



STATE OF NEW YORK • EXECUTIVE DEPARTMENT  
**STATE COMMISSION OF CORRECTION**  
Alfred E. Smith State Office Building  
80 S. Swan Street, 12th Floor  
Albany, New York 12210  
(518) 485-2346  
FAX (518) 485-2467

CHAIRMAN  
Thomas A. Beilein

COMMISSIONER  
Phyllis Harrison-Ross, M.D.

**MEMORANDUM**

**TO:** COMMISSION MEMBERS  
**FROM:** Michael Donegan, Counsel *Michael Donegan*  
**RE:** AGENDA FOR COMMISSION MEETING  
**DATE:** May 21, 2013 at 11:00AM

**I. MINUTES**

**SCOC**

April 16, 2013  
May 9, 2013

**CPCRC**

May 9, 2013

**MRB**

Administrative Closures

Meeting of the Correction Medical Review Board  
May 9, 2013

**II. VARIANCES**

**A. Erie County Sheriff's Office**

(New Variance)  
(Section 7040.3 Facility Population Limitation)

**B. Herkimer County Jail**

06-V-05  
(Section 7028 Exercise)

**C. Orleans County Jail**

98-V-19  
(Section 7040.3 Facility Population Limitation)

**D. Oswego County Jail**  
96-V-24  
(Section 7040.3 Facility Population Limitation)

**E. Oswego County Jail**  
01-V-14  
(Section 7040.3 Facility Population Limitation)

**F. Putnam County Jail**  
08-V-08  
(Section 7040.3 Facility Population Limitation)

**G. Putnam County Jail**  
03-V-01  
(Section 7040.3 Facility Population Limitation)

**H. Saratoga County Sheriff's Office**  
08-V-05  
(Section 7040.3 Facility Population Limitation)

III. **MFC**

**I. Washington County Jail**

IV. **CONSTRUCTION**

**J. Monroe County Jail**  
Renovations

**K. Montgomery County Jail**  
Dorm Conversion Renovation

V. **REGULATORY REFORM**

**L. Notice of Adoption**  
Amendment of Sections 7031.4 of Title 9 NYCRR

**M. Notice of Adoption**  
Amendment of Sections 7022.5 (c), 7200(a), 7200.3 of Title 9 NYCRR  
Amendment of Sections 7200.6(b), 7202.4(a), 7202.6 of Title 9 NYCRR  
Amendment of Section 7202.11(a) of Title 9 NYCRR

**N. Notice of Adoption**  
Amendment of Sections 7013.8, 7064.8, 7300.2, of Title 9 NYCRR  
Amendment of Sections 7300.4, 7414.6, 7600.1 of Title 9 NYCRR  
Amendment of Sections 7601.1 and 7651.3 of Title 9 NYCRR



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MINUTES

LOCATION:

STATE COMMISSION OF CORRECTION

Alfred E. Smith State Office Building  
80 So. Swan Street, 12<sup>th</sup> Floor  
Albany, New York 12210-8001

DATE OF MEETING: April 16, 2013

Chairman Beilein called the meeting to order at 11:45am.

**PRESENT:**

- Thomas A. Beilein, Chairman
- Phyllis Harrison-Ross M.D., Commissioner
- James Lawrence, Deputy of Operations
- Michael Donegan, Counsel
- Brian Callahan, Staff Counsel
- Tricia Amati, Assistant to Chairman/Commissioner
- Peggy Loffredo, Forensic Unit, Supervisor
- Terry Moran, Capital West, Supervisor
- Bill Benjamin, Hudson Lakes, Supervisor
- Walter McClure, Deputy Director of Public Information
- New York State Division of Criminal Justice Services

**I. MINUTES**

- |   |  |                         |
|---|--|-------------------------|
| <p><b>SCOC</b><br/>March 19, 2013</p>         | <p><b>Approved</b><br/><b>Ross/Beilein</b></p> | <p><b>Unanimous</b></p> |
| <p><b>CPCRC</b><br/>April 11, 2013</p>        | <p><b>Approved</b><br/><b>Ross/Beilein</b></p> | <p><b>Unanimous</b></p> |
| <p><b>MRB</b><br/>Administrative Closures</p> | <p><b>Approved</b><br/><b>Ross/Beilein</b></p> | <p><b>Unanimous</b></p> |

**II. VARIANCES**

- |  |  |                         |
|--|--|-------------------------|
| <p><b>A. Monroe County Correctional Facility</b><br/>07-V-01<br/>(Section 7040.3 Facility Population Limitation)</p> | <p><b>Approved</b><br/><b>Ninety (90) Days</b><br/><b>Ross/Beilein</b></p> | <p><b>Unanimous</b></p> |
|--|--|-------------------------|

- |   |   |                  |
|---|---|------------------|
| <b>B. Monroe County Correctional Facility</b><br>98-V-20<br>(Section 7040.3 Facility Population Limitation) | <b>Approved</b><br><b>Ninety (90) Days</b><br><b>Ross/Beilein</b> | <b>Unanimous</b> |
| <b>C. Onondaga County Penitentiary</b><br>02-V-10<br>(Section 7040.3 Facility Population Limitation)        | <b>Approved</b><br><b>One (1) Year</b><br><b>Ross/Beilein</b>     | <b>Unanimous</b> |
| <b>D. Onondaga County Penitentiary</b><br>98-V-16<br>(Section 7040.3 Facility Population Limitation)        | <b>Approved</b><br><b>One (1) Year</b><br><b>Ross/Beilein</b>     | <b>Unanimous</b> |

**III. CONSTRUCTION**

- |   |  |                  |
|---|--|------------------|
| <b>E. Anna M. Kross Center</b><br>Law Library Modification  | <b>Approved</b><br><b>Ross/Beilein</b> | <b>Unanimous</b> |
| <b>F. Manhattan Detention Center</b><br>Manhattan Criminal Court Centcell Project   | <b>Approved</b><br><b>Ross/Beilein</b> | <b>Unanimous</b> |
| <b>G. New York City Department of Correction</b><br>Renovation and Reconstruction of the<br>Donald Cranston Judicial Center (DCJC)<br>on Riker's Island | <b>Approved</b><br><b>Ross/Beilein</b> | <b>Unanimous</b> |
| <b>H. Ocean Beach Police Department</b><br>Temporary Holding Facility-Trailer   | <b>Approved</b><br><b>Ross/Beilein</b> | <b>Unanimous</b> |
| <b>I. Scotia Police Department</b><br>Removal of Cell   | <b>Approved</b><br><b>Ross/Beilein</b> | <b>Unanimous</b> |

**IV. REGULATORY AGENDA**

- |                            |  |                  |
|----------------------------|--|------------------|
| <b>J. Five Year Review</b> | <b>Approved</b><br><b>Ross/Beilein</b> | <b>Unanimous</b> |
|----------------------------|--|------------------|

Commissioner Ross made a motion to go into executive session at 12:00pm to discuss Construction and MRB items, which was seconded by Chairman Beilein.

Commissioner Ross made a motion to exit Executive Session and return to general session at 12:15pm, which was seconded by Chairman Beilein.

The meeting resumed at 12:16pm. Motion was made by Commissioner Ross to ratify actions taken in Executive Session regarding MRB and Construction items, seconded by Chairman Beilein and approved.

Commissioner Ross made a motion to adjourn at 12:16pm, which was seconded by Chairman Beilein.

Respectfully submitted,

Tricia Amati  
Assistant to Chairman/Commissioner





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CHAIRMAN  
Thomas A. Beilein

COMMISSIONER  
Phyllis Harrison-Ross, M.D.

## **EXECUTIVE SESSION**

### **LOCATION:**

**STATE COMMISSION OF CORRECTION**  
**Alfred E. Smith State Office Building**  
**80 So. Swan Street, 12<sup>th</sup> Floor**  
**Albany, New York 12210-8001**

**DATE OF MEETING: April 16, 2013**

### **PRESENT:**

Thomas A. Beilein, Chairman  
Phyllis Harrison-Ross M.D., Commissioner  
James Lawrence, Deputy of Operations  
Michael Donegan, Counsel  
Brian Callahan, Staff Counsel  
Tricia Amati, Assistant to Chairman/Commissioner  
Peggy Loffredo, Forensic Unit, Supervisor  
Terry Moran, Capital West, Supervisor  
Bill Benjamin, Hudson Lakes, Supervisor  
Walter McClure, Deputy Director of Public Information  
New York State Division of Criminal Justice Services

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Respectfully submitted,

Tricia Amati  
Assistant to Chairman/Commissioner



CITIZENS' POLICY AND COMPLAINT REVIEW COUNCIL

May 9, 2013

NYS Commission of Correction  
at  
Alfred E. Smith Office Building  
80 South Swan Street, 12<sup>th</sup> Floor  
Albany, NY

And  
The Division of Criminal Justice Services  
at  
65 Court Street  
Buffalo, NY  
And  
633 Third Ave, 33<sup>rd</sup> Floor  
New York, NY

**PRESENT:**

Chairman Thomas A. Beilein

**Council Members:**

Albany:

Tom Cross  
Douglas Landon

Buffalo:

Jimmie Seright  
Julie Scalione

NYC:

Burt Schoenbach

Also Present:

Brian Callahan  
Rich Kinney  
Janet Judge  
Marlene Johnston

Chairman Beilein opened the meeting at 11:10 a.m.

Chairman Beilein asked for a motion to approve the minutes of the April 11, 2013 meeting. Tom Cross made a motion to approve the minutes and Doug Landon seconded.

Carried. Chairman Beilein asked for a motion to ratify all action taken at the April 11, 2013 meeting. Doug Landon made a motion and Tom Cross seconded. Carried.

Jimmie Seright and Doug Landon, as the grievance sub-committee, reviewed the expedited grievances for the month of May 2013. Motions were made respectively to deny all of the expedited grievances. The motions were seconded by Doug Landon and Tom Cross, respectively, and unanimously passed.

Tom Cross reviewed the Expedited With Comment grievances for the month of May 2013 and made a motion to deny all of the grievances. The motion was seconded by Doug Landon and unanimously passed.

The Council reviewed the remaining grievances.

**TABLED**

13-LG-33915 St. Lawrence	Unanimous
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**ACCEPT WITH MODIFICATION**

13-LG-34467 Cayuga CJ	Unanimous
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13-LG-35326 Niagara CJ	Unanimous
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13-LG-33529 Oswego CJ	Unanimous
--------------------------	-----------

13-LG-34804 Washington CJ	Unanimous
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**ACCEPT**

12-LG-31294 Clinton CJ	Unanimous
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13-LG-33530 Onondaga JC	Unanimous
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13-LG-32124 Oswego CJ	Vote: 4 accept, 1 no
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**DENY WITH COMMENT**

13-LG-34947  
Chautauqua CJ Unanimous

12-LG-30972  
12-LG-30994  
12-LG-30995  
12-LG-30973  
12-LG-30996  
Clinton CJ Unanimous

**DENY**

12-LG-31208  
Chautauqua CJ Unanimous

13-LG-34384  
Erie County HC Unanimous

**ADMINISTRATIVE CLOSURES**

**DENY**

13-LG-34784  
Albany CJ Unanimous

13-LG-34786  
Broome CJ Unanimous

13-LG-34574  
13-LG-34575  
13-LG-34709  
Cattaraugus CJ Unanimous

13-LG-34259  
Cayuga CJ Unanimous

13-LG-33561  
13-LG-33725  
13-LG-33726  
13-LG-33727  
13-LG-33918  
13-LG-34752  
13-LG-34928

13-LG-35009 13-LG-35226 Chemung CJ	Unanimous
13-LG-34006 Chenango CJ	Unanimous
13-LG-34688 Columbia CJ	Unanimous
13-LG-32814 13-LG-34445 Cortland CJ	Unanimous
13-LG-34751 Delaware CJ	Unanimous
13-LG-34867 Dutchess CJ	Unanimous
13-LG-34386 Erie County HC	Unanimous
13-LG-34456 Erie County CF	Unanimous
13-LG-34403 Franklin CJ	Unanimous
13-LG-33471 Fulton CJ	Unanimous
13-LG-34589 Madison CJ	Unanimous
13-LG-34387 Monroe CJ	Unanimous
13-LG-35116 Montgomery CJ	Unanimous
13-LG-34597 13-LG-34708 13-LG-34966 13-LG-35435	

Nassau CJ Unanimous

13-LG-34164

13-LG-35129

13-LG-35351

Niagara CJ Unanimous

13-LG-34248

13-LG-34288

13-LG-34593

Onondaga DOC Unanimous

13-LG-34472

13-LG-34532

13-LG-34533

13-LG-34864

13-LG-35031

13-LG-35225

Ontario CJ Unanimous

13-LG-33743

13-LG-34787

13-LG-35224

Oswego CJ Unanimous

13-LG-34588

13-LG-34857

Otsego CJ Unanimous

13-LG-34032

Putnam CJ Unanimous

13-LG-34525

13-LG-34885

13-LG-35034

13-LG-35047

13-LG-35286

Rockland CJ Unanimous

13-LG-34163

13-LG-34168

13-LG-34276

13-LG-34724

St. Lawrence CJ Unanimous

13-LG-34027  
Schenectady CJ

Unanimous

13-LG-33490  
13-LG-34594  
13-LG-34870  
Seneca CJ

Unanimous

13-LG-34551  
13-LG-35252  
Steuben CJ

Unanimous

13-LG-34454  
13-LG-34455  
13-LG-35065  
13-LG-35083  
Tompkins CJ

Unanimous

13-LG-34605  
13-LG-34606  
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13-LG-34609  
13-LG-34625  
13-LG-34626  
13-LG-34627  
13-LG-34785  
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13-LG-35457  
13-LG-35464  
13-LG-35465  
13-LG-35468  
13-LG-35483  
Warren CJ

Unanimous

13-LG-34803  
Washington CJ

Unanimous

13-LG-35175  
Wayne CJ

Unanimous

13-LG-32764  
13-LG-32671  
13-LG-32672  
13-LG-33468  
13-LG-33484  
13-LG-33913  
13-LG-33924  
13-LG-34165  
13-LG-34167  
13-LG-34246  
13-LG-34265  
13-LG-34529  
13-LG-34546  
13-LG-34576  
13-LG-34577  
13-LG-34608  
13-LG-34907  
13-LG-34910  
13-LG-34927  
13-LG-35008  
13-LG-35450  
Westchester CJ

Unanimous

13-LG-32387  
Yates CJ

Unanimous

DENY WITH COMMENT ADMINISTRATIVE CLOSURES

13-LG-34599 13-LG-34689 Cattaraugus CJ	Unanimous
13-LG-34748 13-LG-35032 Cayuga CJ	Unanimous
13-LG-34025 13-LG-34914 Chemung CJ	Unanimous
13-LG-34573 Monroe CJ	Unanimous
13-LG-34404 13-LG-35503 Steuben CJ	Unanimous
13-LG-34912 Westchester CJ	Unanimous

Doug Landon and Ted Hilscher will form the sub-committee for the next CPCRC meeting. Julie Scalione will review the Expedited with Comment grievances for the next CPCRC meeting.

The next CPCRC meeting will be held on Thursday, June 13, 2013 at 11:00 a.m. at SCOC, AESOB 80 S. Swan Street, Albany, New York at the NYS Division of Criminal Justice Services, 65 Court Street, Buffalo, New York and at the NYS Division of Criminal Justice Services, 633 Third Avenue, New York, NY.

Chairman Beilein requested a motion to adjourn the meeting which was made by Doug Landon, seconded by Tom Cross and carried. The meeting adjourned at 12:10 P.m.

Respectfully submitted,

Marlene Johnston  
Secretary 2



**VARIANCE HISTORY**

**CONSTRUCTION/RENOVATION PLANS**

Not Applicable.

**OTHER VARIANCES IN EFFECT**

Not Applicable

**STAFF INFORMATION AFTER SITE VISIT (DATE OF LAST VISIT TO FACILITY):**

**DATE OF LAST CYCLE VISIT THAT STANDARD VIOLATIONS WERE IDENTIFIED:**

January 2013

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

7003 – Firearms inspection frequency and documentation  
7015 – Facility needs repainting and air vents need cleaning

**ANY VIOLATIONS WHICH PERTAIN TO THE VARIANCE'S CONDITIONS:**

None

**JUSTIFICATION FOR WHY VARIANCE SHOULD OR SHOULD NOT BE EXTENDED:**

1. For several years, the Erie County Sheriff's Office (ECSO) agreed to hold Buffalo Police Department arrestees at the Holding Center. With the opening of the new City of Buffalo Police Department lockup (for males) in 2011, the ECSO ceased holding City of Buffalo Police Department male arrestees. The ECSO continues to hold Buffalo Police Department female arrestees.
2. In early 2013, Erie County notified the City of Buffalo that effective June 1, 2013, the ECSO would not longer house Buffalo Police Department female arrestees. Subsequently, Buffalo Police Department requested the assistance of SCOC staff in discussing available options to house unarraigned females. SCOC staff met with Buffalo Police Department officials in March. One less-than-desirable option would have the Buffalo Police Department take over the Court detention cells on the 3<sup>rd</sup> floor of the City Court Building. This would result in the expulsion of the ECSO, which currently utilizes the cells for City Court appearances – this could jeopardize public safety. One long-term option would be the construction of a detention area for Buffalo Police Department females in the basement of the City Court Building, close to the current Buffalo Police Department lockup.
3. The variance should become null and void any time during the approval period Erie County discontinues housing Buffalo Police Department female arrestees.

