



**Justice Center for the
Protection of People
with Special Needs**

KATHY HOCHUL **DENISE M. MIRANDA**
Governor Executive Director

April 7, 2023

Dr. Li-Wen Lee
Associate Commissioner
Division of Forensic Services
NYS Office of Mental Health
44 Holland Avenue
Albany, NY 12229

Anthony J. Annucci
Acting Commissioner
NYS Department of Corrections and
Community Supervision
The Harriman State Campus-Building 2
1220 Washington Avenue
Albany, NY 12226-2050

Dear Dr. Lee and Acting Commissioner Annucci:

On February 23, 2023, we sent a letter to you with our draft report on our review of the programs, treatment and conditions of confinement for incarcerated individuals placed in segregated confinement in the Clinton Correctional Facility. We asked for a response by March 23, 2023 and to date, we have only received a response from the Office of Mental Health.

We now consider this report to be final and maintain our finding of non-compliance with the HALT law for the reasons outlined in the attached report. Whenever the Department of Corrections and Community Supervision submits a response to this review, we will re-assess the determination and include the response in the final report.

Please direct any correspondence or concerns related to this review to me at davin.robinson@justicecenter.ny.gov. Thank you for your continued cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Davin Robinson", written over a light blue horizontal line.

Davin Robinson
Deputy Director, Office of Outreach, Prevention & Support

Cc: Denise M. Miranda, Esq., Executive Director, Justice Center
Laura Darman, Esq., Executive Deputy Director, Justice Center
Nikki O'Meara, Director of Operations, Forensics
Melissa Finn, Director of Quality and Compliance, Forensics
Kathryn Farley, Supervising Facility Review Specialist, Forensics
Jessica Benedict, Facility Review Specialist, Forensics
Dr. Anne Sullivan, M.D., Commissioner, OMH
Danielle Dill, Executive Director, CNYPC
William Vertoske, Deputy Director Psychiatric Center 2, OMH
Lisa Murphy, Acting Director of Quality Management, OMH
Maureen Morrison, Director of Suicide Prevention, OMH
Meaghan Bernstein, Advocacy Letter Coordinator, OMH
Bryan Hilton, Associate Commissioner, DOCCS

NOTE: All correspondence related to this matter will be available for public inspection under Article 6 of the Public Officers Law. Material which will be required to be kept confidential or which is protected from disclosure under the Public Officers Law or other laws will be redacted prior to such disclosure.



**Clinton Correctional Facility
Humane Alternatives to Long-Term Solitary Confinement (HALT)
Final Compliance and Quality of Care Review
JC#: 77010134731**

On May 18, 2022 the Justice Center for the Protection of People with Special Needs (the Justice Center) conducted a site visit at the Clinton Correctional Facility (CF) to review the programs, treatment, and conditions of confinement for incarcerated individuals placed in segregated confinement in that facility. The Justice Center also assessed compliance with the implementation of the HALT law that went into effect on March 31, 2022.¹

The Justice Center reviewed policies and practices concerning:

- a) Placement of persons in segregated confinement and residential rehabilitation units (RRU);
- b) Placement and treatment of persons meeting the “special population” definition in the HALT legislation;²
- c) Length of time spent in segregated confinement or residential rehabilitation units;
- d) Hearings and procedures;
- e) Assessments and rehabilitation plans, procedures, and discharge determinations.

Since the Clinton Correctional Facility does not operate a Residential Rehabilitation Unit (RRU), the Justice Center toured the Special Housing Unit (SHU) and spoke cell side with 27 incarcerated individuals. To complete a thorough evaluation, Justice Center staff requested private interviews and three individuals accepted. The interviews were conducted in a private room at the Clinton Correctional Facility.

