



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

KATHY HOCHUL
Governor

DENISE M. MIRANDA
Executive Director

March 3, 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 21220
Washington Avenue
Albany, NY 12226-2050

Re: 77010135179 Justice Center

Dear Dr. Lee and Acting Commissioner Annucci:

Thank you for your responses to the Justice Center for the Protection of People with Special Needs (the Justice Center) review of the programs, treatment and conditions of confinement for incarcerated individuals placed in segregated confinement in the Sing Sing Correctional Facility.

Based on the responses from the Department of Corrections and Community Supervision (DOCCS) and Office of Mental Health (OMH) the Justice Center has amended the report and now considers this review to be final.^{1 2}

Please direct any correspondence or concerns related to this review to me at davin.robinson@justicecenter.ny.gov. Thank you for your attention to these important matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Davin Robinson", with a horizontal line underneath.

Davin Robinson
Deputy Director, Outreach, Prevention and Support

¹ DOCCS response dated February 23, 2023

² OMH response dated February 8, 2023

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
Dr. Anne Sullivan, M.D., Commissioner, OMH
Danielle Dill, Executive Director, CNYPC
William Vertoske, Deputy Director, Corrections-Based Operations
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.



**Sing Sing Correctional Facility
Humane Alternatives to Long-Term Solitary Confinement (HALT)
Draft Compliance and Quality of Care Review
JC#: 77010135179**

On May 11, 2022, the Justice Center for the Protection of People with Special Needs (the Justice Center) conducted a site visit at the Sing Sing Correctional Facility 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 Sing Sing Correctional facility does not operate a Residential Rehabilitation Unit (RRU), the Justice Center toured the Special Housing Unit (SHU) and spoke cell side with nine incarcerated individuals. To complete a thorough evaluation, Justice Center staff requested private interviews in the SHU and three incarcerated individuals accepted.

In addition to reviewing Office of Mental Health (OMH) clinical case records, Department of Corrections and Community Supervision (DOCCS) SHU Folders, and DOCCS guidance records, the DOCCS Sign-In Logbook and Unit Activity Logbook, the Justice Center also requested any Exceptional Circumstances documentation for a time-period of six months.³ The Justice Center’s review found that there were no individuals placed on exceptional circumstances during this review period.

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 11, 2021, to May 11, 2022.

Justice Center Findings

Treatment and Conditions

1. Incarcerated individuals prefer to attend programming daily instead of receiving the tablet.

At the time of the Justice Center's site visit, programming time was scheduled to occur in the mornings for three hours from approximately 7:30 a.m. to 10:30 a.m. (OR Static Tablet 9:00 a.m. to 11:00 a.m.) Monday to Friday and one hour of recreation daily after lunch from 12:00 p.m. to 1:00 p.m. All three incarcerated individuals interviewed privately by the Justice Center, reported that they attend programming daily and prefer to attend program instead of receiving the tablet in the morning. It is unclear per the Activity Log how many individuals attend programming per day. The programming space was on the opposite side of the block and the area consisted of a row of desks in the block hallway.

Recommendation:

The incarcerated individuals interviewed reported that they would like programming to include resume building for employment, stress reduction groups, "vocational classes" and "something I can learn from".

Special Populations

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

Incarcerated individual 1 was on the mental health caseload with a mental health service level (MHSL) 4.⁴ Although initially designated as a MHSL 3 in July 2021, they were changed to a MHSL 4 as of October 12, 2021 as they remained stable without psychiatric medications. They are currently diagnosed with [REDACTED]

[REDACTED]
[REDACTED].

Incarcerated individual 2 was on the mental health caseload as a MHSL 4.⁵ They have a mental health diagnosis of [REDACTED]
[REDACTED]. According to their Treatment Needs/Service Level Designation Form, they have not taken medication since September 2020.

⁴ [REDACTED] [REDACTED] is hereafter referred to as **incarcerated individual 1**.

⁵ [REDACTED] [REDACTED] is hereafter referred to as **incarcerated individual 2**.

Incarcerated individual 3 was on the mental health caseload as a MHSL 3.⁶ Their mental health diagnosis is [REDACTED]. Upon placement in the SHU the individual stated they would like to work on their impulse control issues.

Request and Recommendation:

The Justice Center requests that DOCCS and OMH expand the definition of disability so that people who have been determined by OMH to need ongoing mental health treatment are included in the definition of special population. Solitary confinement poses serious risks to a person's mental health and people with ongoing mental health needs should be provided with more access to therapeutic programming rather than placement in solitary confinement for any period of time.