REVIEWED BY REGIONAL SUPERVISOR:

TM

DATE:

5/6/13

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**OFFICIAL USE ONLY:**

NOTES OF MEETING: \_\_\_\_\_



New York State  
 Commission of Correction  
 80 Wolf Road  
 Albany, New York 12205  
 518-485-2465  
 518-485-2467 (Fax)

New	_____
Renewal	_____
Variance #	_____
(SCOC USE ONLY)	

**Thomas A. Beilein**  
**Chairman**

**Variance Application Form**

**INSTRUCTIONS TO SHERIFF OR CHIEF ADMINISTRATIVE OFFICER:**

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and mail or fax this form Attn: Chairman/Commissioner to the address or fax number listed above.

Facility: ERIE COUNTY CORRECTIONAL FACILITY

Person requesting: SUPERINTENDENT THOMAS J. RUINA

(Sheriff/Chief Administrative Officer)

- A. State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested: Example: 7040.3 states that, the total number of inmates confined within each correctional facility shall not exceed the maximum facility capacity of such facility. To request a variance to house additional inmates within the facility the citation should be listed as:

Ex. Part: 7040 Section: 3 Subdivision: n/a

Standard for which the variance is requested:

Part: 7040 Section: 5 Subdivision:

- B. In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. (Include or attach any relevant supporting documentation)

SEE ATTACHED SHEET.



G. Has this variance been previously approved?

Yes X If yes, include the variance number 97-V-25 No \_\_\_\_\_

TR J. J.

4/29/13

Signature (Sheriff) (Chief Administrative Officer)

Date

**Additional copies of this form can be obtained by contacting the Commission, or online at [www.scoc.state.ny.us](http://www.scoc.state.ny.us). Click on table of contents, Commission Forms, Request for a Variance (Formal application statement).**

**Erie County Sheriff's Office Variance Request: Section B**

Should this variance request be approved, the Erie County Sheriff's Office would add eight (8) beds to the Joliet Housing Unit at ECCF. This will provide us with enough capacity to continue to house Buffalo Police Department pre-arraigned female arrestees, until such time as BPD has the capacity to house them at their Buffalo City Court Lock-Up. Absent this variance, the ECSO will be in danger of violating the above referenced standard, as well as potentially violating Part 7013, Classification.

If approved, the added capacity in Joliet Unit will allow ECSO to house an additional eight (8) properly classified, arraigned female inmates at ECCF. This in turn will dramatically improve our ability to house the aforementioned BPD pre-arraigned female arrestees at ECHC pending their arraignment.

**Erie County Sheriff's Office Variance Request: Section C**

Due to the fact that the Buffalo Police Department Lock-Up does not have any facilities for housing pre-arraigned female detainees, the Erie County Sheriff's Office is continuing to house them. This was unanticipated, and will become an issue as we move into the summer and our average daily population increases. While not ideal, this is the only viable option for both the ECSO and BPD, as all other alternatives which have been discussed would compromise the safe and secure operation of ECSO's City Court Lock-Up, located on the third floor of Buffalo City Court.

**Erie County Sheriff's Office Variance Request: Section E**

While the ECSO has not been provided with an estimated time in which the Buffalo Police Department will begin housing pre-arraigned female arrestees, we have received notice that a project to add additional space for females at their Lock-Up has been initiated. During this time, the ECSO is committed to working collaboratively with BPD in maintaining the safe and secure of housing of BPD female arrestees, and we request the assistance of the NYSCOC in procuring safe and secure housing options.



Name of Facility: Herkimer County JailVariance # 06-V-05New:  Renewal: 

Relief from Standard: 7028.4

Application by: Sheriff Christopher Farber

Date Request Rec: 3-29-13

Last Approved: 2/19/13 Length of Approval: 90 Days Expiration: 6-1-13

Write-up Prepared by: Cynthia Diaz

Recommendation by Field Staff: Approve for 90 days

Recommendation at Briefing:

Final Recommendation:

**SUMMARY OF VARIANCE REQUEST**

The facility is requesting a continued extension of variance 06-V-05 which authorizes the county to use a temporary exercise yard for the purpose of providing prisoners outdoor exercise.

**RECOMMENDED CONDITIONS****VARIANCE HISTORY**

2013	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at Meeting 2/19/2013 90 Days
2012	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at Meeting 11/20/12 90 Days
2012	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at Meeting 8/14/12 90 Days
2012	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 05/15/12 Meeting 90 Days
2012	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 01/17/12 Meeting 120 Days
2011	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 10/18/11 Meeting 90 Days
2011	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 04/19/11 Meeting 90 Days
2011	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 2/15/11 Meeting 90 Days

2010	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 10/10 Meeting 30 Days
2010	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 7/10 Meeting 90 Days
2010	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 4/10 Meeting 60 Days
2010	Recommendation Action Taken Length of Variance Conditions, if changed Conditions, if changed	Approval Approved at 2/10 Meeting 90 Days

**CONSTRUCTION/RENOVATION PLANS**

**4/11/13:**

Cynthia Diaz completed an on-site assessment of facility compliance with the variance conditions set forth in 06-V-05. According to County Administrator James Wallace, the Village of Herkimer has perfected their appeal and Herkimer County is scheduled to be heard in September 2013. They would anticipate a decision in mid-November 2013.

**1/29/13:**

Terrence Moran and Cynthia Diaz met with Sheriff Farber and his executive team to discuss the status of the new jail project. It was reported that Herkimer County was victorious in their court case against the Village of Herkimer. The Village of Herkimer had until February 19, 2013 to file a 'notice of appeal'.

**08/03/12:**

Larry Roe met with Captain McGrail and Lieutenant Adams to discuss the status of the New Jail project and the Courts determination regarding the County's lawsuit against the Village of Herkimer. Captain McGrail and Lieutenant Adams had no new information to offer other than the County thought they would have received a decision from the judge by May or June of 2012. Captain McGrail and Lieutenant Adams also advised that they are unaware of when the judge will make a decision, and that they believe that the Judge was under no time restriction to render a determination. Captain McGrail and Lieutenant Adams further advised that the two issues (zoning change that would preclude Herkimer County from building a jail & the authorization for sewer connection) are still in the courts awaiting a decision from the judge. As for the construction project, the cell bids were received and extended due to no decision from the Judge regarding the aforementioned court matters.

**04/25/12:**

Terry Moran and Bill Benjamin met with Sheriff Farber and several Herkimer County Officials to discuss the status of the project. The following information was provided to Commission staff:

- To date, the Village of Herkimer has rejected several offers to settle the issues of sewer and water, as well as the recently enacted zoning law.
- The county awaits a decision concerning their lawsuit against the Village of Herkimer.

- Bids for the pre-cast cell construction have been returned. No action can be taken until the court decision is rendered.

**03/27/12:**

Sheriff Farber submitted to Chairman Beilein a letter of request to extend Variance 06-V-05 for 180 days and advised that the County continues to move forward with the construction of a new correctional facility. Sheriff Farber also submitted within the letter of request for the aforementioned variance extension, a copy of a letter that was written to him (Sheriff Farber) from Herkimer County Administrator James Wallace. Administrator Wallace's letter, dated March 27, 2012, advised that the County continues to move forward with the construction of a new Herkimer County Correctional Facility at the Route 28 site in Herkimer. It also advised that the County is currently in court with the Village of Herkimer over two issues; a zoning change that would prohibit Herkimer County from building a jail; and the authorization for a sewer connection that the County was denied by the Village of Herkimer. Administrator Wallace concluded by writing that the County has their Correctional Facility cell package out for bid.

**12/07/11:**

Sheriff Farber submitted to Chairman Beilein a letter of request to extend Variance 06-V-05 for 180 days and advised that the County continues to move forward with the construction of a new correctional facility. Sheriff Farber also submitted within the letter of request for the aforementioned variance extension, a copy of a letter that was written to him (Sheriff Farber) from Herkimer County Administrator James Wallace. Administrator Wallace's letter, dated December 7, 2011, advised that the County continues to move forward with the construction of a new Herkimer County Correctional Facility at the Route 28 site in Herkimer. It also advised that the County Legislature at its last meeting was given a presentation by Mark kakuvka of LaBella Associates which allowed the members and the residents to review the design of the facility and the schedule. It further advised that the County is in the design development phase and is continuing with their cell package.

**08/30/11:**

Sheriff Farber submitted to Chairman Beilein a letter of request to extend Variance 06-V-05 for 180 days. On September 28, 2011, Sheriff Farber and Captain McGrail meet with Chairman Beilein and SCOC supervisory staff to discuss the County's progress toward the construction of a new jail.

**05/25/11:**

Sheriff Farber submitted to Chairman Beilein a copy of a letter County Administrator James Wallace sent to him (Sheriff Farber). County Administrator Wallace informed Sheriff Farber that the county continues to move forward on the P&C site and that Labella's team was at the site on the date of the letter (May 25, 2011) finishing up the onsite work for the percolation test. County Administrator Wallace also advised Sheriff Farber in the aforementioned letter that at the last meeting of the County Legislature, the County hired an environmental attorney to assist with the site. Also, there has been recent correspondence between the Chairman of the Legislature and the Mayor of the Village of Herkimer regarding allowing the County to use their (Village's) sewer system; however, the County continues to move forward with Labella Associates on the P&C site.

**4/7/11:**

Commission staff members Terrence Moran and Larry Roe met with Sheriff Farber, County

Administrator James Wallace, and Public Safety Chair Leonard Hendrix. Commission staff were informed of the following concerning the jail project:

1. The county has not yet applied to the DEC for permits to construct a septic system on the jail site. Forty-seven (47) test pits will be dug in the coming weeks. The results will then be forwarded to the DEC.
2. The county will be meeting with LaBella Associates, the architectural/engineering firm hired by Herkimer County for this project.
3. The size of the facility will be 132 beds, with double celling capability to 154 beds.

**3/29/11:**

Sheriff Farber submitted to Chairman Beilein a copy of a letter County Administrator James Wallace to him (Farber). Wallace informed Farber that the county has approved resolutions on the hiring of LaBella Associates as their architect/engineer, and that there is movement on the purchasing of the proposed construction site property (P & C site).

**1/18/11:**

Sheriff Farber forwarded Chairman Beilein the results of the SEQRA tests, which indicated that the jail project would not have a significant environmental impact.

**12/14/10:**

In a letter to Chairman Beilein, Herkimer County Administrator James Wallace reported that percolation tests as part of an assessment of a septic system for the new facility have been completed and are awaiting the test results. Also, the county awaits a report from consultant Rod Miller concerning the recommended size of the new facility. Further, once the SEQRA process is completed, and a decision on facility size is made, he anticipates holding a vote for bonding on the new facility and continued movement towards purchasing the site property.

**10/28/10:** In a letter to Chairman Beilein, Herkimer County Legislative Chair Raymond Smith reported that the legislature recently approved a measure for percolation tests as part of an assessment of a septic system for the new facility.

**9/08/10:** Village of Herkimer's counter offer to the County includes:

- Requiring the county to pay for all costs incurred for hooking the correctional facility into the village's wastewater treatment plant, including permits, the necessary piping, road repairs, etc.;
- The county paying an annual \$58,000 host community benefit to the village for the life of the correctional facility, with an uncapped escalator clause tied to the village's tax rate; and
- The county contributing \$800,000 to the village's wastewater treatment plant upgrade project.

**8/4/10:** The Village of Herkimer Board voted 5-0 to reject the legislature's offer of a one-time \$400,000 payment for the wastewater treatment plant upgrades and a \$20,000 per year for 20 years annual payment to offset the loss of the parcel (P & C Site) from the tax rolls.

**7/7/10:** The county Legislature voted 10-7 to offer the Village of Herkimer \$800,000 in order to connect a proposed county jail facility into the municipal sewer system. The proposal included a \$400,000 payment toward the village wastewater treatment plant upgrade and \$20,000 per year for

20 years.

**OTHER VARIANCES IN EFFECT** – None

**STAFF INFORMATION AFTER SITE VISIT (DATE OF LAST VISIT TO FACILITY):**

Facility compliance with conditions of variance 06-V-05 was last reviewed on March 12, 2013; Compliance with these conditions was noted.

**DATE OF LAST CYCLE VISIT THAT STANDARD VIOLATIONS WERE IDENTIFIED:**

February 3, 2012

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

Commission staffs' review of revised policies is ongoing. A comprehensive review of the inmate rulebook was recently completed and comments were forwarded to Sheriff Farber. Additional on-site assistance will be scheduled.

- 7003 - Lack of certain documentation and key control issues
- 7006 - Lack of certain documentation and need for policy and procedure enhancement
- 7008 – Need for policy and procedure enhancement
- 7009- Food Services-Approved menus
- 7028 – Policy and procedure revisions necessary
- 7070- Educational Services-Policy Revisions

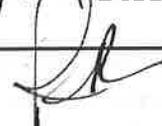
**ANY VIOLATIONS WHICH PERTAIN TO THE VARIANCE'S CONDITIONS:**

None

**JUSTIFICATION FOR WHY VARIANCE SHOULD OR SHOULD NOT BE EXTENDED:**

The Commission previously approved the cell package submitted by Herkimer County. It is the county's intention to move forward with construction once litigation has ended.

REVIEWED BY REGIONAL SUPERVISOR:

 DATE: 4/23/13  
 4/24/13

**OFFICIAL USE ONLY:**

NOTES OF MEETING: \_\_\_\_\_



OFFICE OF

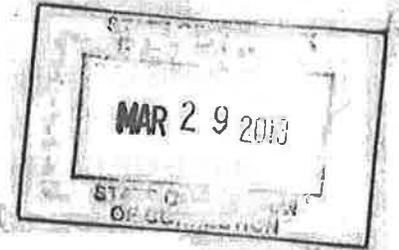
## The Herkimer County Sheriff

320 NORTH MAIN STREET - SUITE 2900  
HERKIMER, NEW YORK 13350-1949  
OFFICE/CIVIL: (315) 867-1167  
FAX: (315) 867-1354

THOMAS MCGRAIL, C. N  
Correction Facility: (315) 867-1252  
Correctional Fax: (315) 867-1263

CHRISTOPHER P. FARBER, SHERIFF  
GEORGE TREEN, JR., UNDERSHERIFF

March 27, 2013



Thomas A. Beilein  
Chairman  
State Commission of Correction  
Alfred E. Smith State Office Bldg.  
80 S. Swan St., 12<sup>th</sup> Floor  
Albany, NY 12210

Dear Chairman Beilein:

The Herkimer County Sheriff's Office is respectfully requesting an extension of Variance No. 06-V-05 which addresses compliance with provisions of 9NYCRR Section 7028 regarding outdoor recreation space for inmates.

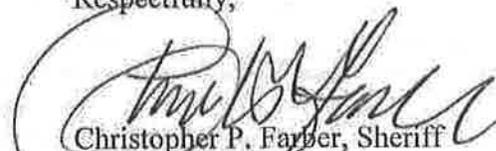
We feel this extension is warranted based on the following facts: (1) The temporary recreation area was constructed and approved under the guidance and frequent inspections of staff from your office, (2) Ten or less inmates utilize the area at one time so as to comply with the less than 1,500 square foot requirement on a 1 ½ hour, 5 days a week schedule, (3) The area does provide for good health and reduces tension of the jail population.

Herkimer County continues to move forward with the construction of a new correctional facility. I therefore am respectfully requesting a 180 day extension on the above mentioned variance. Enclosed please find a copy of a letter addressed to me from our County Administrator regarding the County's position.

Policies and Procedures have been submitted to the Commission and we continue to work to revise the policy and procedures in question.

We look forward to the continued working relationship that my staff and I have enjoyed the past years with the Commission and its staff.

Respectfully,

  
Christopher P. Farber, Sheriff  
Herkimer County

C/c: Hon. Vincent Bono  
Hon. Leonard Hendrix  
James Wallace, Co. Admin.



New York State  
 Commission of Correction  
 80 Wolf Road  
 Albany, New York 12205  
 518-485-2465  
 518-485-2467 (Fax)

New:	_____
Renewal:	_____
Variance #:	_____
(SCOC USE ONLY)	

Thomas A. Beilein  
 Chairman

Variance Application Form

INSTRUCTIONS TO SHERIFF OR CHIEF ADMINISTRATIVE OFFICER:

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and mail or fax this form Attn: Chairman/Commissioner to the address or fax number listed above.

Facility: Herkimer County Correctional Facility

Person requesting: Sheriff Christopher P. Farber

~~(Sheriff/Chief Administrative Officer)~~

A. State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested: Example: 7040.3 states that, the total number of inmates confined within each correctional facility shall not exceed the maximum facility capacity of such facility. To request a variance to house additional inmates within the facility the citation should be listed as:

Ex. Part: 7040 Section: 3 Subdivision: n/a

Standard for which the variance is requested:

Part: 7028 Section: 4 Subdivision: b

B. In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. (Include or attach any relevant supporting documentation)

See Attached Letter

C. In the space provided below include a detailed description regarding why this variance is necessary. (Include or attach any relevant supporting documentation)

D. Provide the amount of time for which the variance is requested, if applicable:

180 Days               Weeks               Months

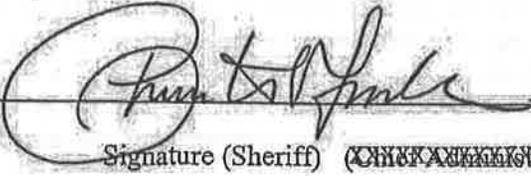
E. If this variance request is approved, what plans, provisions and timetables are in place for achieving full compliance with the Minimum Standard at issue such as adding to the MFC, etc. (Use additional sheets to provide additional supporting documentation, if necessary).