In addition to reviewing the Office of Mental Health (OMH) clinical case record and the Department of Corrections and Community Supervision (DOCCS) guidance record, the Movement Logs and Programming Logs, the Justice Center also requested any Exceptional Circumstances documentation for a time-period of six months.³ The Justice

¹ Correction Law §§137(6)(d)(e) (h), (i), (j), (k), (l), (m), (n), and (o) and §§138 (7), 401.

² Section 2 of the Correction Law, subdivision 33 defines Special Population as any person twenty-one years of age or younger; fifty-five years or older; with a disability; pregnant, in the first 8 weeks of post-partum recovery or caring for a child in a correctional facility.

³ November 18, 2021 through May 18, 2022.

Center's review found that there were no incarcerated individuals placed on exceptional circumstances during this review period.

Justice Center Findings

Treatment and Conditions:

1. Incarcerated individuals only participated in programming on nine days between March 31, 2022 and May 18, 2022.

At the time of the Justice Center site visit, no incarcerated individuals were observed in the programming area. During the three private interviews, the Justice Center found that all three individuals had access to their tablets and two individuals were accepting of out-of-cell programming. One individual told the Justice Center that they had safety concerns that prevented them from participating in out-of-cell programming, such as being in large groups and that there may be potential gang related activity around them.

According to the programming schedule received from DOCCS, out-of-cell programming is offered for three hours each day Monday through Friday in addition to one hour of recreational time a day. The programming attendance sheet indicated that incarcerated individuals only participated in programming on nine days between the dates of March 31, 2022 through May 18, 2022.⁴

The incarcerated individuals interviewed reported they would like more programming that involves learning about animals, ART, recreational programs, and material on how to regulate their emotions.

Request and Recommendations:

The Justice Center requests that DOCCS provide any directives and procedures that provide staff with guidance about how to re-assure incarcerated individuals with safety concerns so that they participate in programming.

In order to increase participation in programming, the Justice Center recommends including DOCCS mandated programming, such as Aggression Replacement Training (ART), Alcohol and Substance Abuse Treatment (ASAT), and vocational training.

⁴ According to the program attendance record provided to the Justice Center, incarcerated individuals participated on March 31, 2022, April 1, 2022, April 4, 2022, April 5, 2022-April 8, 2022, April 11, 2022, April 21, 2022, and April 25, 2022.

Special Populations

2. At the time of the Justice Center's site visit, ten individuals in the SHU were on the mental health case load.

There were ten incarcerated individuals in the Clinton Correctional Facility Special Housing Unit who were on the mental health caseload.⁵ Their designated Mental Health Service Level (MHSL) ranged from 2 to 4. Their diagnoses included anti-social personality disorder, impulsive control disorder, adjustment disorder, bipolar disorder, major depressive disorder, and generalized anxiety. Eight of the ten incarcerated individuals had no clinical concerns with adjustment prior to and following their transfer to the Special Housing Unit.

- Incarcerated individual 5, a MHSL 3, is diagnosed with [REDACTED].⁶ They were admitted to the Residential Crisis and Treatment Program (RCTP) on May 3, 2022 for being "assaultive and possible psyche decompensation".⁷ This admission occurred immediately after they were found to be in possession of a weapon.⁸ The individual was transferred to the SHU from the RCTP on May 4, 2022 with a plan to be monitored daily on SHU rounds.
- Incarcerated individual 6, a MHSL 4, is diagnosed with [REDACTED]. They were admitted to the RCTP on May 3, 2022 due to suicidal threats after exposing themselves to staff and were released to SHU on May 4, 2022.⁹ They had discussed requesting medication management prior to their placement in the SHU.
- Incarcerated individual 7, a MHSL 2, is diagnosed with [REDACTED].¹⁰ The individual was placed in the Residential Crisis and Treatment Program on May 3, 2022 due to making threats of self-harm after they received a disciplinary ticket for exposing themselves. They were transferred from the Special Housing Unit to the Residential Crisis and Treatment Program three