Length of time spent in segregated confinement

3. During the site visit, there were four incarcerated individuals on the Justice Center's review sample that had spent more than 15 consecutive days in segregated confinement.

On April 24, 2022, incarcerated individual 4 was placed in the SHU pending a disciplinary hearing for possessing a cellphone on their person.⁷ The individual received 120 days of confinement and had not yet been transferred at the time of the Justice Center's site visit on May 11, 2022.

On April 21, 2022, incarcerated individual 5 was placed in the SHU for possession of marijuana.⁸ They received 45 days of confinement and had not yet been transferred at the time of the Justice Center's site visit on May 11, 2022.

On April 24, 2022, incarcerated individual 6 was placed in the SHU for having an iPhone charging cord and power block plug in his cell.⁹ They received 90 days of confinement and had not yet been transferred at the time of the Justice Center's site visit on May 11, 2022.

On April 24, 2022, incarcerated individual 7 was placed in the SHU for contraband found in their cell including a 4 ½ inch long carbon fiber knife, an iPhone with

⁶ [REDACTED] is hereafter referred to as **incarcerated individual 3**.

⁷ [REDACTED] is hereafter referred to as **incarcerated individual 4**

⁸ [REDACTED] is hereafter referred to as **incarcerated individual 5**

⁹ [REDACTED] is hereafter referred to as **incarcerated individual 6**

charger, and marijuana.¹⁰ They received 270 days SHU time and had not yet been transferred at the time of the Justice Center's site visit on May 11, 2022.

Request and Recommendation:

The Justice Center requests that DOCCS provide an explanation as to why the four incarcerated individuals were not transferred to an RRU in the appropriate timeframe set forth by HALT.

Hearings and procedures

The Justice Center reviewed disciplinary hearing documentation for all nine incarcerated individuals. Eight individuals had disciplinary hearings occurring within five days of their placement in segregated confinement and the ninth took twelve days due to incarcerated individual 4 requesting witnesses.¹¹

Assessments, rehabilitation plans, and discharge procedures

4. The Justice Center acknowledges OMH clinicians for incarcerated individual 2's Treatment Plan. It was individualized, frequently reviewed and updated.

Incarcerated individual 2's treatment plan addressed their need for coping skills as their symptoms historically interfered with their daily functioning. Following their transfer to the Sing Sing CF, the individual's plan was reviewed twice within the first two months acknowledging their transfer and how the transfer may affect their overall stability.

5. Incarcerated individual 3 was not seen for mental health callouts in accordance with policy.

According to OMH clinical case record, incarcerated individual 3 transferred to the Sing Sing CF as a MHSL 3 on March 11, 2022. Progress notes indicate that they were "no-show" for their scheduled mental health callouts following their transfer on March 25, 2022, April 5, 2022, and April 13, 2022. The individual was not seen in accordance with policy and there was no documented reason for the missed appointments nor a timeframe in which they would be rescheduled.¹² The individual

¹⁰ [REDACTED] is hereafter referred to as **incarcerated individual 7**

¹¹ Under HALT, the hearing officer has 15 days to complete a hearing if the incarcerated individual requests assistance or representation.

¹² CNYPC CBO Policy # 9.27 Psychiatric Progress Notes – to be seen within one month of transfer into a facility from another facility, CNYPC CBO Policy # 9.30 Progress Notes – to be seen within two weeks of transfer for active

was seen for their first documented encounter with mental health staff cell-side with the psychiatrist on April 14, 2022.

Requests and Recommendations:

- Time frames for mental health evaluations and assessments should be strictly adhered to so that incarcerated individuals receive services in a timely manner during incarceration, especially following a facility transfer. Please provide documentation demonstrating whether routine and missed/refused/cancelled mental health call outs were conducted according to policy. If documentation cannot be provided and it was determined that these call outs were not completed, the Justice Center recommends OMH staff be retrained in CNYPC CBO Policies # 9.27 Psychiatric Progress Notes, # 9.30 Progress Notes and CNYPC CBO Policy # 2.4 Canceled/Refused/Missed Callouts.
- In addition, please forward any updated CNYPC CBO policies related to the SHU/RRU Mental Health Interview that memorialize when the interviews are to be completed since the inception of HALT.

Documentation Discrepancies

6. There is a discrepancy in the primary diagnosis documented in incarcerated individual 1's diagnosis record and the April 28, 2022, psychiatric progress note.