Herkimer County is in the process of formulating plans for a new correctional facility with the construction to start as soon as possible.



G. Has this variance been previously approved?

Yes. X If yes, include the variance number 06-V-05 No         

  
Signature (Sheriff) ~~(Chief Administrative Officer)~~

3/21/13  
Date

Additional copies of this form can be obtained by contacting the Commission, or online at [www.scoc.state.ny.us](http://www.scoc.state.ny.us). [Click](#) on table of contents, Commission Forms, Request for a Variance (Formal application statement).

(SCOC Form #V-1)  
(07/06)



# HERKIMER COUNTY LEGISLATURE

OFFICE OF THE HERKIMER COUNTY ADMINISTRATOR

JAMES W. WALLACE, JR., ADMINISTRATOR

109 MARY STREET - SUITE 1310

HERKIMER, NEW YORK 13350-2913

TELEPHONE: (315) 867-1112 - FAX: (315) 867-1109

March 1, 2013

Dear Sheriff Farber:

As you know Herkimer County won a court case against the Village of Herkimer concerning zoning issues at the P&C site.

Since that time, the Village has perfected their appeal and we are scheduled for the same to be heard in September. We await a decision by mid November.

We stand ready to move forward with the Correctional Facility as soon as feasible.

Should you need any further information, please do not hesitate to contact me.

Sincerely,



James W. Wallace, Jr.  
County Administrator

JWW/bc

cc: Hon. Vincent J. Bono, Herkimer County Legislature Chairman  
Hon. Leonard R. Hendrix, Public Safety & Emergency Management Committee Chairman  
Hon. Patrick E. Russell, Ways & Means Committee Chairman  
Hon. Raymond Smith, Human Resources Committee Chairman  
Hon. Bernard Peplinski, Sr., County Planning & Development Committee Chairman  
Robert Malone, County Attorney

**New York State Commission of Correction  
Chairman Thomas A. Beilein**

**Memorandum**

**From:** Chairman Thomas A. Beilein  
2013

**Date:** March 29,

**Access Number:**

**To:** Jim Lawrence  
Michael Donegan  
Richard Kinney

**Sender:** Sheriff Christopher Farber

**Agency:** Herkimer County Sheriff's Office

**Date Original Received:** 3/27/13

**Re:** Request Extension of 06V05

**Document Description:** Letter/Variance Application

**Chairman's Comments:**

**Routing Information**

**Regional Supervisor:** Moran

**CC:**

Name of Facility: Orleans County Jail

Variance # 98-V-19

New:  Renewal:

Relief from Standard: 7040.3

Application by: Sheriff Scott Hess  
Date Request Rec: 4-26-13

Last Approved: December 2012 Length of Approval: 6 Months Expiration: June 1, 2013

Write-up Prepared by: Terrence Moran

Recommendation by Field Staff: Approve for 3 months

Recommendation at Briefing:

Final Recommendation:

### SUMMARY OF VARIANCE REQUEST

The facility is requesting a continued extension of most of the variance beds authorized via variance 98-V-19 which authorizes the county to house an additional 26 inmates in the jail through the use of housing in day space areas. The county is no longer requesting variance beds for the 1<sup>st</sup> floor North West Block, 2<sup>nd</sup> floor South West and South East female housing areas. The total number of variance beds requested by the county is now 17.

### RECOMMENDED CONDITIONS

Commission staff recommends that the following conditions be included in the approval letter regarding this variance, if the variance is approved.

- 1) The county is authorized to house a maximum of 17 inmates in any of the following areas:

<u>Location</u>	<u>MFC</u>	<u>Increase</u>	<u>Total Housed*</u>
<b>1st Floor</b>			
North East Block	7	4 (3 with cell vacated)	10*
South East Block	7	4 (3 with cell vacated)	10*
South West Block	7	4 (3 with cell vacated)	10*
East Dorm	5	1	6
West Dorm	5	1	6
<b>2<sup>nd</sup> Floor</b>			
North West Block	7	4 (3 with cell vacated)	10*
North East Block	7	4 (3 with cell vacated)	10*
		26 Variance beds	

\* One cell needs to be vacated in order to allow inmates in the day space access to a toilet and sink.

- 2) When inmates are housed in the day space of the above-noted areas, a cell will be vacated in order to allow inmates in the day space with direct access to a toilet and sink. When the displaced inmate is housed in the day space area, he/she will be counted as (1) of the total number of variance beds.
- 3) Inmates who are housed in the above-noted areas *must* be provided with a bunk, cot, or at a minimum a boat to be used as a bed.
- 4) Active Supervision must be provided on a 24-hour basis, pursuant to 9NYCRR Section 7003.2(c).
- 5) Inmates housed in the above-noted areas receive the same services and programs as the general population.
- 6) The county shall not exceed the rated MFC for the purpose of boarding inmates. The Commission does not approve variances for the purpose of generating revenue.

**VARIANCE HISTORY**

2012	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 12/18 Meeting 6 months
2012	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 6/19 Meeting 6 months
2011	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 12/11 Meeting 6 months
2011	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 06/11 Meeting 6 months
2010	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 12/10 Meeting 6 months
2010	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 07/10 Meeting 6 months
2010	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 04/10 Meeting 90 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 10/09 Meeting 6 months
2009	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 7/09 Meeting 90 days

SCOC VARIANCE WRITE-UP FORM: EFFECTIVE JANUARY 2010

2009	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 4/09 Meeting 90 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 1/09 Meeting 90 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 10/08 Meeting 90 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 6/08 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 5/08 Meeting 30 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 4/08 Meeting 30 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 1/08 Meeting 3 months Addition of condition #7 above – county must provide status report of progress

**CONSTRUCTION/RENOVATION PLANS**

The jail roof renovation project commenced on April 25, 2013 and is anticipated to take 30 days to complete. The shower replacement project is on hold, pending additional work by engineers.

**OTHER VARIANCES IN EFFECT**

Variance No. 98-V-02: This variance authorizes the Orleans County Jail to utilize the Court Law Library located in the Public Defender's Office to provide inmates with access to legal reference materials required by Section 7031.4(d).

Variance No. 12-V-04: This variance authorizes the Orleans County Jail to utilize the second floor inmate worker dormitory for outdoor exercise for a period of 60 days, commencing with the start of the roof renovation project in spring 2013.

**STAFF INFORMATION AFTER SITE VISIT (DATE OF LAST VISIT TO FACILITY):**

Variance 98-V-19 was last reviewed on May 8, 2013.

**DATE OF LAST CYCLE VISIT THAT STANDARD VIOLATIONS WERE IDENTIFIED:**

December 2012

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

7006 – Misbehavior Report requires revision

7070 – Minor inmates were not being afforded the full 3 hours of GED per day. SCOC staff offered various options available to rectify the situation.

**ANY VIOLATIONS WHICH PERTAIN TO THE VARIANCE'S CONDITIONS:**

None

**JUSTIFICATION FOR WHY VARIANCE SHOULD OR SHOULD NOT BE EXTENDED:**

1. A review of population records for 2010 through 2012 revealed that the facility averaged 73 inmates per day, not counting boarder inmates. The rated capacity for the jail is 82. The county has no long-term plans to increase capacity.
2. The ongoing roof replacement project resulted in the loss of a dormitory (used for exercise) until the project's completion. The commencement of a planned shower replacement project will also result in the closure of housing areas during construction.
3. Approval of this variance for a three month period will allow the facility to house inmates in accordance with Correction Law 500-b and Part 7013 during the roof and shower replacement projects.
4. The county is to be reminded that variance beds are not to be used for the purposes of boarding inmates. The facility was boarding females and housing them in areas where variance beds were in use. The facility was reminded that such practice violates one of the conditions of the variance. The facility eliminated the female housing areas from the variance extension request.

REVIEWED BY REGIONAL SUPERVISOR:

DATE:

 5/3

**OFFICIAL USE ONLY:**

NOTES OF MEETING: \_\_\_\_\_



New York State  
Commission of Correction  
80 Wolf Road  
Albany, New York 12205  
518-485-2465  
518-485-2467 (Fax)

New	_____
Renewal	_____
Variance #	_____
(SCOC USE ONLY)	

Thomas A. Beilein  
Chairman

Variance Application Form

INSTRUCTIONS TO SHERIFF OR CHIEF ADMINISTRATIVE OFFICER:

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and mail or fax this form Attn: Chairman/Commissioner to the address or fax number listed above.

Facility: ORLEANS COUNTY JAIL

Person requesting: SUPERINTENDENT SCOTT D. WILSON

(Sheriff/Chief Administrative Officer)

- A. State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested: Example: 7040.3 states that, the total number of inmates confined within each correctional facility shall not exceed the maximum facility capacity of such facility. To request a variance to house additional inmates within the facility the citation should be listed as:

Ex. Part: 7040 Section: 3 Subdivision: n/a

Standard for which the variance is requested:

Part: 7040 Section: 3 Subdivision: \_\_\_\_\_

- B. In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. (Include or attach any relevant supporting documentation)

C. In the space provided below include a detailed description regarding why this variance is necessary. (Include or attach any relevant supporting documentation)

(SEE ATTACHED)

D. Provide the amount of time for which the variance is requested, if applicable:

\_\_\_\_\_ Days      \_\_\_\_\_ Weeks      6 Months

E. If this variance request is approved, what plans, provisions and timetables are in place for achieving full compliance with the Minimum Standard at issue such as adding to the MFC, etc. (Use additional sheets to provide additional supporting documentation, if necessary).

C. In the space provided below include a detailed description regarding why this variance is necessary. (Include or attach any relevant supporting documentation).

The purpose of requesting this variance extension (98-V-19) is based on the following circumstances. First, this variance will allow the Orleans County Jail to maintain a formal and objective classification system as a result our legal obligation to fulfill the remand of intermittent sentenced inmates. Secondly, an extension for variance 98-V-19 will be required to maintain a temporary recreation area for the duration of the roof replacement project which has begun as of April 22<sup>nd</sup>, 2013. This variance will allow the Orleans County Jail to displace the inmates housed in our inmate worker dormitory to facilitate the temporary recreation area variance (12-V-04).

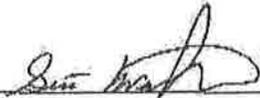
The Orleans County Jail has also completed a mock-up shower retrofit for the Second Floor North East housing unit. The purpose of the shower mock-up was to ensure that it met the required safety, security and sanitation standards prior to completing the remainder of the housing units. Currently, I have not approved the initial shower mock-up due to design flaws and concerns of pooling water on the floor outside of the shower unit. I have requested the engineers to look at other options to address this issue. The Initial Shower mock-up was tentatively planned to be completed in 5 business days which has now been delayed for a period of 10 weeks due these existing problems.

I do not have a tentative time frame to complete the remainder of the housing unit. However, once the mock up is approved the Orleans County Jail will be required to close each housing unit individually to maintain safety and security until the entire project has been completed.



G. Has this variance been previously approved?

Yes   x   If yes, include the variance number   98-V-19   No       

Scott D. Wilson 

Signature (Sheriff) (Chief Administrative Officer)

Date   4-26-13  

Additional copies of this form can be obtained by contacting the Commission, or online at [www.scoc.state.ny.us](http://www.scoc.state.ny.us). Click on table of contents, Commission Forms, Request for a Variance (Formal application statement).

(SCOC Form #V-1)  
(07/06)



Name of Facility: Oswego CJ

Variance # 96-V-24

New:  Renewal: 

Relief from Standard: 7040.3

Number of Renewals: 19

Application by: Jail Adm. Michael Stafford

Date Request Rec: 3-25-13

Last Approved: 12/18/12 Length of Approval: Six (6) Months Expiration: 6/1/2013

Write-up Prepared by: Diaz

Recommendation by Field Staff: Approval for Six (6) Months

Recommendation at Briefing:

Final Recommendation:

**SUMMARY OF VARIANCE REQUEST**

The Oswego County Jail is requesting an extension of variance #96-V-24 which allows them to house an additional (6) inmates in the day space of intake housing.

**MOST RECENT VARIANCE HISTORY**

- |      |                        |                             |
|------|------------------------|-----------------------------|
| 2012 | Recommendation         | Approval                    |
|      | Action Taken-          | Approved at 12/18 meeting   |
|      | Length of Variance     | Six (6) Months              |
|      | Conditions if changed: |                             |
| 2012 | Recommendation         | Approval                    |
|      | Action Taken-          | Approved at 6/12 meeting    |
|      | Length of Variance     | Six (6) Months              |
|      | Conditions if changed: |                             |
| 2012 | Recommendation         | Approval                    |
|      | Action Taken-          | Approved at 3/12 meeting    |
|      | Length of Variance     | 90 Days                     |
|      | Conditions if changed: |                             |
| 2011 | Recommendation         | Approval                    |
|      | Action Taken-          | Approved at 10/2011 meeting |
|      | Length of Variance     | 90 Days                     |
|      | Conditions if changed: |                             |
| 2011 | Recommendation         | Approval                    |
|      | Action Taken-          | Approved at 4/2011 meeting  |
|      | Length of Variance     | Six (6) months              |
|      | Conditions if changed: |                             |
| 2010 | Recommendation         | Approval                    |
|      | Action Taken-          | Approved at 10/2010 meeting |
|      | Length of Variance     | Six (6) months              |
|      | Conditions if changed: |                             |

**CONSTRUCTION/RENOVATION PLANS**

N/A

**OTHER VARIANCES IN EFFECT**

Variance # **02-V-07**: The facility is authorized to utilize the County Law Library located adjacent to the facility to provide inmates with access to legal reference materials

Variance # **01-V-14**: This variance authorizes the facility to house four (4) female inmates in the day space of Female Housing Unit.

**STAFF INFORMATION AFTER SITE VISIT (DATE OF LAST VISIT TO FACILITY):**

Site visit completed February 2013

**DATE OF LAST CYCLE VISIT THAT STANDARD VIOLATIONS WERE IDENTIFIED:**

July 2012

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

SCOC staff need to verify corrective action reported by the facility on the following outstanding deficiencies.

Part 7024.4(c) -Property confiscation

Part 7003.4(a)-Supervision of inmates outside of facility housing areas

Part 7003.8(c) Firearms control

Part 7028.5 Exercise area searches

Part 7032.4(f) (k) (i) Grievance program requirements

**ANY VIOLATIONS WHICH PERTAIN TO THE VARIANCE'S CONDITIONS:**

See above

**JUSTIFICATION FOR WHY VARIANCE SHOULD OR SHOULD NOT BE EXTENDED:**

The variance beds provide the facility flexibility with respect to classifying inmates.

**RECOMMENDED CONDITIONS IF APPROVED**

Commission staff recommends that the following conditions be included in the approval letter regarding this variance.

- 1) The county is authorized to house an additional six (6) male inmates in the I-51 day space of the Intake Housing Unit, which includes cells #101 and #102.

Location	Capacity	Increase	Total Housed
Intake Housing Unit Day Room I-51	8	6 (5 with cell vacated)	Up to 14(includes relocation of inmate from vacated cell to the dayspace, provided the number of inmates in the dayspace does not exceed six.

- 2) Inmates who are housed in the day space area *must* be provided with a bunk, cot, or at a minimum a boat to be used as a bed.
- 3) That one (1) cell is left vacant for inmates housed in the day space area to have direct access to toilet and sink facilities, thereby displacing one (1) inmate. The displaced inmate may be housed in the day space area, provided the number of inmates in the dayspace area does not exceed six.
- 4) Active supervision must be provided on a 24-hour basis, pursuant to 9NYCRR Section 7003.2(c).
- 5) Inmates housed in the above-noted areas receive the same services and programs as the general population.
- 6) The county shall not exceed the rated MFC for the purpose of boarding inmates. The Commission does not approve variances for the purpose of generating revenue.
- 7) The facility will ensure compliance with all elements of Correction Law 500-b and Part 7013, Classification.