⁵ [REDACTED] ([REDACTED]) is hereafter referred to as incarcerated individual 1, [REDACTED] ([REDACTED]) is hereafter referred to as incarcerated individual 2, [REDACTED] ([REDACTED]) is hereafter referred to as incarcerated individual 3, [REDACTED] ([REDACTED]) is hereafter referred to as incarcerated individual 4, [REDACTED] ([REDACTED]) is hereafter referred to as incarcerated individual 5, [REDACTED] ([REDACTED]) is hereafter referred to as incarcerated individual 6, [REDACTED] ([REDACTED]) is hereafter referred to as incarcerated individual 7 and [REDACTED] ([REDACTED]) is hereafter referred to as incarcerated individual 8, [REDACTED] ([REDACTED]) is hereafter referred to as incarcerated individual 9 and [REDACTED] ([REDACTED]) is hereafter referred to as incarcerated individual 10.

⁶ According to the Admission/Screening Form dated May 4, 2022.

⁷ According to the Residential Crisis and Treatment Program Nursing Assessment dated May 3, 2022 at 7:30 PM.

⁸ According to the Superintendent Hearing Deposition Rendered form dated May 9, 2022.

⁹ According to the Residential Crisis and Treatment Program Observation Progress note dated May 3, 2022 at 9:15 AM.

¹⁰ According to Admission/Screening form dated November 12, 2021.

more times on May 4, 2022, May 9, 2022, and May 10, 2022. Subsequently, they were transferred back to the Residential Crisis and Treatment Program on May 10, 2022 for cutting both their forearms with a state razor.¹¹

Request and Recommendations:

Segregated confinement poses serious risks to a person's mental health and people with ongoing mental health needs should be provided with access to therapeutic programming instead of placement in solitary confinement for any time period. The Justice Center recommends that DOCCS and OMH divert all individuals on the mental health caseload to a residential rehabilitation unit or another program that will provide better access to therapeutic programming than they will receive in segregated confinement.

In addition, please provide the Justice Center with an update for incarcerated individuals 5, 6 and 7. This update should include their MHS�, housing status, current confinement sanctions, any additional misbehavior reports or tickets, and the number of times the individuals were transferred to the RCTP.

Length of time spent in segregated confinement.

3. There was one incarcerated individual on the Justice Center's review sample that had spent more than 15 consecutive days in segregated confinement.

On April 25, 2022, incarcerated individual 11 was placed in SHU pending a disciplinary hearing for assaulting another individual in the yard.¹² They received 90 days of segregated confinement and had not yet been transferred at the time of the Justice Center's site visit on May 18, 2022.

Request and Recommendation:

The Justice Center requests that DOCCS provide an explanation as to why the incarcerated individual was not transferred to an RRU in the appropriate timeframe set forth by HALT. In addition, please provide their facility transfer dates and any time cuts that they may have received since their transfer.

Hearings and procedures

¹¹ According to RCTP Monitoring Sheet dated May 3, 2022, May 4, 2022, May 9, 2022 and Psychiatric Progress Note dated May 12, 2022.

¹² [REDACTED] is hereafter referred to as incarcerated individual 11.

4. The Justice Center reviewed disciplinary hearing documentation for all 29 incarcerated individuals in the SHU and there were two individuals who did not engage in conduct that warranted placement in segregated confinement.

Twenty-seven incarcerated individuals engaged in conduct that permits a penalty of segregated confinement, such as sex offense, violent conduct, procuring a deadly weapon or other dangerous contraband and causing and attempting physical injury to staff or other inmates. There were two individuals who did not engage in conduct that permits a penalty of segregated confinement.

- Incarcerated individual 6 was found guilty of refusing a direct order and lewd conduct from a May 3, 2022 incident in which the individual exposed themselves during a mental health session. They received 48 days of segregated confinement, which included 3 days prehearing confinement.
- Incarcerated individual 12 was found guilty of interference with an employee and lewd conduct following a May 13, 2022 incident when it was observed through the bubble window that the individual had their “penis out of the bars waving it around”.^{13,14} The individual received 45 days of confinement. According to the documentation provided, a Video Monitoring Recording Copy was requested on May 14, 2022 for the date and the time of the incident, however video reproduction was not successful due to “no video showing into cell”.

