the facility, and the inmate's medical needs, program and work assignments.

(d) No inmate shall be confined in a double-cell for a period of more than sixty (60) days unless such inmate volunteers to remain in the double-cell for a longer period of time. At the expiration of the 60 days, if an inmate does not volunteer to remain in a double-cell, the inmate shall be moved to a single-cell or multiple occupancy housing at either his current facility or a new facility.

(e) Inmates in double-cell housing will be specifically assigned to either the upper or lower bunk and may not change such assignment without the approval of the deputy superintendent of security or designee. If the lower bunk was assigned for medical reasons, the DSS or designee shall consult with medical staff before any change.

Statutory authority: Correction Law, § 112

HISTORY:

Added 1701.7 on 9/03/97.

NEW YORK CODES, RULES AND REGULATIONS

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH JULY 18, 2003 ***

TITLE 7. DEPARTMENT OF CORRECTIONAL SERVICES

CHAPTER V. PROCEDURES FOR IMPLEMENTING STANDARDS OF INMATE BEHAVIOR AND FOR GRANTING GOOD BEHAVIOR TIME ALLOWANCES

SUBCHAPTER A. PROCEDURES FOR IMPLEMENTING STANDARDS OF INMATE BEHAVIOR

PART 253. DISCIPLINARY HEARING

7 NYCRR § 253.7 (2003)

@ 253.7 Dispositions and mandatory surcharge

<< Dispositions. (1) Upon affirming a charge, the hearing officer may impose one or more of the following penalties:

- (i) counsel and/or reprimand;
- (ii) loss of one or more specified privileges for a period of up to 30 days. Correspondence privileges may not be withheld; however, visiting privileges may be withheld with a particular person where the inmate has been involved in improper conduct in connection with visitation with such person. Visiting-related sanctions shall be imposed only in accordance with the provisions of the penalty chart contained in section 200.5(f) of this Title;
- (iii) confinement to a cell or room continuously or to a special housing unit under keeplock admission or on certain days during certain hours for a period of up to 30 days (See Chapter VI, Part 301, section 301.6);
- (iv) restitution for loss or intentional damage to property up to \$ 100; or
- (v) the imposition of one work task per day other than a regular work assignment for a maximum of seven days, excluding Sundays and public holidays, to be performed on the inmate's housing unit or other designated area. Inmates given such disposition who are participating in a regular work assignment shall not be required to work more than 8 hours per day. The eight-hour limitation excludes such non-work assignments as educational or vocational school programming.

(2) Any penalty imposed pursuant to this section shall run consecutively to any other like penalty previously imposed unless the hearing officer advised the inmate that the penalty shall run concurrently.

(3) Whenever a confinement penalty is being served and a more restrictive confinement penalty is imposed as a result of another hearing, the more restrictive penalty shall begin to be served immediately, and any time owed on the less restrictive penalty shall be served after completion of the more restrictive penalty period.

(4) The disciplinary hearing officer may suspend imposition of any penalty for a period of up to 90 days. Any such suspended penalty may be imposed by a subsequent disciplinary hearing or superintendent's hearing officer upon substantiating a charge of misbehavior in a subsequent hearing within a specific period.

(5) As soon as possible, but not later than 24 hours after the conclusion of the hearing, the inmate shall be given a written statement of the disposition of the hearing. This statement shall set forth the evidence relied upon by the hearing officer in reaching his decision and also set forth the reasons for any penalties imposed.

(b) Mandatory disciplinary surcharge. Upon the conclusion of a disciplinary hearing wherein the inmate admits the charges, or where the hearing officer affirms one or more charges, a mandatory disciplinary surcharge in the amount of \$ 5.00 shall be assessed automatically against the inmate.

Statutory authority: Correction Law, § § 70, 112, 138 and 146

HISTORY:

Repealed and added 253.7 on 6/10/92; amended 253.7 (a)(3)c1 par on 12/15/93; amended 253.7 (a)(1)(ii) on

10/19/94; amended 253.7 (a)(1)(v) on 12/21/94; amended 253.7 (a), (3) on 12/28/94; amended 253.7 (a) (2) on 3/01/95.

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TITLE 7. DEPARTMENT OF CORRECTIONAL SERVICES

CHAPTER VI. SPECIAL HOUSING UNITS

SUBCHAPTER D. PROCEDURES FOR GRANTING MERIT TIME

PART 301. SPECIAL HOUSING UNIT ADMISSIONS

7 NYCRR § 301.6 (2003)

§ 301.6 Keyplock admission

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

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

or

- (3) awaiting transfer to another facility.

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

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

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

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

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

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

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

Statutory authority: Correction Law, § § 112, 138

Repealed and added 301.6 on 10/12/88; amended 301.6 on 4/18/90; repealed and added 301.6(a) on 10/20/99; added 301.6(b) on 11/08/00; amended 301.6(g) on 7/28/99; repealed 301.6(h) on 7/28/99; relettered 301.6(b)-(g) to be (c)-(h) on 11/08/00; amended 301.6(c) on 9/18/02; amended 301.6(d) on 9/18/02; amended 301.6(e) on 9/18/02; amended 301.6(g) on 9/18/02; amended 301.6(h) on 9/18/02.

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TITLE 7. DEPARTMENT OF CORRECTIONAL SERVICES

CHAPTER VI. SPECIAL HOUSING UNITS

SUBCHAPTER D. PROCEDURES FOR GRANTING MERIT TIME

PART 304. SERVICES

7 NYCRR § 304.4 (2003)

@ 304.4<dical services

<< A qualified medical practitioner (physician, physician's assistant, registered nurse) will be required to examine each inmate upon admission to an SHU in accord with section 302.1(b) of this Title.

(b) A qualified medical practitioner (as listed above) is required to visit the SHU once in every 24-hour period to examine into the state of health of the inmates confined in such unit.

(c) Sick call will be conducted daily.

(1) The officer in charge will prepare a list of all inmates who request to see a medical practitioner.

(2) Any inmate who requests to see a medical practitioner will be permitted an opportunity to do so in accord with all good security precautions.

(3) The medical encounter will be recorded in each inmate's medical file and in the appropriate SHU file.

(d) If an inmate has a medical complaint, requests health services other than at sick call, or a medical emergency occurs, the facility health services unit will be contacted immediately. The response/action taken by health services staff shall be logged.

(e) A qualified medical practitioner must examine the state of health of an inmate within 24 hours of the commencement of any diet restriction, and daily thereafter during the period of the diet restriction.

(f) To the extent consistent with the safety and good order of the facility, staff shall respect an inmate's right to privacy during medical encounters and the confidential nature of communications between inmates and health care providers.

Statutory authority: Correction Law, § § 112, 138

HISTORY:

Repealed and added 304.4 on 10/12/88; amended 304.4(c)(3) on 7/28/99; added 304.4(f) on 7/28/99.