REVIEWED BY REGIONAL SUPERVISOR:

*John RL* DATE: 4/23/19  
4/2/13

**OFFICIAL USE ONLY:**

NOTES OF MEETING: \_\_\_\_\_

# OSWEGO COUNTY SHERIFF'S OFFICE



ADMINISTRATION  
(315) 349-3307  
FAX (315) 349-3483

ROAD PATROL  
(315) 349-3411  
FAX (315) 349-3303

CRIMINAL INVESTIGATION  
(315) 349-3318  
FAX (315) 349-3317

REUEL A. TODD  
SHERIFF



EUGENE F. SULLIVAN, III  
UNDERSHERIFF

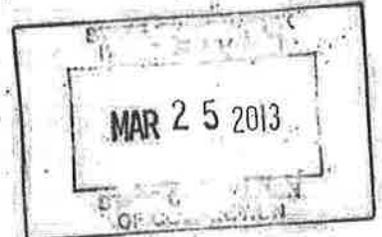


CIVIL DIVISION  
(315) 349-3302  
FAX (315) 349-3373  
1-800-582-7683

JAIL DIVISION  
(315) 349-3300  
FAX (315) 349-3349

39 Churchill Road, Oswego, New York. 13126-6613

OSWEGO COUNTY CORRECTIONAL FACILITY  
Facsimile Number: (315) 349-3349



## FAX TRANSMISSION COVER SHEET

NUMBER OF PAGES INCLUDING COVER SHEET: 7

DATE: 3/25/13  
TIME: 1450 HR  
TO: CYNTHIA DIAZ  
DIVISION: NYS COMMISSION OF CORRECTION  
FAX NO.: 518-485-2467

FROM: Michael K. Stafford, Correction Administrator

DIVISION: Oswego County Correctional Facility

COMMENTS: VARIANCE No. 96-V-24 (INTAKE UNIT)

RESPONSE REQUESTED: YES NO



New York State  
Commission of Correction  
80 Wolf Road  
Albany, New York 12205  
518-485-2465  
518-485-2467 (Fax)

New	_____
Renewal	_____
Variance #	_____
(SCOC USE ONLY)	

Thomas A. Beilein  
Chairman

Variance Application Form

INSTRUCTIONS TO SHERIFF OR CHIEF ADMINISTRATIVE OFFICER:

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and mail or fax this form Attn: Chairman/Commissioner to the address or fax number listed above.

Facility: Oswego County Correctional Facility

Person requesting: Michael K. Stafford  
Correction Administrator  
~~(Sheriff/Chief Administrative Officer)~~

A. State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested: Example: 7040.3 states that, the total number of inmates confined within each correctional facility shall not exceed the maximum facility capacity of such facility. To request a variance to house additional inmates within the facility the citation should be listed as:

Ex. Part: 7040 Section: 3 Subdivision: n/a

Standard for which the variance is requested:

Part: 7040 Section: 03 Subdivision: N/A

B. In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. (Include or attach any relevant supporting documentation) Inmates housed in the day space area shall be provided with a bunk, cot, or at a minimum, a "boat" to be used as a bed, and one (1) cell shall be left vacant to allow these inmates direct access to sink and toilet facilities. "Active Supervision" shall be provided on a 24-hour basis. The inmates housed in the day space area shall receive the same services and programs as the general population.

- C. In the space provided below include a detailed description regarding why this variance is necessary. (Include or attach any relevant supporting documentation)
 

Periodic fluctuations in inmate population necessitates this request for the extension of Variance # 96-V-24, regarding the Intake Housing Unit. The variance extension will continue to allow the facility to house six (6) additional inmates in the Intake Housing Unit.
- D. Provide the amount of time for which the variance is requested, if applicable:

\_\_\_\_\_ Days      \_\_\_\_\_ Weeks      12 Months

- E. If this variance request is approved, what plans, provisions and timetables are in place for achieving full compliance with the Minimum Standard at issue such as adding to the MFC, etc. (Use additional sheets to provide additional supporting documentation, if necessary).

The requested variance extension is intended to address short-term fluctuations in the inmate population, resulting from periodic intermittent sentences and classification procedures. Although there are no long-term plan to alleviate this occasional need, any use of this variance is intended to be short-term in nature.

A copy of the existing variance and conditions set forth by the Commission is attached.



G. Has this variance been previously approved?

Yes X If yes, include the variance number 96-V-24 No         

  
Michael K. Stafford

Correction Administrator  
Signature (SH67A) X (Clear or White Ink Only)

Date 3/25/13

Additional copies of this form can be obtained by contacting the Commission, or online at [www.scoc.state.ny.us](http://www.scoc.state.ny.us). Click on table of contents, Commission Forms, Request for a Variance (Formal application statement).

(SCOC Form #V-1)  
(07/06)



STATE OF NEW YORK • EXECUTIVE DEPARTMENT  
**STATE COMMISSION OF CORRECTION**  
 Alfred E. Smith State Office Building  
 80 S. Swan Street, 12th Floor  
 Albany, New York 12210-8001  
 (518) 485-2348  
 FAX (518) 485-2487

CHAIRMAN  
 Thomas A. Bellein  
 COMMISSIONER  
 Phyllis Harrison-Ross, M.D.

December 18, 2012

Sheriff Reuel A. Todd  
 Oswego County Sheriff's Office  
 39 Churchill Road  
 Oswego, New York 13126

RE: Variance No. 96-V-24

Dear Sheriff Todd:

The Commission has reviewed the county's application for a variance with respect to compliance with the provisions of 9NYCRR Section 7040.3 and has determined at the June 19, 2012 Commission Meeting that the request be approved for six months.

Pursuant to this action the following conditions shall apply:

- 1) The county is authorized to house an additional six (6) male inmates in the I-51 day space of the Intake Housing Unit, which includes cells #101 and #102.

Location	Capacity	Increase	Total Housed
Intake Housing Unit Day Room I-51	8	6 (5 with cell vacated)	Up to 14 (includes relocation of Inmate from vacated cell to the day space, provided the number of inmates in the day space does not exceed six.

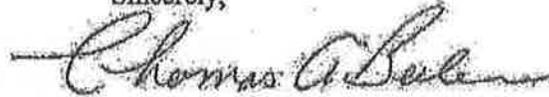
- 2) Inmates who are housed in the day space area *must* be provided with a bunk, cot, or at a minimum a boat to be used as a bed.
- 3) That one (1) cell is left vacant for inmates housed in the day space area to have direct access to toilet and sink facilities, thereby displacing one (1) inmate. The displaced inmate may be housed in the day space area, provided the number of inmates in the day space area does not exceed six.
- 4) Active supervision must be provided on a 24-hour basis, pursuant to 9NYCRR Section 7003.2(c).
- 5) Inmates housed in the above-noted areas receive the same services and programs as the general population.
- 6) The county shall not exceed the rated MFC for the purpose of boarding inmates. The Commission does not approve variances for the purpose of

generating revenue.

- 7) The facility will ensure compliance with all elements of Correction Law 500-b and Part 7013, Classification.

This variance will expire on **June 1, 2013**, and will appear on the agenda for the May 2013 Commission meeting. If the County finds there is a need for an extension of this variance, a written request must be submitted to the Commission **45 days** prior to that meeting. Therefore, by **April 2, 2013**, the extension request must be received to avoid any unnecessary delays in processing the renewal review.

Sincerely,



Thomas A. Beilein  
Chairman

cc: Mike Stafford, Administrator

**New York State Commission of Correction  
Chairman Thomas A. Beilein**

**Memorandum**

**From:** Chairman Thomas A. Beilein  
2013

**Date:** March 25,

**Access Number:**

**To:** Jim Lawrence  
Michael Donegan  
Richard Kinney

**Sender:** Michael K. Stafford, Correction Administrator

**Agency:** Oswego County Correctional Facility

**Date Original Received:** 3/25/13

**Re:** Variance 96V24

**Document Description:** Variance Application

**Chairman's Comments:**

**Routing Information**

Regional Supervisor: Moran

CC:



Name of Facility: Oswego CJ

Variance # 01-V-14

New:  Renewal: 

Relief from Standard: 7040.

Number of Renewals: 14

Application by: Michael Stafford-Jail Adm

Date Request Rec: 3-25-13

Last Approved: 12/18/12 Length of Approval: Six (6) Months Expiration: 6-1-2013

Write-up Prepared by: Diaz

Recommendation by Field Staff: Approval Six (6) Months

Recommendation at Briefing:

Final Recommendation:

**SUMMARY OF VARIANCE REQUEST**

The Oswego County Jail is requesting an extension of variance #01-V-14 which allows them to house four(4) additional females in the day space of the female housing unit.

**MOST RECENT VARIANCE HISTORY**

2012	Recommendation	Approval
	Action Taken-	Approved at 12/12 meeting
	Length of Variance	Six (6) Months
	Conditions if changed:	
2012	Recommendation	Approval
	Action Taken-	Approved at 6/12 meeting
	Length of Variance	Six (6) Months
	Conditions if changed:	
2012	Recommendation	Approval
	Action Taken-	Approved at 3/12 meeting
	Length of Variance	90 Days
	Conditions if changed:	
2011	Recommendation	Approval
	Action Taken-	Approved at 10/2011 meeting
	Length of Variance	90 Days
	Conditions if changed:	
2011	Recommendation	Approval
	Action Taken-	Approved at 4/2011 meeting
	Length of Variance	Six (6) months
	Conditions if changed:	

2010 Recommendation Approval  
Action Taken- Approved at 10/2010 meeting  
Length of Variance Six (6) months  
Conditions if changed:

**CONSTRUCTION/RENOVATION PLANS**

N/A

**OTHER VARIANCES IN EFFECT**

Variance # 02-V-07: The County is authorized to utilize the County Law Library located adjacent to the facility to provide inmates with access to legal reference materials

Variance # 96-V-24: The County is authorized to house an additional six (6) inmates in the day space of the Intake Housing Unit.

**STAFF INFORMATION AFTER SITE VISIT (DATE OF LAST VISIT TO FACILITY):**

Site visit completed February 2013

**DATE OF LAST CYCLE VISIT THAT STANDARD VIOLATIONS WERE IDENTIFIED:**

JUNE 2012

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

SCOC staff need to verify corrective action reported by the facility on the following outstanding deficiencies.

Part 7024.4(c) -Property confiscation

Part 7003.4(a)-Supervision of inmates outside of facility housing areas

Part 7003.8(c) Firearms control

Part 7028.5 Exercise area searches

Part 7032.4(f) (k) (i) Grievance program requirements

**ANY VIOLATIONS WHICH PERTAIN TO THE VARIANCE'S CONDITIONS:**

See above

**JUSTIFICATION FOR WHY VARIANCE SHOULD OR SHOULD NOT BE EXTENDED:**

The variance beds provide the facility flexibility with respect to classifying inmates.

**RECOMMENDED CONDITIONS IF APPROVED**

Commission staff recommends that the following conditions be included in the approval letter regarding this variance.

- 1) The county is authorized to house an additional four (4) female inmates in the W-51 day space of Female Housing Unit, which includes cells #101 and #102.

Location	Capacity	Increase	Total Housed
Female Housing Unit Day Room W-51	2	4 (3 with cell vacated)	Up to 6 (includes relocation of inmate from vacated cell to the day space, provided the number of inmates in the day space does not exceed four.

- 2) Inmates who are housed in the day space area **must** be provided with a bunk, cot, or at a minimum a boat to be used as a bed.
- 3) That one (1) cell is left vacant for inmates housed in the day space area to have direct access to toilet and sink facilities, thereby displacing one (1) inmate. The displaced inmate may be housed in the day space area.
- 4) Active supervision must be provided on a 24-hour basis, pursuant to 9NYCRR Section 7003.2(c).
- 5) Inmates housed in the above-noted areas receive the same services and programs as the general population.
- 6) The county shall not exceed the rated MFC for the purpose of boarding inmates. The Commission does not approve variances for the purpose of generating revenue.
- 7) The facility will ensure compliance with all elements of Correction Law 500-b and Part 7013, Classification.

REVIEWED BY REGIONAL SUPERVISOR:

*TM* DATE: 4/23/13  
*JA* 4/24/13

**OFFICIAL USE ONLY:**

NOTES OF MEETING: \_\_\_\_\_

# OSWEGO COUNTY SHERIFF'S OFFICE



ADMINISTRATION  
(315) 349-3307  
FAX (315) 349-3483

ROAD PATROL  
(315) 340-3411  
FAX (315) 349-3303

CRIMINAL INVESTIGATION  
(315) 349-3318  
FAX (315) 349-3317

REUEL A. TODD  
SHERIFF



EUGENE F. SULLIVAN, III  
UNDERSHERIFF



CIVIL DIVISION  
(315) 349-3302  
FAX (315) 349-3373  
1-800-582-7683

JAIL DIVISION  
(315) 349-3300  
FAX (315) 349-3349

39 Churchill Road, Oswego, New York. 13126-6613

OSWEGO COUNTY CORRECTIONAL FACILITY  
Facsimile Number: (315) 349-3349

## FAX TRANSMISSION COVER SHEET

NUMBER OF PAGES INCLUDING COVER SHEET: 7

DATE: 3/25/13  
TIME: 1454 HR  
TO: CYNTHIA DIAZ  
DIVISION: NYS COMMISSION OF CORRECTION  
FAX NO.: 518-485-2467

FROM: Michael K. Stafford, Correction Administrator

DIVISION: Oswego County Correctional Facility

COMMENTS: VARIANCE NO. 01-V-14 (FEMALE UNIT)

RESPONSE REQUESTED:    YES            NO



New York State  
Commission of Correction  
80 Wolf Road  
Albany, New York 12205  
518-485-2465  
518-485-2467 (Fax)

New	_____
Renewal	_____
Variance #	_____
(SCOC USE ONLY)	

Thomas A. Bellein  
Chairman

Variance Application Form

INSTRUCTIONS TO SHERIFF OR CHIEF ADMINISTRATIVE OFFICER:

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and mail or fax this form Attn: Chairman/Commissioner to the address or fax number listed above.

Facility: Oswego County Correctional Facility

Person requesting: Michael K. Stafford  
Correction Administrator  
~~(Sheriff/Chief Administrative Officer)~~

A. State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested; Example: 7040.3 states that, the total number of inmates confined within each correctional facility shall not exceed the maximum facility capacity of such facility. To request a variance to house additional inmates within the facility the citation should be listed as:

Ex. Part: 7040 Section: 3 Subdivision: n/a

Standard for which the variance is requested:

Part: 7040 Section: 03 Subdivision: N/A

B. In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. (Include or attach any relevant supporting documentation) Inmates housed in the day space area shall be provided with a bunk, cot, or at a minimum, a "boat" to be used as a bed, and one (1) cell shall be left vacant to allow these inmates direct access to sink and toilet facilities. "Active Supervision" shall be provided on a 24-hour basis. The inmates housed in the day space area shall receive the same services and programs as the general population.

- C. In the space provided below include a detailed description regarding why this variance is necessary. (Include or attach any relevant supporting documentation) Periodic fluctuations in inmate population necessitates this request for the extension of Variance # 01-V-14, regarding the Women's Housing Unit. The variance extension will continue to allow the facility to house four (4) additional inmates in the dayroom area of the Women's Housing Unit.
- D. Provide the amount of time for which the variance is requested, if applicable:

\_\_\_\_\_ Days      \_\_\_\_\_ Weeks      12 Months

- E. If this variance request is approved, what plans, provisions and timetables are in place for achieving full compliance with the Minimum Standard of issue such as adding to the MFC, etc. (Use additional sheets to provide additional supporting documentation, if necessary).  
The requested variance extension is intended to address short-term fluctuations in inmate population, resulting from periodic intermittent sentences and classification procedures. Although there is no long-term plan to alleviate this occasional need, any use of this variance is intended to be short-term in nature.

A copy of the existing variance and conditions set by the Commission is attached.



G. Has this variance been previously approved?

Yes X If yes, include the variance number 01-V-14 No         

*Michael K. Stafford*  
Michael K. Stafford

Signature (Print) (~~Chief Administrator~~)  
Correction Administrator

Date 3/25/13

Additional copies of this form can be obtained by contacting the Commission, or online at [www.scoc.state.ny.us](http://www.scoc.state.ny.us). Click on table of contents, Commission Forms, Request for a Variance (Formal application statement).

(SCOC Form #V-1)  
(07/06)



STATE OF NEW YORK • EXECUTIVE DEPARTMENT  
 STATE COMMISSION OF CORRECTION  
 Alfred E. Smith State Office Building  
 80 S. Swan Street, 12th Floor  
 Albany, New York 12210-8001  
 (518) 485-2348  
 FAX (518) 485-2387

CHAIRMAN  
 Thomas A. Bellein

COMMISSIONER  
 Phyllis Harrison-Ross, M.D.

December 18, 2012

Sheriff Reuel A. Todd  
 Oswego County Sheriff's Office  
 39 Churchill Road  
 Oswego, New York 13126

**RE: Variance No. 01-V-14**

Dear Sheriff Todd:

The Commission has reviewed the county's application for a variance with respect to compliance with the provisions of 9 NYCRR Section 7040.3 and has determined at the December 18, 2012 Commission meeting that the request be approved for a period of six months.

Pursuant to this action, the following conditions shall apply:

- 1) The county is authorized to house an additional four (4) female inmates in the W-51 day space of Female Housing Unit, which includes cells #101 and #102.

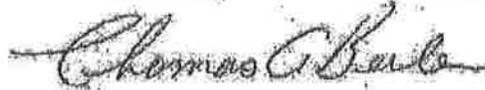
Location	Capacity	Increase	Total Housed
Female Housing Unit Day Room W-51	2	4 (3 with cell vacated)	Up to 6 (includes relocation of inmate from vacated cell to the day space, provided the number of inmates in the day space does not exceed four.

- 2) Inmates who are housed in the day space area *must* be provided with a bunk, cot, or at a minimum a boat to be used as a bed.
- 3) That one (1) cell is left vacant for inmates housed in the day space area to have direct access to toilet and sink facilities, thereby displacing one (1) inmate. The displaced inmate may be housed in the day space area, provided the number of inmates in the day space area does not exceed four.
- 4) Active supervision must be provided on a 24-hour basis, pursuant to 9NYCRR Section 7003.2(c).