Request and Recommendations:

Please provide the Justice Center with the evidence and rationale to support the written decision as to why both incarcerated individual 6 and incarcerated individual 12 received a confinement sanction for approximately forty-four days or more for exposing themselves to staff when the HALT law states the criteria needs to meet the threshold of “compelling or attempting to compel another person, by force or threat of force, to engage in a sexual act”.

In addition, the Justice Center requests that DOCCS Central Office complete a review of the disciplinary packet involving incarcerated individual 12’s May 13, 2022 incident. Specifically, the documented concerns that the individual was exposing themselves through the cell bars that an officer in the bubble was

¹³ Inmate misbehavior report dated May 13, 2022

¹⁴ [REDACTED] is hereafter referred to as incarcerated individual 12 .

witness to the incident, however the hallway camera was not able to record the incident.

5. It took 10 days for incarcerated individual 11's hearing to be completed.

According to incarcerated individual 11's DOCCS Disciplinary Hearing packet, their hearing for assault on an inmate, weapon, violent conduct, creating a disturbance, fighting, and refusing a direct order began on April 27, 2022 and ended on May 7, 2022. Per the documentation received by the Justice Center, there is no evidence as to why the hearing took ten days to complete.

Request and Recommendation:

Please provide the Justice Center with documentary evidence as to why incarcerated individual 11 did not receive their disciplinary hearing in the allotted time as defined by HALT. In addition, please consider changing the disciplinary hearing packet to include an explanation as to why a hearing may take ten days to complete.

6. There was no indication based on documentation provided and through private interviews that any legal representation or assistance was requested for any of the hearings.

Request and Recommendation:

Please provide the Justice Center with any policies or procedures concerning how incarcerated individuals are notified of their right to request legal representation at disciplinary hearings. If there are written documents provided to incarcerated individuals about obtaining representation at hearings, please provide that as well. If these policies, procedures, and advisory documents for incarcerated individuals do not exist, please consider developing them.

Assessments, rehabilitation plans and discharge procedures

7. Although incarcerated individual 10 was on the OMH caseload, their SHU/RRU Mental Health Assessment indicated that they did not warrant mental health services.

According to incarcerated individual 10's OMH clinical case record, a SHU/RRU Mental Health Interview form was completed cell side on April 26, 2022 and May 3, 2022 because the individual refused a private interview. At the time of both of

these assessments, the individual was designated an MHSL 3 and each assessment documented “no indication for active mental health services”.¹⁵

Request and Recommendation:

Please provide the Justice Center with the reason it was determined that a person with a MHSL 3 was found to have no need for active mental health services. If this was written in error, the Justice Center requests that OMH staff members at Clinton Correctional Facility be retrained in CNYPC Corrections Based Operations Policy # 6.0 - Special Housing Unit and Residential Rehabilitation Unit/Special Population Diversion Services. Accurate documentation about mental health needs is critical to support the person’s mental health treatment as they are transferred from housing units and facilities.

A six-month review of DOCCS and OMH records often includes records of treatment that an incarcerated individual received at another correctional facility before being transferred to the correctional facility reviewed. The findings below do not pertain to the Clinton Correctional Facility:

8. Incarcerated individual 1, a MHSL 2, had the same recommendation on three consecutive Special Housing Unit Mental Health Assessments.

While at the Fishkill Correctional Facility SHU, incarcerated individual 1 received three Special Housing Unit mental health screenings during the period of January 7, 2022 through February 4, 2022. For each screening, the individual refused a private interview and was evaluated cell-side. The reason for refusal was not documented. Within the recommendation section of each screening, it appears that the response is verbatim in each assessment without any insight to their current mental health treatment.¹⁶ The repetitive narratives were generic and did not acknowledge any changes that may have occurred after thirty days in the SHU.

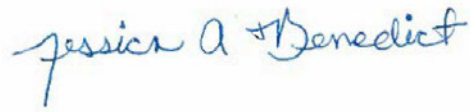
Request and Recommendation:

To ensure appropriate continuity of care, documentation should accurately reflect how an incarcerated individual is working on their mental health goals. Repetitive

¹⁵ According to the documentation provided to the Justice Center, Treatment Needs/Service Level Designation form dated May 19, 2019.

¹⁶ According to the recommendation section on three Special Housing Unit mental health screenings, it stated the following: “Incarcerated Individual is appropriate for continued housing in SHU based on his mental status. Incarcerated Individual will be seen again by primary therapist in accordance with policy. Focus of Incarcerated Individual's session regarded Incarcerated Individual's adjustment to SHU 200. Incarcerated Individual was seen in SHU 200 for interview. Incarcerated Individual reported he is doing okay in SHU. Clinician encouraged Incarcerated Individual to continue to utilize coping skills when feeling stressed. Incarcerated Individual reported he is eating and sleeping while in SHU 200. Incarcerated Individual denied thoughts of SI and HI during interview. Incarcerated Individual is aware how to access mental health services prior to next visit if necessary. There are no current elevated or imminent risk factors for suicide at this time. Writer observed nothing in Incarcerated Individual's affect, behavior, or verbalizations to warrant a heightened concern for suicide risk. There is additionally no collateral evidence to suggest an increase in suicide risk at this time. Incarcerated Individual remains hopeful and future oriented. Incarcerated Individual gave no indication that he was not being genuine with his denial of concerns that would indicate suicide risk.”

recommendations do not demonstrate that the individual is making progress regarding their goals or memorialize concerns that an incarcerated individual may have. As that form is no longer in use, the Justice Center requests that OMH staff members at Fishkill Correctional Facility be retrained in CNYPC Corrections Based Operations Policy # 6.0 - Special Housing Unit and Residential Rehabilitation Unit/Special Population Diversion Services. In addition, clinical staff should be reminded of the importance of documenting the reasoning for private call out refusals.



Review conducted by: _____
Jessica Benedict, Facility Review Specialist

KATHY HOCHUL
Governor

ANN MARIE T. SULLIVAN, M.D.
Commissioner

MOIRA TASHJIAN, MPA
Executive Deputy Commissioner

March 21, 2023

Davin Robinson
Deputy Director of Outreach, Prevention and Support
Justice Center for the Protection of People with Special Needs
161 Delaware Avenue
Delmar, New York 12054

Dear Ms. Robinson:

We received your letter dated February 23, 2023, in response to the Justice Center's May 18, 2022 site visit of the Clinton Correctional Facility (CF) Special Housing Unit (SHU) to determine the quality of mental health care provided to incarcerated individuals and determine compliance with the Humane Alternatives to Long-Term Solitary Confinement (HALT) legislation, the Office of Mental Health's (OMH) policies, and the Department of Corrections and Community Supervision's (DOCCS) directives.

Below are the Justice Center's requests from the above-referenced review, and OMH's response.

Recommendation for Finding #1: OMH response not indicated, as this is directed to DOCCS.

OMH Response:

OMH defers to DOCCS regarding providing programming in Sullivan's SHU.

Recommendation for Finding #2:

"The Justice Center recommends that DOCCS and OMH divert all individuals on the mental health caseload to a residential rehabilitation unit or another program that will provide better access to therapeutic programming than they will receive in segregated confinement.

In addition, please provide the Justice Center with an update for incarcerated individuals 5, 6 and 7. This update should include their MHSL, housing status, current confinement sanctions, any additional misbehavior reports or tickets, and the number of times the individuals were transferred to the RCTP."