- 5) Inmates housed in the above-noted areas receive the same services and programs as the general population.
- 6) The county shall not exceed the rated MFC for the purpose of boarding inmates. The Commission does not approve variances for the purpose of generating revenue.
- 7) The facility will ensure compliance with all elements of Correction Law 500-b and Part 7013, Classification.

This variance will expire on **June 1, 2013**, and will appear on the agenda for the May 2013 Commission meeting. If the County finds there is a need for an extension of this variance, a written request must be submitted to the Commission 45 days prior to that meeting. Therefore, by **April 2, 2013**, the extension request must be received to avoid any unnecessary delays in processing the renewal review.

Sincerely,



Thomas A. Beilein  
Chairman

cc: Mike Stafford, Administrator

**New York State Commission of Correction  
Chairman Thomas A. Beilein**

**Memorandum**

**From:** Chairman Thomas A. Beilein  
2013

**Date:** March 25,

**Access Number:**

**To:** Jim Lawrence  
Michael Donegan  
Richard Kinney

**Sender:** Michael K. Stafford, Correction Administrator

**Agency:** Oswego County Correctional Facility

**Date Original Received:** 3/25/13

**Re:** Variance 01V14 Female Unit

**Document Description:** Variance Application

**Chairman's Comments:**

**Routing Information**

Regional Supervisor: Moran

CC:



Name of Facility: Putnam County

Variance # 08-V-08

New:  Renewal: 

Relief from Standard: 7040

Application by: Sheriff Donald Smith

Date Request Rec: 04/2013

Last Approved: 11/2012

Length of Approval: 6 Months

Expiration: 6/1/2013

Write-up Prepared by: Elisha Hamilton

Recommendation by Field Staff: Approve

Recommendation at Briefing:

Final Recommendation:

**SUMMARY OF VARIANCE REQUEST**

Sheriff Smith is requesting an extension of this variance which authorizes the county to house an additional four (4) inmates in the day space of the North Housing Unit. This allows the facility to have an area to house inmates in the event of local population spike.

**VARIANCE HISTORY**

2012	Recommendation: Action Taken Length of variance Conditions, if changed	Approval Approved at 11/12 meeting 6 Months
2011	Recommendation: Action Taken Length of variance Conditions, if changed	Approval Approved at 11/11 meeting 1 year
2010	Recommendation: Action Taken Length of variance Conditions, if changed	Approval Approved at 11/10 meeting 1 year
2009	Recommendation: Action Taken Length of variance Conditions, if changed	Approval Approved at 11/09 meeting 1 year

**CONSTRUCTION/RENOVATION PLANS**

None at this time but the county has had some dialogue with an architect about developing and revising plans to address female housing units.

**OTHER VARIANCES IN EFFECT**

03-V-01





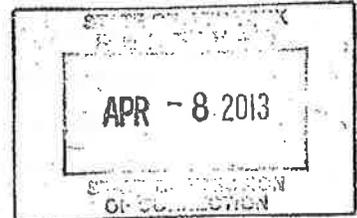
New York State  
 Commission of Correction  
 80 Wolf Road  
 Albany, New York 12205  
 518-485-2465  
 518-485-2467 (Fax)

New: \_\_\_\_\_  
 Renewal: \_\_\_\_\_  
 Var. #: \_\_\_\_\_

(SCOC USE ONLY)

Thomas Beilein  
 Chairman

Variance Application Form NORTH2



INSTRUCTIONS TO SHERIFF OR CHIEF ADMINISTRATIVE OFFICER:

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and mail or fax this form Attn: Chairman/Commissioner to the address or fax number listed above.

Facility: Putnam County Correction Facility

Person requesting: Donald B. Smith  
 (Sheriff)

(A) State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested: Example: 7040.3 states that, the total number of inmates confined within each correctional facility shall not exceed the maximum facility capacity of such facility. To request a variance to house additional inmates within the facility the citation should be listed as:

Ex. Part: 7040 Section: 3 Subdivision: n/a

Standard for which the variance is requested:

Part: 7040 Section: 3 Subdivision: n/a

(B) In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. (Include or attach any relevant supporting documentation)

No alternative has been found within the correctional facility. The opening of an un-staffed housing unit, on overtime, for the housing of overflow inmates is the only option in the short term, prior to finding other suitable housing. The ability to have a flexible housing alternative in the correctional facility, during off business hours, would greatly enhance our ability to maintain the inmate population in the proper security & supervision.

(C) In the space provided below include a detailed description regarding why this variance is necessary. (Include or attach any relevant supporting documentation)

The female and male inmate average daily population (ADP) has fluctuated and steadily increased. During the past year, both populations have remained at their highest levels, 15 and 113, respectively. This increase has had a severe impact on the operations of the general population housing units, as they have reached or exceeded 98 % capacity. This additional bed space in this housing unit would allow for the flexibility, during normal business hours, to manage the increases and fluctuations of inmate population properly prior to finding a long term solution. The cost of boarding out inmates has caused a financial hardship on the county budget.

(D) Provide the amount of time for which the variance is requested, if applicable

Days                      Weeks                      12 Months

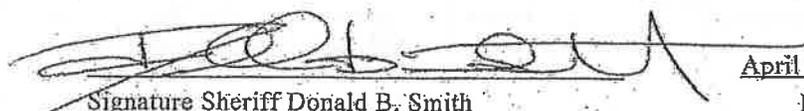
(E) If this variance request is approved, what plans, provisions and timetables are in place for achieving full compliance with the Minimum Standard at issue such as adding to the MFC, etc. (Use additional sheets to provide additional supporting documentation, if necessary)

Reassign inmate housing and evaluate the feasibility of short term boarding out of inmates.  
Continue dialogue with the County Executive and the County Legislature regarding the increased populations and set a long term plan to alleviate the lack of bed space. A Legislative meeting is tentatively planned for May 2013.



(G) Has this variance been previously approved?

YES. If yes, include the variance number 08-V-08

  
Signature Sheriff Donald B. Smith      April 1, 2013  
Date

Additional copies of this form can be obtained by contacting the Commission, or online at [www.scoc.state.ny.us](http://www.scoc.state.ny.us). Click on table of contents, Commission Forms, Request for a Variance (Formal application statement).

(SCOC Form #V-1)  
(07/06)

Name of Facility: Putnam County Jail

Variance # 03-V-01

New:  Renewal:

Relief from Standard: 7040

Application by: Sheriff Donald Smith

Date Request Rec: 4/2013

Last Approved: 11/2012

Length of Approval: 6 Months

Expiration: 6/01/2013

Write-up Prepared by: Elisha Hamilton

Recommendation by Field Staff: Approve

Recommendation at Briefing:

Final Recommendation:

**SUMMARY OF VARIANCE REQUEST**

Sheriff Smith is requesting an extension of this variance which authorizes the county to house an additional four (4) female inmates in the day space of the South Housing Unit. This is a continuation from a previous variance.

**VARIANCE HISTORY**

2012	Recommendation: Action Taken Length of variance Conditions, if changed	Approval Approved at 11/12 meeting 6 Months
2011	Recommendation: Action Taken Length of variance Conditions, if changed	Approval Approved at 11/11 meeting 1 year
2010	Recommendation: Action Taken Length of variance Conditions, if changed	Approval Approved at 11/10 meeting 1 year
2009	Recommendation: Action Taken Length of variance Conditions, if changed	Approval Approved at 11/09 meeting 1 year
2008	Recommendation Action Taken Length of Variance Conditions, if changed	Approval Approved at 11/08 meeting 1 year
2007	Recommendation Action Taken Length of Variance Conditions, if changed	None

SCOC VARIANCE WRITE-UP FORM: EFFECTIVE JANUARY 2010

2005 Recommendation Approval  
Action Taken Approved at 7/05 Meeting  
Length of Variance 1 year  
Conditions, if changed

2004 - Recommendation Approval  
Action Taken Approved at 07/13/04 Meeting  
Length of Variance 1 year  
Conditions, if changed from first variance: SAME

2003 - Recommendation Approval  
Action Taken Approved at 07/15/03  
Length of Variance 1-year  
Conditions, if changed from first variance: SAME

2003 - Recommendation Approval  
Action Taken Approved at 01/14/03  
Length of Variance 6 months

**CONSTRUCTION/RENOVATION PLANS**

None at this time but the county has had some dialogue with an architect about developing and revising plans to address female housing units.

**OTHER VARIANCES IN EFFECT**

08-V-08

**STAFF INFORMATION AFTER SITE VISIT (DATE OF LAST VISIT TO FACILITY):**

8/30/2012

**DATE OF LAST CYCLE VISIT THAT STANDARD VIOLATIONS WERE IDENTIFIED:**

8/30/2012

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

Administrative segregation pending a disciplinary hearing is not done on a case by case basis. Inmates are not consistently separated by their classification designation.

**ANY VIOLATIONS WHICH PERTAIN TO THE VARIANCE'S CONDITIONS:**

None

**JUSTIFICATION FOR WHY VARIANCE SHOULD OR SHOULD NOT BE EXTENDED:**

This allows the facility to have overflow housing if they experience a spike in their local population.

**RECOMMENDED CONDITIONS IF APPROVED**

1. The county would be authorized to house an additional four (4) female inmates in the day space

of the South Housing Unit.

Housing Area	MFC	Increase	Total
South Housing Unit	4	4	8

- 2. The facility would be allowed to house four (4) inmates in the day space of the South Housing Unit.
- 3. Inmates housed in the above-noted areas must be provided with a bunk to be used as a bed.
- 4. "Active supervision" must be provided on a 24-hour basis, pursuant to 9NYCRR Section 7003.2(c) when inmates are housed in any of the above noted areas.
- 5. Inmates housed in these areas receive the same services and programs as the general population.

REVIEWED BY REGIONAL SUPERVISOR:

*WS*  
*Re*

DATE:

*4/22/13*  
*4/29/13*

OFFICIAL USE ONLY:

NOTES OF MEETING: \_\_\_\_\_



New York State  
 Commission of Correction  
 80 Wolf Road  
 Albany, New York 12205  
 518-485-2465  
 518-485-2467 (Fax)

New: \_\_\_\_\_

Renewal: \_\_\_\_\_

Var. #: \_\_\_\_\_

(SCOC USE ONLY)

Thomas Beilein  
 Chairman

Variance Application Form SOUTH

INSTRUCTIONS TO SHERIFF OR CHIEF ADMINISTRATIVE OFFICER:

Pursuant to New York State Minimum Standards Part 7050, Variances, please complete all portions of this form and mail or fax this form Attn: Chairman/Commissioner to the address or fax number listed above.

Facility: Putnam County Correction Facility

Person requesting: Donald B. Smith  
 (Sheriff)

(A) State the specific part, section and subdivision of New York State Minimum Standards for which the variance is requested: Example: 7040.3 states that, the total number of inmates confined within each correctional facility shall not exceed the maximum facility capacity of such facility. To request a variance to house additional inmates within the facility the citation should be listed as:

Ex. Part: 7040 Section: 3 Subdivision: n/a

Standard for which the variance is requested:

Part: 7040 Section: 3 Subdivision: n/a

(B) In the space provided below include specific plans fully explaining and supporting the alternative manner of compliance. If you are requesting a modification to an existing variance please include that information in the area below as well. (Include or attach any relevant supporting documentation)

The alternative for the housing of female inmates within the correctional facility is the opening of a second housing unit which requires overtime. This option is not feasible, for long term housing, due to the cost of manning the housing unit on an overtime basis. Additionally, this would add more housing unit assignments and burden the staff with forced overtime. This second housing unit would, at times, be opened for only one or two female inmates at an overtime cost, as a temporary solution.

(C) In the space provided below include a detailed description regarding why this variance is necessary. (Include or attach any relevant supporting documentation)

The female inmate average daily population (ADP) has averaged 17 for the past two years. However, during the past years the ADP has fluctuated between 12 and 25. This is an increase that has a severe impact on the operations of the unit, as the female housing unit has only eight (8) cells. Furthermore, when there is a minor female inmate in the unit the available cells for adults is further reduced. Once the adult population reaches 6 the female housing unit is near the commonly accepted operating capacity. The cost of boarding out female inmates continues to increase and impact the county budget.

(D) Provide the amount of time for which the variance is requested, if applicable:

Days                      Weeks                      12 Months

(F) If this variance request is approved, what plans, provisions and timetables are in place for achieving full compliance with the Minimum Standard at issue such as adding to the MFC, etc. (Use additional sheets to provide additional supporting documentation, if necessary)

The renovation and expansion of the female housing unit is under review. There has been dialogue with an architect in developing and revising plans that fit the tight foot print of the Correction Facility property. As the plans are revised components identified as critical have been addressed. There have been recent tours of the housing unit by the County Legislature. The Chairmen of the Protective Services Committee plans to schedule a hearing in April 2013.



(G) Has this variance been previously approved?

Yes XX If yes, include the variance number 03-V-01

  
Signature Sheriff Donald B. Smith

April 8, 2013

Date

Additional copies of this form can be obtained by contacting the Commission, or online at [www.scoc.state.ny.us](http://www.scoc.state.ny.us). Click on table of contents, Commission Forms, Request for a Variance (Formal application statement).

(SCOC Form #V-1)  
(07/06)



Name of Facility: Saratoga County Jail

Variance # 08-V-05

New:  Renewal: 

Relief from Standard: 7040

Application by: Sheriff James Bowen

Date Request Rec: May 21, 2012

Last Approved: 6/19/12 Length of Approval: 6 months Expiration: 1/1/13

Write-up Prepared by: Deane McGeary

Recommendation by Field Staff: Approve for 1 year

Recommendation at Briefing:

Final Recommendation:

**SUMMARY OF VARIANCE REQUEST**

Sheriff Bowen is requesting relief from Part 7040 by reinstating double ceiling in the following areas and increasing double ceiling to 8 beds in A Pod, Unit 2:

Housing Area	Current Capacity	Revised
A Pod Unit 1 (Cells 137-144)	32	40
A Pod Unit 2 (Cells 125-128)	16	20
B Pod Unit 1* (Cells 105-116)	48	60
Total	96	120

**VARIANCE HISTORY**

October 2008 - Approved 6 months  
 April 2009 - Approved 12 months  
 April 2010 - Approved 12 months  
 April 2011 - Approved 12 months  
 June 2012 - Approved 6 Months

**CONSTRUCTION/RENOVATION PLANS**

N/A

**OTHER VARIANCES IN EFFECT**

N/A

**STAFF INFORMATION AFTER SITE VISIT (DATE OF LAST VISIT TO FACILITY):**

4/18/13

**DATE OF LAST CYCLE VISIT THAT STANDARD VIOLATIONS WERE IDENTIFIED:**

10/17, 10/18/12

**ANY OPEN MINIMUM STANDARD VIOLATIONS:**

Section 7003.9(c) Key Control

Section 7003.9(e) Key control

**ANY VIOLATIONS WHICH PERTAIN TO THE VARIANCE'S CONDITIONS:**

N/A

**JUSTIFICATION FOR WHY VARIANCE SHOULD OR SHOULD NOT BE EXTENDED:**

The facility is well managed and operated.

The Commission of Correction has not received any grievance appeals relating to double celling.

The facility has not used variance beds to generate any revenue in the past.

There have been no incidents related to double-celling since inception of this variance.

Review of population trend data for the period 1/1/13-5/1/13 shows an average of 179 inmates per day which 19 inmates higher than the 5/1/08 through 5/1/13 average.

The female population has risen to as high as 29. The facility has sustained an average female population, this year that is 29% higher than the average between 5/1/08 and 5/6/13. This has impacted facility operations by requiring occupation of two housing areas, A2 and A4 for females thereby leaving one fewer housing area to house males. Having this variance ensures that both the female and male populations are properly separated according to their security classifications.

Since 1/1/13, the facility has had to operate above 90% capacity 65 days and over 85% 107 days.

Based on an 80% occupancy rate, the operational capacity of the facility is 166. This variance would permit the operational capacity to increase up to 186.

**RECOMMENDED CONDITIONS IF APPROVED**

1) The County is authorized to double-cell in the following areas only.

Housing Area	Current Capacity	Revised
A Pod Unit 1 (Cells 137-144)	32	40
A Pod Unit 2 (Cells 125-128)	16	20
B Pod Unit 1 (Cells 105-116)	48	60
<b>Total</b>	<b>96</b>	<b>120</b>

2) That "active supervision" must be maintained in all housing areas. Minimum Standards section 7003.2(c) defines active supervision as the immediate availability to prisoners or facility staff responsible for the care and custody of such prisoners which shall include:

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

3) That the facility shall not double cell inmates that fall into the following categories:

- (a) pending completion of classification
- (b) punitive segregation
- (c) administrative segregation

4) That inmates housed in these areas receive the same services and programs as the general population.

5) That inmates shall not be double-celled for a period of more than sixty (60) days; however, a mechanism may be put in place to allow inmates to volunteer to remain in a double-cell for a period of more than sixty (60) days. A waiver shall be completed and signed by the inmate if he or she agrees to be double-celled for more than sixty (60) days. This waiver shall be re-evaluated and a new waiver completed every thirty (30) days for the duration of the double-celled period

6) That Commission staff will monitor the effects of the double-celling program on staff and inmates as well as the general operation of the facility.

7) That the facility will maintain information on all double-cell inmates which shall include, but is not limited to:

- (a) name and location of the inmate;
- (b) date of entrance into and release from double-celling; and

- (c) reason for release
- (d) substantiation of eligibility criteria, (e.g. classification instrument)
- (e) 30 day voluntary waivers

These records shall be made available to Commission staff for inspection.

8) That the facility shall monitor its double-celling plan by tracking rates of incidents, grievance, and complaints directly related to double-celling. This documentation shall be made available to Commission staff for inspection.

9) That the county shall implement its double-celling proposal according to the Commission's Double-Celling Guidelines for Local Correctional Facility Variances to Part 7040.

10) The county will not exceed the rated MFC for the purpose of boarding inmates.

REVIEWED BY REGIONAL SUPERVISOR:

*Tm*

DATE:

*5/6/13*

REVIEWED BY DEPUTY DIRECTOR:

DATE:

---

**OFFICIAL USE ONLY:**

NOTES OF MEETING: \_\_\_\_\_

JAMES D. BOWEN  
Sheriff

MICHEAL T. WOODCOCK  
UnderSheriff

# Office of the Sheriff

SARATOGA COUNTY  
6010 COUNTY FARM ROAD  
BALLSTON SPA, NEW YORK 12020  
518-885-2450  
518-885-2453 (Fax)

Records & Pistol Permits  
885-2467  
Civil Office  
885-2469  
Correction  
885-2480

March 27, 2013



Chairman Thomas A. Beilein  
New York State Commission of Correction  
Alfred E. Smith State Office Building  
80 South Swan Street, 12<sup>th</sup> Floor  
Albany, New York 12210-8001

RE: Extension of Variance #08-V-05

Dear Chairman Beilein:

The Saratoga County Sheriff's Office respectfully requests an extension of variance #08-V-05. The extension being requested would cover a period of one year from the date that the current variance expires.

The extension of variance #08-V-05, is being requested to ensure the facility has sufficient housing to properly classify inmates and handle any increase of inmate population that may occur.

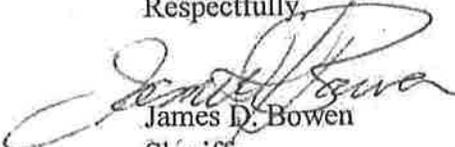
If the request for the variance extension is approved, The Saratoga County Sheriff's Office will continue to comply with the current terms and conditions, as listed in the variance, during the period of time covering the variance extension. This includes:

- 1) The county is authorized to double-cell inmates in the following area:

<u>Housing Unit</u>	<u>Rated Capacity</u>	<u>Continued Increase</u>	<u>Revised Capacity</u>
A Pod Unit 1 (Cells 137-144)	32	08	40
A Pod Unit 2 (Cells 125-128)	16	04	20
B Pod Unit 1 (Cells 105-116)	48	12	60
Total	96	24	120

Thank you for your consideration and attention to this matter. If you should have any questions regarding this matter, please contact me.

Respectfully,

  
James D. Bowen  
Sheriff



Amendment to Facility MFC

Facility: Washington County

Date of Site Visit:

2/22/2013  
ec

Name of Person Who Conducted the Last Site Visit to Facility:

Robert Cuttita and Steve Savoy

Date of Last MFC report

2004

Update on Capital Construction Project:

N/A

Summary of amendment(s) to current MFC

Request to add 4 beds to the female housing area

Recommendation/Comments:

During a tour of the facility we discussed many issues one of which was the female housing area. The Sheriff stated they had to board out the females. One option I gave them was to move the entire female housing unit to another location within the jail that allowed for more separation to comply with classification. This option was not the greatest at the time as it would have lowered their available male beds as there are not enough females to fill any of the other pods. As we visited the female housing area there are only two separations. The Female unit current is a large dorm along with individual cells with and a sub day room. The Commission approved this configuration in the original plans? The current housing unit has a room in it that was labeled a multipurpose room. This room once had a ping pong table in it and books. They have removed all of the items and it is now an empty room.

I have been dealing with the jail administrator and the sheriff on this issue. I researched the housing area, reviewed the original plans in the commission office and gave them my advice. The first option was to put in a shower and a toilet in that area to allow for another day room. This would allow for greater flexibility with the female population. Currently there is no way to get water and sewer to the location. The Second option was to increase the day space area remove the door and allow for more female housing. They contacted me and stated they have on occasion had to board out female inmates due to a lack of space. I told them they needed to submit for an MFC change and I would look into it and work with them.

This is good housing space, I have already worked out the toilet, sink and shower ratios and have worked with them on the beginning of proper classification for the female population. Along with this they are in the future researching the possibility to put in three additional individual cells in another area of the female housing unit which I am currently discussing with them. Recommend Approval.

NOTE Re TOTAL MFC Goes From 179 TO 183 + 4 beds IN Female Housing ec



Approve:   X  

Amended Capacity: \_\_\_\_\_

No Recommendation: \_\_\_\_\_  
(Check One)

Submitted by CFS Staff:

Robert Cuttita 

Date: 5/6/2013

Reviewed by Regional Supervisor:

Steve Savoy 

Date: 5/7/13

Reviewed by Facility Planning:

\_\_\_\_\_ 

Date: \_\_\_\_\_

Reviewed by Deputy Director:

\_\_\_\_\_ 

Date: 5/14/13



**NEW YORK STATE  
COMMISSION OF CORRECTION**



**May 2013**

**MAXIMUM FACILITY CAPACITY**

**for  
Washington County Jail  
in  
Fort Edward, New York**

**Thomas A. Beilein**

*Chairman*

**Phyllis Harrison-Ross, M.D.**

*Commissioner*



**NOTE: ONLY INDIVIDUAL HOUSING UNITS AND MULTIPLE OCCUPANCY HOUSING UNITS WHICH MEET THE FOLLOWING REQUIREMENTS PURSUANT TO 9 NYCRR PART 7040 ARE TO BE INCLUDED IN THIS CAPACITY FORMULATION.**

**INDIVIDUAL OCCUPANCY HOUSING UNITS:**

1. Each such unit shall only house 1 inmate and contain at least 60 square feet of floor space.
2. Each such unit shall contain:  
1 bed and mattress;  
1 functioning toilet; and  
1 functioning sink.
3. At least 1 functioning shower shall be available for each tier/section of such units.

**EXCEPTIONS:**

1. A unit may contain less than 60 square feet of floor space if such unit was originally constructed for single occupancy or rated for single occupancy by the Commission of Correction prior to the effective date Part 7040, September 13, 1989.
2. Each such unit used to house inmates apart from general population for the purpose of medical observation or treatment shall have a minimum of 80 square feet of floor space.
3. Required equipment (bed, mattress, toilet, sink) may be modified or excluded for 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.

**MULTIPLE OCCUPANCY HOUSING UNITS:**

1. Each such unit shall provide a minimum of 50 square feet of floor space per inmate in the sleeping area.
2. Each such unit shall house no more than 60 inmates.
3. Each such unit shall have a bed and mattress for each inmate.
4. Each such unit shall have at least:  
1 functioning toilet for every 12 inmates;  
1 functioning shower for every 15 inmates; and  
1 functioning sink for every 12 inmates.
5. Each such unit shall provide a minimum of 25 square feet of dayroom space immediately adjacent and accessible to the sleeping area.



**I. A. INDIVIDUAL OCCUPANCY HOUSING UNITS USED FOR GENERAL HOUSING**

<b>Name of Housing Area/Section</b>	<b>Number of Individual Housing Units</b>	<b>Total Size of Unit (Sq. Ft. of Floor Space)</b>	<b># of Shower Available per Section</b>	<b>Proposed Inmate Capacity</b>
A Pod – (female)	4	100Sq. Ft	1	3
B Pod -	40	100 Sq. Ft	6	30
D Pod	40	100 Sq. Ft	6	30

**GENERAL HOUSING INDIVIDUAL OCCUPANCY UNIT TOTAL: 63**



I. B. INDIVIDUAL OCCUPANCY HOUSING UNITS USED FOR SPECIAL HOUSING

Name of Housing Area/Section	Purpose/ Type of Special Housing	Number of Individual Housing Units	Total Size of Unit (Sq. Ft. of Floor Space)	# of Showers Available per Section	Maximum Inmate Capacity
C3	Punitive / Segregation	10	9 @ 100 Sq. Ft 1 @ 91 Sq. Ft	1	10
E 174 Booking cell	Constant Supervision	1	88 Sq. Ft.	1	1

**SPECIAL HOUSING INDIVIDUAL OCCUPANCY UNIT TOTAL: 11**



II. A. MULTIPLE OCCUPANCY HOUSING UNITS USED FOR GENERAL HOUSING

Name of Housing Area/Section	Number of Toilets	Number of Sinks	# of Showers Available per Section	Total Size of Unit (Sq. Ft. of Floor Space)	Maximum Inmate Capacity
A Dorm - Female	3	3	2	1493 Sq. Ft	24
C1 Dorm	1	1	1	695 Sq. Ft	9
C2 Dorm	1	1	1	785 Sq. Ft	10
C4 Dorm	2	2	2	2316 Sq. Ft	24
A Pod Cell's # 2 double cell	1	1	2	100 sq. Ft	2
B Pod Cell's 11-20	1	1	6	100 Sq. Ft. Per Cell	20
D Pod Cell's 11-20	1	1	6	100 Sq. Ft. Per Cell	20

**MULTIPLE OCCUPANCY HOUSING UNITS USED FOR GENERAL HOUSING TOTAL: 109**



**II. B. MULTIPLE OCCUPANCY HOUSING UNITS USED FOR SPECIAL HOUSING**

<b>Name of Housing Area/Section</b>	<b>Number of Toilets</b>	<b>Number of Sinks</b>	<b>Number of Showers Available per Section</b>	<b>Total Size of Unit (Sq. Ft. of Floor Space)</b>	<b>Maximum Inmate Capacity</b>
N/A					

**GENERAL HOUSING MULTIPLE OCCUPANCY UNIT TOTAL: 0**



### III. A. NON-STANDARD HOUSING

NOTE: For all Non-Standard Housing cells/holding tanks, the facility shall limit individual occupancy holding to 12 hours, and multiple occupancy holding for 4 hours.

Name of Housing Area/Section	Number of Toilets	Number of Sinks	Total Size of Unit (Sq. Ft. of Floor Space)	Description of use (limit as to use, time frame, etc.)
E170	1	1	100 sq. ft.	The facility shall limit individual occupancy holding to 12 hours. Multiple occupancy holding shall be limited to four (4) hours. When utilized for holding the facility may hold up to six (7) inmates in this cell.
E169	1	1	100 sq. ft.	The facility shall limit individual occupancy holding to 12 hours. Multiple occupancy holding shall be limited to four (4) hours. When utilized for holding the facility may hold up to five (7) inmates in this cell.
E165	1	1	170 sq. ft.	The facility shall limit individual occupancy holding to 12 hours. Multiple occupancy holding shall be limited to four (4) hours. When utilized for holding the facility may hold up to four (11) inmates in this cell.

**This housing may be used only for the type of housing, or for the durations shown, as listed in the right hand column. Any other use is prohibited. This housing is non-standard and will not be added to the MFC.**



HOUSING TYPE	TOTALS
Subtotal Individual Housing Units Used for General Housing:	63
Subtotal Individual Housing Units Used for Special Housing:	11
Subtotal Multiple Housing Units Used for General Housing:	109
Subtotal Multiple Housing Units Used for Special Housing:	
<b>MAXIMUM FACILITY CAPACITY:</b>	<b>183</b>

Other identified housing areas not on Max. Facility Capacity      **Yes ( X ) No ( )**

The above-noted capacity is based upon 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 9 NYCRR Chapter IV which are related to facility capacity.

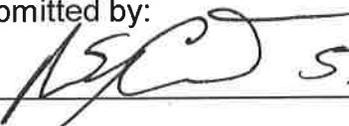
\_\_\_\_\_ Adjustments have not been made based on the facility's ability to provide required programs and services and to comply with other rules and regulations of 9 NYCRR Chapter IV which are related to facility capacity.

\_\_\_\_\_ Adjustments have been made based on the facility's ability to provide required programs and services and to comply with other rules and regulations of 9 NYCRR Chapter IV which are related to facility capacity. (Explain below.)

**COMMENTS:**

To the best of my knowledge all information contained in this formulation is correct.

Submitted by:

 5/7/13

(Preparer's Signature and Title, and Date)

Approved by:

 5/07/13

(Signature Title and Date)



**New York State Commission of Correction  
Chairman Thomas A. Beilein**

**Memorandum**

**From:** Chairman Thomas A. Beilein  
2013

*TAB*

**Date:** April 17,

**Access Number:**

**To:** Jim Lawrence  
Michael Donegan  
Richard Kinney

**Sender:** Sheriff Jeffery Murphy

**Agency:** Washington County Sheriff's Office

**Date Original Received:** 4/15/13

**Re:** Request to increase MFC

**Document Description:** Letter

**Chairman's Comments:**

**Routing Information**

Regional Supervisor: Savoy

CC:





OFFICE OF THE SHERIFF  
WASHINGTON COUNTY NEW YORK

Jeffrey J. Murphy  
Sheriff

John A. Winchell  
Undersheriff

*"Community First"*

Administrative Office Division  
399 Broadway  
Fort Edward, NY 12828  
Voice (518) 746-2475  
Fax (518) 746-2483

Law Enforcement Division  
399 Broadway  
Fort Edward, NY 12828  
Voice (518) 746-2475  
Fax (518) 746-2483

Corrections  
399 Broadway  
Fort Edward, NY 12828  
Voice (518) 746-2476  
Fax (518) 746-2484

Civil Division  
399 Broadway  
Fort Edward, NY 12828  
Voice (518) 746-2477  
Fax (518) 746-2385

Salem Substation  
State Route 22  
Salem, New York 12865  
Voice (518) 854-7488  
Fax (518) 854-2303

April 15, 2013

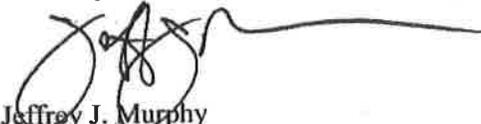
Thomas Beilein, Chairman  
Alfred E. Smith State Office Building  
80 So. Swan Street, 12<sup>th</sup> Floor  
Albany, NY 12210

Dear Chairman Beilein:

Please consider this letter as our request to increase the maximum facility capacity of our female unit, which now houses a maximum of 25 females. Our intent is to utilize the multi-purpose room (see attached), which will allow an addition of two bunk beds and increase the unit maximum capacity to 29. If our request is approved, the door will be removed and additional cameras will be installed.

Thank you for your consideration in this matter.

Sincerely,



Jeffrey J. Murphy  
Sheriff

JJM/kkh  
Enclosures







New York State Commission of Correction  
 DAILY POPULATION COUNT REPORTING SYSTEM  
 AVERAGE DAILY COUNTS / HIGHS / LOWS

Facility: Washington County Jail

DATE RANGE: 5/1/11 thru 5/6/13

	Unsentenced	Sentenced	Unarraigned	Civil	Federal	Totals
<b>Adult Male</b>	AVG: 58.58 HI: 94.00 06/17/12 LOW: 31.00 06/02/11	AVG: 19.07 HI: 31.00 07/23/11 LOW: 9.00 01/02/13	AVG: 0.01 HI: 10.00 09/05/12 LOW: 0.00 00/00/00	AVG: 1.92 HI: 11.00 09/24/12 LOW: 0.00 12/06/12	AVG: 5.79 HI: 21.00 01/06/13 LOW: 0.00 09/24/12	AVG: 85.36 HI: 118.00 06/16/12 LOW: 58.00 06/02/11
<b>Adult Female</b>	AVG: 10.71 HI: 20.00 03/03/13 LOW: 5.00 05/24/12	AVG: 4.33 HI: 10.00 04/07/12 LOW: 1.00 11/13/12	AVG: 0.00 HI: 1.00 09/05/12 LOW: 0.00 00/00/00	AVG: 0.32 HI: 2.00 04/05/12 LOW: 0.00 00/00/00	AVG: 0.33 HI: 3.00 04/11/13 LOW: 0.00 00/00/00	AVG: 15.68 HI: 24.00 02/24/13 LOW: 8.00 10/04/11
<b>Minor Male</b>	AVG: 3.25 HI: 9.00 10/03/11 LOW: 0.00 05/30/12	AVG: 1.42 HI: 4.00 11/03/11 LOW: 0.00 04/17/13	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 4.67 HI: 12.00 10/02/11 LOW: 0.00 05/08/12
<b>Minor Female</b>	AVG: 0.66 HI: 3.00 11/19/11 LOW: 0.00 03/31/13	AVG: 0.14 HI: 2.00 07/19/12 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.00 HI: 1.00 06/28/11 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.80 HI: 3.00 07/15/12 LOW: 0.00 03/31/13
<b>Total</b>	AVG: 73.19 HI: 110.00 06/17/12 LOW: 40.00 06/02/11	AVG: 24.96 HI: 39.00 07/23/11 LOW: 13.00 01/03/13	AVG: 0.01 HI: 11.00 09/05/12 LOW: 0.00 00/00/00	AVG: 2.23 HI: 12.00 09/24/12 LOW: 0.00 12/06/12	AVG: 6.11 HI: 22.00 01/06/13 LOW: 0.00 09/24/12	AVG: 106.52 HI: 141.00 06/16/12 LOW: 72.00 06/02/11