OMH Response:

As noted in previous responses, in cases where an individual at a correctional facility is experiencing substantial functional disability due to their mental health, they are assigned an S-designation and thus appropriately considered part of the "special population" and admitted to a SHU Diversion Program. Individuals on caseload but not S-designated continue to have individual services while in SHU and RRU as indicated for their service level. Regardless of their MHSL or "special population" designation, all individuals housed in the SHU and RRU continue to have

access to mental health staff daily during rounds and can request mental health follow-up as needed.

Incarcerated individual 5 transferred to the Upstate RRU on 5/25/22, then to General Population (GP) at Coxsackie on 9/29/22. He was discharged from the mental health caseload on 10/27/22. He has not required any further Residential Crisis Treatment Program (RCTP) admissions.

Incarcerated individual 6 transferred to the Upstate RRU on 5/25/22, where he was made a MHSL 3 on 6/17/22. He then transferred to GP at Five Points on 6/23/22. He had one additional RCTP admission from 12/6/22-12/7/22 due to threatening to self-harm; he was returned to GP once cleared for RCTP discharge.

Incarcerated individual 7 was made a MHSL 1S on 5/31/22. He transferred to the Marcy Residential Mental Health Unit (RMHU) on 8/4/22, then to the Five Points RMHU on 1/26/23. He was admitted to RCTP six times after the 5/10/22 admission noted by the Justice Center. He was admitted from 5/12/22-6/6/22 after engaging in a suicide attempt (leading to his S-designation); from 7/6/22-7/7/22 for threatening to self-harm; 7/7/22-7/11/22 after engaging in non-suicidal self-injury; from 7/12/22-7/21/22 after engaging in non-suicidal self-injury; 8/13/22-8/15/22 for psychiatric decompensation; and 11/16/22-11/18/22 for threatening to self-harm.

For all three individuals, OMH defers to DOCCS for information on confinement sanctions and any additional misbehavior reports or tickets.

Recommendations for Findings #3-6: OMH response not indicated, as these matters are managed by DOCCS.

Recommendation for Finding #7:

“Please provide the Justice Center with the reason it was determined that a person with a MHSL 3 was found to have no need for active mental health services. If this was written in error, the Justice Center requests that OMH staff members at Clinton Correctional Facility be retrained in CNYPC Corrections Based Operations Policy # 6.0 - Special Housing Unit and Residential Rehabilitation Unit/Special Population Diversion Services. Accurate documentation about mental health needs is critical to support the person’s mental health treatment as they are transferred from housing units and facilities.”

OMH Response:

Upon review it was determined that this was due to human error and not an indication of the patient no longer needing mental health services nor the clinician being unfamiliar with policy. In lieu of a policy review, the Unit Chief reviewed with the clinician the need to double check progress notes for accuracy.

Recommendation for Finding #8:

“To ensure appropriate continuity of care, documentation should accurately reflect how an incarcerated individual is working on their mental health goals. Repetitive recommendations do not demonstrate that the individual is making progress regarding their goals or memorialize concerns that an incarcerated individual may have. As that form is no longer in use, the Justice Center requests that OMH staff members at Fishkill Correctional Facility be retrained in CNYPC Corrections Based Operations Policy # 6.0 - Special Housing Unit and Residential Rehabilitation Unit/Special Population Diversion Services. In addition, clinical staff should be reminded of the importance of documenting the reasoning for private call out refusals.”

OMH Response:

The Fishkill CF Unit Chief reviewed this matter with the clinician at the time the notes were written (December 2021-February 2022). More recently, the Fishkill CF treatment team reviewed CNYPC CBO Policy #9.30 Progress Notes with a focus on the importance of ensuring notes are individualized and include all pertinent information.

Sincerely,

Li-Wen Lee, M.D.
Associate Commissioner
Division of Forensic Services

cc: Danielle Dill, Psy.D., Executive Director, CNYPC
William Vertoske, Deputy Director, Corrections Based Operations, CNYPC
File