**New York State Commission of Correction**  
**DAILY POPULATION COUNT REPORTING SYSTEM**  
**AVERAGE DAILY COUNTS / HIGHS / LOWS**

Facility: Washington County Jail

DATE RANGE: 5/1/11 thru 5/6/13

	Coram Nobis	D and E Felons	State Readies	Convicted Felons	Parole Violators	New Arrests w/Parole Warrant
<b>Adult Male</b>	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 4.28 HI: 10.00 12/22/11 LOW: 2.00 02/15/13	AVG: 2.09 HI: 8.00 04/23/12 LOW: 0.00 00/00/00	AVG: 0.01 HI: 3.00 03/24/13 LOW: 0.00 00/00/00	AVG: 7.18 HI: 14.00 02/04/13 LOW: 0.00 03/24/13	AVG: 1.73 HI: 13.00 11/05/12 LOW: 0.00 03/24/13
<b>Adult Female</b>	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.77 HI: 3.00 04/12/12 LOW: 0.00 04/11/13	AVG: 0.40 HI: 6.00 03/24/13 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 1.23 HI: 6.00 04/08/13 LOW: 0.00 03/24/13	AVG: 0.05 HI: 1.00 11/05/12 LOW: 0.00 00/00/00
<b>Minor Male</b>	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.32 HI: 2.00 03/24/13 LOW: 0.00 00/00/00	AVG: 0.11 HI: 2.00 03/27/13 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.29 HI: 1.00 11/26/12 LOW: 0.00 00/00/00	AVG: 0.00 HI: 2.00 11/05/12 LOW: 0.00 00/00/00
<b>Minor Female</b>	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.00 HI: 1.00 10/22/11 LOW: 0.00 00/00/00	AVG: 0.00 HI: 1.00 08/21/11 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00
<b>Total</b>	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 5.37 HI: 12.00 12/29/11 LOW: 2.00 02/15/13	AVG: 2.60 HI: 11.00 03/24/13 LOW: 0.00 00/00/00	AVG: 0.01 HI: 3.00 03/24/13 LOW: 0.00 00/00/00	AVG: 8.70 HI: 17.00 02/28/13 LOW: 0.00 03/24/13	AVG: 1.78 HI: 16.00 11/05/12 LOW: 0.00 03/24/13



**New York State Commission of Correction**  
**DAILY POPULATION COUNT REPORTING SYSTEM**  
**AVERAGE DAILY COUNTS / HIGHS / LOWS**

Facility: Washington County Jail

DATE RANGE: 5/1/11 thru 5/6/13

	Intermittents	Boarded In	Boarded Out	Out To Hospital	Out To Mental Hygiene	Out To Other
<b>Adult Male</b>	AVG: 0.51 HI: 5.00 01/05/12 LOW: 0.00 05/02/13	AVG: 8.35 HI: 37.00 07/31/12 LOW: 0.00 04/15/13	AVG: 0.02 HI: 1.00 05/18/12 LOW: 0.00 00/00/00	AVG: 0.10 HI: 4.00 05/12/11 LOW: 0.00 00/00/00	AVG: 0.15 HI: 2.00 05/02/11 LOW: 0.00 00/00/00	AVG: 2.89 HI: 7.00 05/05/13 LOW: 0.00 05/19/12
<b>Adult Female</b>	AVG: 0.07 HI: 4.00 01/05/12 LOW: 0.00 00/00/00	AVG: 2.14 HI: 10.00 07/04/12 LOW: 0.00 00/00/00	AVG: 0.05 HI: 2.00 03/17/13 LOW: 0.00 00/00/00	AVG: 0.01 HI: 1.00 01/03/13 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.82 HI: 4.00 04/25/12 LOW: 0.00 04/25/13
<b>Minor Male</b>	AVG: 0.00 HI: 1.00 09/08/12 LOW: 0.00 00/00/00	AVG: 0.54 HI: 5.00 08/01/12 LOW: 0.00 00/00/00	AVG: 0.02 HI: 1.00 10/23/12 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.28 HI: 2.00 05/05/13 LOW: 0.00 02/20/13
<b>Minor Female</b>	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.03 HI: 1.00 11/19/11 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00	AVG: 0.00 HI: 0.00 00/00/00 LOW: 0.00 00/00/00
<b>Total</b>	AVG: 0.58 HI: 9.00 01/05/12 LOW: 0.00 05/02/13	AVG: 11.06 HI: 50.00 07/31/12 LOW: 0.00 04/15/13	AVG: 0.09 HI: 2.00 03/17/13 LOW: 0.00 00/00/00	AVG: 0.12 HI: 4.00 05/12/11 LOW: 0.00 00/00/00	AVG: 0.15 HI: 2.00 05/02/11 LOW: 0.00 00/00/00	AVG: 3.99 HI: 10.00 05/05/13 LOW: 0.00 05/15/12



## Notice of Adoption

Correction, State Commission of  
(SUBMITTING AGENCY)

- This adoption will amend the NYCRR.  
 This adoption will not amend the NYCRR.

**NOTE:** Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

1. *Action taken:*

Amendment of section 7031.4 of Title 9 NYCRR.

"X" box if the rule was originally proposed as a consensus rule making.

2. *Effective date of rule:*

Date this notice is published in the *State Register*.

This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:

Date of filing.

Other date (*specify*): \_\_\_\_\_

Other date (*specify*): \_\_\_\_\_

\_\_\_ days after filing.

3. *Statutory authority under which the rule was adopted:*

Correction Law sections 45(6) and 45(15).

4. *Subject of the rule:*

Inmate access to legal reference materials.

5. *Purpose of the rule:*

To eliminate the requirement that law libraries be maintained within a local correctional facility.

6. *Terms and identification of rule :*A. I.D. No. of original notice of **proposed** or **emergency/proposed** rule making: CMC-14-13-00010 - P

B. Comparison of the proposed rule to the adopted rule (CHECK ALL THAT APPLY):

 No changes were made to the proposed rule.

• Do NOT attach the text of the previously published rule. If the last previously published RIS, RFA, RAFA or JIS remain adequate and do not require correction, SKIP ITEMS 9-12 and do NOT attach any such statements. If any of the most recently published statements were deemed inadequate or required correction, complete Item 9, 10, 11, or 12 as applicable, do NOT attach previously published statements. Be sure to complete C, if applicable, as well as remaining Items 7-8 and 13-14.

 Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:

• Attach the original of the text as adopted (if proposed as full text, submit full text; if proposed as a summary, submit a summary) typed in scannable format. Do not skip Items 9-12; revised statements or explanatory statements are required.

Text attached.

Summary attached.

 This is a "rate making" as defined in SAPA §102(2)(a)(ii) and, pursuant to SAPA §202(7)(b), the agency elected to submit an original copy of a description of the substance. Substantial revisions were made in the following Parts, sections, subdivisions or paragraphs:

C. List the publication date and I.D. No. of any previously published notice(s) of revised rule making:

Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_

Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_

7. *The text of the final rule and any required statements and analyses may be obtained from:*Agency contact Brian M. Callahan, Associate AttorneyAgency name New York State Commission of CorrectionOffice address Alfred E. Smith State Office Building80 S. Swan Street, 12th Floor, Albany, New York 12210Telephone (518) 485-2346 E-mail: Brian.Callahan@scoc.ny.gov8. *Additional matter required by statute:* Yes (include below material required by statute). No additional material required by statute.9. **Revised Regulatory Impact Statement (RIS)**

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RIS contains:

 The full text of the Revised RIS. A summary of the Revised RIS.

B. A statement is attached explaining why a revised RIS is not required (check one box):

 Changes made to the last published rule do not necessitate revision to the previously published RIS. This is a technical amendment exempt from SAPA §202-a.

- C.  A revised RIS is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 A revised RIS is **not** attached because this rule was proposed as a consensus rule as defined in SAPA

**10. Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments**  
(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised RFA contains:  
 The full text of the Revised RFA.  
 A summary of the Revised RFA.
- B. A **statement is attached** explaining why a revised RFA is not required (check one box):  
 Changes made to the last published rule do not necessitate revision to the previously published RFA.  
 The changes will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.
- C.  A revised RFA is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 A revised RFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

**11. Revised Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised RAFA contains:  
 The full text of the Revised RAFA.  
 A summary of the Revised RAFA.
- B. A **statement is attached** explaining why a revised RAFA is not required (check one box):  
 Changes made to the last published rule do not necessitate revision to the previously published RAFA.  
 The changes will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.
- C.  A revised RAFA is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 A revised RAFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

**12. Revised Job Impact Statement (JIS)**

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised JIS contains:  
 The full text of the Revised JIS.  
 A summary of the Revised JIS.
- B. A **statement is attached** explaining why a revised JIS is not required (check one box):  
 Changes made to the last published rule do not necessitate revision to the previously published JIS.  
 The changes will not impose a substantial impact on jobs and employment opportunities. The attached statement sets forth this agency's findings that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.
- C. A revised JIS is **not** attached because:  
 This rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 This rule was proposed by the State Comptroller or Attorney General.

13. **Assessment of Public Comment** (includes legislative comments) (check applicable box):

A.  45-day minimum comment period is complete (Full text was submitted with proposal or summary of text was submitted with the proposal and the full text was posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making])

60-day minimum comment period is complete (Summary of text was submitted with the proposal and the full text was not posted on a State web site or the rule is **not** a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making])

## B. (COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

Attached is an assessment of public comment.

No particular form is required, and it need **only** include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.

An assessment is not attached because no comments were received.

An assessment is not required because this action is for a "rate making" as defined in SAPA §102(2)(a)(ii).

14. **Referenced material** (check one box):

No information is being incorporated by reference in this rule.

This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

15. **Initial Review of Rule** (SAPA §207)

## (SELECT AND COMPLETE ONE)

A.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year \_\_\_\_\_, which is no later than the 3<sup>rd</sup> year after the year in which this rule is being adopted.

B.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year \_\_\_\_\_, which is the 4<sup>th</sup> or 5<sup>th</sup> year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period; or

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

C.  As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5<sup>th</sup> year after the year in which this rule is being adopted.

D.  Not Applicable. This rule is a "rate making" or a "consensus rule," or the agency is not required to review existing rules.

**AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)**

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Brian M. Callahan Signature \_\_\_\_\_

Address NYS Commission of Correction, 80 S. Swan Street, Albany, New York 12210

Telephone (518) 485-2346 E-mail Brian.Callahan@scoc.ny.gov

Date 05/21/2013

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**Please read before submitting this notice:**

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.
2. Rule making notices with any necessary attachments should be e-filed via the Department of State website.

Text:

Section 7031.4 of Title 9 is amended to read as follows:

§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] provide prisoners access to:

(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)5] a legal dictionary;

[(2)6] 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]7) 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]8) a New York State case law digest, or comparable search function of an electronic legal research service, capable of retrieving relevant case law on the topic of [dealing with]:

(i) criminal law; and

(ii) prisoners and prisons;

([5]9) The United States and New York State Constitutions;

([6]10) a treatise on prisoner's legal rights and remedies;

([7]11) New York State Civil Practice Law and Rules Annotated;

([8]12) title 42 of the United States Code Annotated, sections 1981-1988;

([9]13) title 18 of the United States Code Annotated, sections 4001-4321; and

([10]14) a treatise on legal research.

(c) Where one or more legal reference materials set forth in subdivision (b) are not maintained within the facility, or are maintained in a manner that does not permit direct access by a prisoner, the prisoner shall be provided access to a list of such available materials, sufficiently indexed to allow for a competent request by chapter, article, section, etc. Any such resulting request 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.

(d) Legal reference materials requested pursuant to subdivision (c) of this section shall be made available within three (3) business days of the request. Costs attendant to printing or photocopying such materials shall not be charged to the requesting prisoner.

(e) Each local correctional facility shall additionally 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, or comparable search function of an electronic legal research service, capable of retrieving relevant case law;

(6) a New York State case law digest, or comparable search function of an electronic legal research service, capable of retrieving relevant case law;

(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] set forth in subdivision (e) 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]g) Legal reference materials requested pursuant to subdivision ([g]f) of this section shall be made available within [a reasonable time after any such] three (3) business days of the request.

([i]h) The chief administrative officer may require that requests made pursuant to subdivision ([g]f) 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]i) 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]j) Legal reference material photocopied pursuant to paragraph ([j]i) (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]k) With respect to legal reference material requested pursuant to subdivision ([g]f) 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]l) All prisoners shall be provided access to, and i[I]ndigent 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]m) All prisoners shall be permitted to have access to either black ink pens or typewriters for the purpose of preparing legal documents.

([o]n) 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]o) 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] sufficient access to such materials and supplies, providing further consideration to prisoners acting *pro se* with regard to a criminal proceeding or a matter related to the conditions of his or her confinement.

([q]p) 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.

Assessment of Public Comment:

The New York State Commission of Correction (hereinafter "Commission") received formal comment from William Mills, President of the Law Library Association of Greater New York (hereinafter "LLAGNY"), Jerry Johnson, an inmate of Sing Sing Correctional Facility, and twenty three (23) separate, but identical comments from various individuals, mostly inmates of Sing Sing Correctional Facility.

As evident by its comments, LLAGNY is of the mistaken belief that the regulation affects the facilities, inmates and budget of the New York State Department of Corrections and Community Supervision (DOCCS). Contained in Chapter I of Subtitle AA of Title 9 NYCRR, the amended regulation controls only local correctional facilities operated by a county or the City of New York.

Otherwise, LLAGNY contends that the proposed amendment will result in the removal of legal reference materials from correctional facilities, thus infringing on the inmates' constitutional rights to access such materials. Based upon the relevant judicial authority regarding this matter, the Commission respectfully disagrees with LLAGNY's contention. It is well settled that prisoners have a constitutional right of access to the courts. Bounds v. Smith, 430 U.S. 817, 822, 97 S.Ct. 1491, 1494 (1977). In Bounds, the United States Supreme Court held that this fundamental constitutional right requires correctional authorities to "assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Id. at 828 (emphasis added). In 1996, the Supreme Court revisited the Bounds decision in Lewis v. Casey, 518 U.S. 343, 116 S.Ct. 2174 (1996). In Lewis, the Court held that Bounds "did not create an abstract, free-standing right to a law library or legal assistance." Lewis, at 2180. Rather, "[t]he right that Bounds acknowledged was the (already well-established) right of access to the courts." Id. at 2179. Inmate access to law library facilities was therefore only one constitutionally acceptable method to assure meaningful access to the courts, and the Court did not foreclose alternative means to achieve that goal.

Therefore, based on the decisions in Bounds and Lewis, it appears that an inmate represented by legal counsel would have no constitutional right of access to a law library, or any other legal reference materials provided by a correctional facility.

Nevertheless, the Commission does not believe that the proposed amendment will otherwise infringe on an inmate's existing rights to legal reference materials while incarcerated. Though counties are no longer obliged to maintain physical law libraries within the local correctional facility, inmates remain entitled to access the same legal reference materials as currently required. Further, the Commission anticipates that many counties will continue to maintain a law library within the facility, as the costs associated therewith may now legitimately be paid for with the profits of the inmate commissary pursuant to 9 NYCRR Part 7016.

Lastly, LLAGNY comments that inmate access to legal reference materials will be compromised by both electronic research services and the absence of a traditional book library. Specifically, it is opined that inmates will not know what materials are available absent the ability to browse a library, and that many inmates are not trained in the use of computers. As amended section 7031.4(c) sets forth that, where legal reference materials "are maintained in a manner that does not permit direct access by a prisoner, the prisoner shall be provided access to a list of such available materials, sufficiently indexed to allow for a competent request by chapter, article, section, etc.," the Commission disagrees that inmates will not know what materials are available. Additionally, the Commission has monitored the several local correctional facilities that have maintained electronic access to legal reference materials, and has found such systems equally accessible and more current than a traditional law library. Thus, the Commission does not agree that an electronic means of providing access to legal reference materials would impede the research capabilities of an inmate population.

The comments of Mr. Johnson also reveal a mistaken belief that the regulation affects the facilities, inmates and budget of the New York State Department of Corrections and Community Supervision (DOCCS). Mr. Johnson opines that the New York State Legislature should provide adequate funding for law library clerks

“that are skilled in writing legal briefs and motions, and having the know how of what Court to file papers in and the proper order of filing,” as well as access to copy machines and notaries. As Mr. Johnson’s comments do not specifically address the proposed regulatory amendment, the Commission is not obliged to provide a response.

Lastly, the twenty three (23) identical comments object to eliminating the requirement that local correctional facilities provide inmates access to a typewriter, as this will delay and confuse courts due to illegible handwriting. As legal papers are generally required only to be written in black ink (see CPLR Rule 2101), and the ever decreasing production and use of typewriters renders supply and service thereof costly and scarce, the Commission has found the current regulation to be overly burdensome to local correctional facilities, easily remedied by providing inmates adequate access to the courts via a black pen and paper. Further objection claimed that the proposed amendment “singled out” inmates represented by counsel, and that waiting 3 days to be provided requested materials would prove burdensome while the inmate is on trial. The Commission notes that the proposed amendment does not change the regulation that all inmates are entitled to access legal reference materials, whether represented by counsel or not. Further, amended section 7031.4(o) requires facilities to consider an inmate’s *pro se* status in determining necessary access to reference materials, which presumptively grows more necessary while the inmate is in the midst of a trial. Finally, objection is made to the failure of the proposed amendment to provide a designated area for prisoners to study legal reference material. As inmates were previously provided sufficient access to legal reference materials without the requirement of a designated area, and the fact that many existing local correctional facilities, as currently constructed, would be unable to meet such a requirement, the Commission deems the request unnecessary and unfeasible.

For Department of State use only.

## Notice of Adoption

Correction, State Commission of  
(SUBMITTING AGENCY)

- This adoption will amend the NYCRR.  
 This adoption will not amend the NYCRR.

**NOTE:** Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

**1. Action taken:**

Amendment of sections 7022.5(c), 7200.2(a), 7200.3, 7200.6(b), 7202.4(a), 7202.6 and 7202.11(a) of Title 9 NYCRR.

"X" box if the rule was originally proposed as a consensus rule making.

**2. Effective date of rule:**

Date this notice is published in the *State Register*.

This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:

Date of filing.

Other date (*specify*): \_\_\_\_\_

Other date (*specify*): \_\_\_\_\_

\_\_\_ days after filing.

**3. Statutory authority under which the rule was adopted:**

Correction Law sections 45(6) and 45(15).

**4. Subject of the rule:**

Agency address

**5. Purpose of the rule:**

To amend the Commission of Correction's listed address.

## 6. Terms and identification of rule:

- A. I.D. No. of original notice of **proposed or emergency/proposed** rule making: CMC-11-13-00004 - P
- B. Comparison of the proposed rule to the adopted rule (CHECK ALL THAT APPLY):

No changes were made to the proposed rule.

• Do NOT attach the text of the previously published rule. If the last previously published RIS, RFA, RAFA or JIS remain adequate and do not require correction, SKIP ITEMS 9-12 and do NOT attach any such statements. If any of the most recently published statements were deemed inadequate or required correction, complete Item 9, 10, 11, or 12 as applicable, do NOT attach previously published statements. Be sure to complete C, if applicable, as well as remaining Items 7-8 and 13-14.

Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:

• Attach the original of the text as adopted (if proposed as full text, submit full text; if proposed as a summary, submit a summary) typed in scannable format. Do not skip Items 9-12; revised statements or explanatory statements are required.

Text attached.

Summary attached.

This is a "rate making" as defined in SAPA §102(2)(a)(ii) and, pursuant to SAPA §202(7)(b), the agency elected to submit an original copy of a description of the substance. Substantial revisions were made in the following Parts, sections, subdivisions or paragraphs:

## C. List the publication date and I.D. No. of any previously published notice(s) of revised rule making:

Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_

Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_

## 7. The text of the final rule and any required statements and analyses may be obtained from:

Agency contact Brian M. Callahan, Associate Attorney

Agency name New York State Commission of Correction

Office address Alfred E. Smith State Office Building  
80 S. Swan Street, 12th Floor, Albany, New York 12210

Telephone (518) 485-2346 E-mail: Brian.Callahan@scoc.ny.gov

## 8. Additional matter required by statute:

Yes (include below material required by statute).

No additional material required by statute.

## 9. Revised Regulatory Impact Statement (RIS)

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

## A. The attached Revised RIS contains:

The full text of the Revised RIS.

A summary of the Revised RIS.

## B. A statement is attached explaining why a revised RIS is not required (check one box):

Changes made to the last published rule do not necessitate revision to the previously published RIS.

This is a technical amendment exempt from SAPA §202-a.

- C.  A revised RIS is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 A revised RIS is **not** attached because this rule was proposed as a consensus rule as defined in SAPA

**10. Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments**  
(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised RFA contains:  
 The full text of the Revised RFA.  
 A summary of the Revised RFA.
- B. A **statement is attached** explaining why a revised RFA is not required (check one box):  
 Changes made to the last published rule do not necessitate revision to the previously published RFA.  
 The changes will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.
- C.  A revised RFA is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 A revised RFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

**11. Revised Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised RAFA contains:  
 The full text of the Revised RAFA.  
 A summary of the Revised RAFA.
- B. A **statement is attached** explaining why a revised RAFA is not required (check one box):  
 Changes made to the last published rule do not necessitate revision to the previously published RAFA.  
 The changes will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.
- C.  A revised RAFA is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 A revised RAFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

**12. Revised Job Impact Statement (JIS)**

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised JIS contains:  
 The full text of the Revised JIS.  
 A summary of the Revised JIS.
- B. A **statement is attached** explaining why a revised JIS is not required (check one box):  
 Changes made to the last published rule do not necessitate revision to the previously published JIS.  
 The changes will not impose a substantial impact on jobs and employment opportunities. The attached statement sets forth this agency's findings that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.
- C. A revised JIS is **not** attached because:  
 This rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 This rule was proposed by the State Comptroller or Attorney General.

13. **Assessment of Public Comment** (includes legislative comments) (check applicable box):

- A.  45-day minimum comment period is complete (Full text was submitted with proposal or summary of text was submitted with the proposal and the full text was posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making])
- 60-day minimum comment period is complete (Summary of text was submitted with the proposal and the full text was not posted on a State web site or the rule is **not** a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making])
- B. (COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)
- Attached is an assessment of public comment.  
No particular form is required, and it need **only** include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.
- An assessment is not attached because no comments were received.
- An assessment is not required because this action is for a "rate making" as defined in SAPA §102(2)(a)(ii).

14. **Referenced material** (check one box):

- No information is being incorporated by reference in this rule.
- This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

15. **Initial Review of Rule** (SAPA §207)

(SELECT AND COMPLETE ONE)

- A.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year \_\_\_\_\_, which is no later than the 3<sup>rd</sup> year after the year in which this rule is being adopted.
- B.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year \_\_\_\_\_, which is the 4<sup>th</sup> or 5<sup>th</sup> year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:
- Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period; or
- An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.
- C.  As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5<sup>th</sup> year after the year in which this rule is being adopted.
- D.  Not Applicable. This rule is a "rate making" or a "consensus rule," or the agency is not required to review existing rules.

**AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)**

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Brian M. Callahan

Signature \_\_\_\_\_

Address NYS Commission of Correction, 80 S. Swan Street, Albany, New York 12210Telephone (518) 485-2346E-mail Brian.Callahan@scoc.ny.govDate 05/21/2013**Please read before submitting this notice:**

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.
2. Rule making notices with any necessary attachments should be e-filed via the Department of State website.



Text:

Subdivision (c) of section 7022.5 is amended to read as follows:

(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, [80 Wolf Road, 4<sup>th</sup> Floor, Albany, New York 12205] Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210-8001. 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.

Subdivision (a) of section 7200.2 is amended to read as follows:

(a) The following person has been designated as records access officer to the commission: Public Information Officer, New York State Commission of Correction, [80 Wolf Road, 4<sup>th</sup> Floor, Albany, New York 12205] Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210-8001.

Section 7200.3 is amended to read as follows:

Records shall be available for public inspection and copying at: State Commission of Correction, [80 Wolf Road, 4<sup>th</sup> Floor, Albany, New York 12205] Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210-8001.

Subdivision (b) of section 7200.6 is amended to read as follows:

(b) Any person whose request for access to records has been denied pursuant to subdivision (a) of this section may, within 30 days, appeal such denial to the Special Counsel, State Commission of Correction, [80 Wolf Road, 4<sup>th</sup> Floor, Albany, New York 12205] Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210-8001. Such appeal shall be in writing and shall include:

- (1) the date of the request for access to the records;
- (2) the location of the records sought;
- (3) a description of the records to which the requester was denied access;
- (4) a statement as to whether the denial of access was in writing or was a failure to grant or deny access within the time period required by section 7200.5(d) of this Part; and
- (5) the name and address of the requester.

Subdivision (a) of section 7202.4 is amended to read as follows:

(a) The following person has been designated as privacy compliance officer to the commission: Records Access Officer, New York State Commission of Correction, [80 Wolf Road, 4<sup>th</sup> Floor, Albany, New York 12205] Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210-8001.

Section 7202.6 is amended to read as follows:

Records shall be available for public inspection at State Commission of Correction, [80 Wolf Road, 4<sup>th</sup> Floor, Albany, New York 12205] Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany,

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New York 12210-8001.

Subdivision (a) of section 7202.11 is amended to read as follows:

(a) Any person denied access to a record or denied a request to amend or correct a record or personal information, may appeal to: Special Counsel, State Commission of Correction, [80 Wolf Road, 4<sup>th</sup> Floor, Albany, New York 12205] Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210-8001.



For Department of State use only.

## Notice of Adoption

Correction, State Commission of  
(SUBMITTING AGENCY)

- This adoption will amend the NYCRR.  
 This adoption will not amend the NYCRR.

**NOTE:** Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

1. *Action taken:*

Amendment of sections 7013.8, 7064.8, 7300.2, 7300.4, 7414.6, 7600.1, 7601.1 and 7651.3 of Title 9 NYCRR.

"X" box if the rule was originally proposed as a consensus rule making.

2. *Effective date of rule:*

Date this notice is published in the *State Register*.

This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:

Date of filing.

Other date (*specify*): \_\_\_\_\_

Other date (*specify*): \_\_\_\_\_

\_\_\_ days after filing.

3. *Statutory authority under which the rule was adopted:*

Correction Law sections 45(6) and 45(15).

4. *Subject of the rule:*

Department of Corrections and Community Supervision

5. *Purpose of the rule:*

To amend references of the Department of Correctional Services to the Department of Corrections and Community Supervision.

## 6. Terms and identification of rule :

A. I.D. No. of original notice of **proposed** or **emergency/proposed** rule making: CMC-11-13-00005 - P

B. Comparison of the proposed rule to the adopted rule (CHECK ALL THAT APPLY):

 No changes were made to the proposed rule.

• Do NOT attach the text of the previously published rule. If the last previously published RIS, RFA, RAFA or JIS remain adequate and do not require correction, SKIP ITEMS 9-12 and do NOT attach any such statements. If any of the most recently published statements were deemed inadequate or required correction, complete Item 9, 10, 11, or 12 as applicable, do NOT attach previously published statements. Be sure to complete C, if applicable, as well as remaining Items 7-8 and 13-14.

 Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:

• Attach the original of the text as adopted (if proposed as full text, submit full text; if proposed as a summary, submit a summary) typed in scannable format. Do not skip Items 9-12; revised statements or explanatory statements are required.

Text attached.

Summary attached.

 This is a "rate making" as defined in SAPA §102(2)(a)(ii) and, pursuant to SAPA §202(7)(b), the agency elected to submit an original copy of a description of the substance. Substantial revisions were made in the following Parts, sections, subdivisions or paragraphs:

C. List the publication date and I.D. No. of any previously published notice(s) of revised rule making:

Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_

Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_

## 7. The text of the final rule and any required statements and analyses may be obtained from:

Agency contact Brian M. Callahan, Associate AttorneyAgency name New York State Commission of CorrectionOffice address Alfred E. Smith State Office Building80 S. Swan Street, 12th Floor, Albany, New York 12210Telephone (518) 485-2346E-mail: Brian.Callahan@scoc.ny.gov

## 8. Additional matter required by statute:

 Yes (include below material required by statute). No additional material required by statute.

## 9. Revised Regulatory Impact Statement (RIS)

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RIS contains:

 The full text of the Revised RIS. A summary of the Revised RIS.

B. A statement is attached explaining why a revised RIS is not required (check one box):

 Changes made to the last published rule do not necessitate revision to the previously published RIS. This is a technical amendment exempt from SAPA §202-a.

- C.  A revised RIS is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).
- A revised RIS is **not** attached because this rule was proposed as a consensus rule as defined in SAPA

**10. Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments**  
(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised RFA contains:
- The full text of the Revised RFA.
- A summary of the Revised RFA.
- B. A **statement is attached** explaining why a revised RFA is not required (check one box):
- Changes made to the last published rule do not necessitate revision to the previously published RFA.
- The changes will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.
- C.  A revised RFA is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).
- A revised RFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

**11. Revised Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised RAFA contains:
- The full text of the Revised RAFA.
- A summary of the Revised RAFA.
- B. A **statement is attached** explaining why a revised RAFA is not required (check one box):
- Changes made to the last published rule do not necessitate revision to the previously published RAFA.
- The changes will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.
- C.  A revised RAFA is not attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).
- A revised RAFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

**12. Revised Job Impact Statement (JIS)**

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised JIS contains:
- The full text of the Revised JIS.
- A summary of the Revised JIS.
- B. A **statement is attached** explaining why a revised JIS is not required (check one box):
- Changes made to the last published rule do not necessitate revision to the previously published JIS.
- The changes will not impose a substantial impact on jobs and employment opportunities. The attached statement sets forth this agency's findings that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.
- C. A revised JIS is **not** attached because:
- This rule is a "rate making" as defined in SAPA §102(2)(a)(ii).
- This rule was proposed by the State Comptroller or Attorney General.

13. **Assessment of Public Comment** (includes legislative comments) (check applicable box):

- A.  45-day minimum comment period is complete (Full text was submitted with proposal or summary of text was submitted with the proposal and the full text was posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making])
- 60-day minimum comment period is complete (Summary of text was submitted with the proposal and the full text was not posted on a State web site or the rule is **not** a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making])
- B. (COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)
- Attached is an assessment of public comment.  
No particular form is required, and it need **only** include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.
- An assessment is not attached because no comments were received.
- An assessment is not required because this action is for a "rate making" as defined in SAPA §102(2) (a)(ii).

14. **Referenced material** (check one box):

- No information is being incorporated by reference in this rule.
- This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

15. **Initial Review of Rule** (SAPA §207)

(SELECT AND COMPLETE ONE)

- A.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year \_\_\_\_\_, which is no later than the 3<sup>rd</sup> year after the year in which this rule is being adopted.
- B.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year \_\_\_\_\_, which is the 4<sup>th</sup> or 5<sup>th</sup> year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:
- Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period; or
- An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.
- C.  As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5<sup>th</sup> year after the year in which this rule is being adopted.
- D.  Not Applicable. This rule is a "rate making" or a "consensus rule," or the agency is not required to review existing rules.

**AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)**

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Brian M. Callahan Signature \_\_\_\_\_  
Address NYS Commission of Correction, 80 S. Swan Street, Albany, New York 12210  
Telephone (518) 485-2346 E-mail Brian.Callahan@scoc.ny.gov  
Date 05/21/2013

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**Please read before submitting this notice:**

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.
2. Rule making notices with any necessary attachments should be e-filed via the Department of State website.



Text:

Subparagraph (i) of paragraph (3) of subdivision (e) of section 7013.8 of Title 9 is amended to read as follows:

(i) the Department of [Correctional Services] Corrections and Community Supervision; or

Paragraphs (4) and (15) of subdivision (a) of section 7064.8 of Title 9 are amended to read as follows:

(4) a health care provider or health facility, including a health care provider employed or health facility operated by the Department of [Correctional Services] Corrections and Community Supervision, 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;

(15) an employee or agent of a provider of health or social services, including but not limited to the Department of [Correctional Services] Corrections and Community Supervision 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.

Subdivisions (b) and (e) of section 7300.2 of Title 9 are amended to read as follows:

(b) Commissioner means the Commissioner of the New York State Department of [Correctional Services] Corrections and Community Supervision.

(e) Institution means a correctional facility under the jurisdiction of the New York State Department of [Correctional Services] Corrections and Community Supervision.

Subdivisions (c) and (e) of section 7300.4 of Title 9 are amended to read as follows:

(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] Corrections and Community Supervision;

(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] Corrections and Community Supervision to a county jail or penitentiary.

Subdivision (b) of section 7414.6 of Title 9 is amended to read as follows:

(b) When residents are transferred to another secure facility or to a Department of [Correctional Services] Corrections and Community Supervision facility, the resident's entire mental health record shall be forwarded

by the facility director or designee to the receiving facility. The mental health record shall contain:

- (1) the name and relationship of a parent, legal guardian or spouse of the resident to be notified in case of the death, serious illness or other serious incident involving the resident;
- (2) a record of current medications used for mental health treatment;
- (3) all physician's orders; and
- (4) any parental/legal guardian consent(s).

Paragraph (3) of subdivision (b) of section 7600.1 of Title 9 is amended to read as follows:

(3) to establish procedures for the speedy and impartial review of grievances referred to it by the Commissioner of the Department of [Correctional Services] Corrections and Community Supervision (Correction Law, § 45(4));

Subdivisions (b), (d) and (f) of section 7601.1 of Title 9 are amended to read as follows:

(b) Commissioner shall mean the Commissioner of the New York State Department of [Correctional Services] Corrections and Community Supervision.

(d) Department and departmental shall mean the New York State Department of [Correctional Services] Corrections and Community Supervision.

(f) Inmate shall mean any person committed, transferred or placed in the care and custody of the Commissioner of the New York State Department of [Correctional Services] Corrections and Community Supervision for confinement in a correctional facility as defined by section 2(4) of the Correction Law.

Subdivision (e) of section 7651.3 of Title 9 is amended to read as follows:

(e) "Clinical physician" shall mean a physician licensed to practice medicine in New York State who is an independent contractor with or employee of the Department of [Correctional Services] Corrections and Community Supervision.