Incarcerated individual 1's Diagnosis Record, dated July 9, 2021, indicated their primary diagnosis was [REDACTED]

[REDACTED]. According to the individual's April 28, 2022 Psychiatric Progress Note, after a cell side assessment, their primary diagnosis was documented as [REDACTED]

[REDACTED]. There was no documentary evidence that a new Diagnosis Record was filed.

incarcerated individuals with a MHSL of 1, 2, and 3, and CNYPC CBO Policy # 2.4, - the mental health clinician with conduct a "face-to-face" visit with the incarcerated individual within three business days of the missed rescheduled callout.

Request and Recommendation:

OMH should provide updated documentation, or clarification, as to whether incarcerated individual 1 primary diagnosis was changed. Should this be a documentation error, psychiatric staff should be reminded of the importance of accurate documentation to ensure appropriate continuity of care.

Review conducted by: Roberta Murell, RN
Roberta D. Murell, RN, Facility Review Specialist

KATHY HOCHUL
Governor

ANN MARIE T. SULLIVAN, M.D.
Commissioner

MOIRA TASHJIAN, MPA
Executive Deputy Commissioner

February 8, 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 January 12, 2023, in response to the Justice Center's May 11, 2022 site visit of the Sing Sing 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:

"The incarcerated individuals interviewed reported that they would like programming to include resume building for employment, stress reduction groups, 'vocational classes' and 'something I can learn from'."

OMH Response:

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

Recommendation for Finding #2:

"The Justice Center requests that DOCCS and OMH expand the definition of disability so that people who have been determined by OMH to need ongoing mental health treatment are included in the definition of special population. Solitary confinement poses serious risks to a person's mental health and people with ongoing mental health needs should be provided with more access to therapeutic programming rather than placement in solitary confinement for any period of time."

OMH Response:

Under HALT, "special population" is defined per section 292(21) of Executive Law under which "disability" is "a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques..." Not all mental health conditions result in substantial functional disability (Mental Hygiene Law 1.03). This is not only true in the incarcerated setting, but also in the community. In cases where an individual at a correctional facility is experiencing substantial functional disability due to their mental health condition, they are assigned an S-designation and thus considered part of the special population.

Recommendations for Findings #3-4: OMH response not indicated, as these are directed to DOCCS.

Recommendation for Finding #6:

"...Please provide documentation demonstrating whether routine and missed/refused/cancelled mental health call outs were conducted according to policy. If documentation cannot be provided and it was determined that these call outs were not completed, the Justice Center recommends OMH staff be retrained in CNYPC CBO Policies # 9.27 Psychiatric Progress Notes, # 9.30 Progress Notes and CNYPC CBO Policy # 2.4 Canceled/Refused/Missed Callouts."

OMH Response:

The clinician responsible for assessing [REDACTED] during the timeframe noted no longer works for CNYPC; therefore, policies could not be reviewed.

Recommendation for Finding #7:

"Please provide documentation demonstrating whether incarcerated individual 2 and 6 were assessed by mental health staff in the SHU according to policy. If warranted, retrain OMH staff in the appropriate timeframes for completion of the SHU/RRU Mental Health Interview.

In addition, please forward any updated CNYPC CBO policies related to the SHU/RRU Mental Health Interview that memorialize when the interviews are to be completed since the inception of HALT."

OMH Response:

The requested notes showing both individuals were seen per policy are enclosed with this response. The updated version of CNYPC CBO Policy #6.0 Special Housing Unit and Residential Rehabilitation Unit/Special Population Diversion Services is also enclosed.

Recommendation for Finding #8:

"OMH should provide updated documentation, or clarification, as to whether incarcerated individual 1 primary diagnosis was changed. Should this be a documentation error, psychiatric staff should be reminded of the importance of accurate documentation to ensure appropriate continuity of care."

OMH Response:

In review, it was found that the 7/9/21 diagnoses change was not carried over to both of OMH's electronic databases. As the change happened at a different unit a year prior, not all staff at Sing Sing were aware of this intended change. Staff are regularly reminded via trainings and case reviews of the importance of crosschecking the electronic databases with the paper record.

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



Corrections and Community Supervision

KATHY HOCHUL
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

February 23, 2023

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

Re: 77010135179 Justice Center Oversight Action

Deputy Director Robinson:

This is in response to the New York State Justice Center's review of the compliance with the Humane Alternatives to Long-Term Solitary Confinement (HALT) law, and the monitoring of the quality of corrections-based mental health care for incarcerated individuals at Sing Sing Correctional Facility's Special Housing Unit (SHU) on May 11, 2022.

Recommendation:

The incarcerated individuals interviewed reported that they would like programming to include resume building for employment, stress reduction groups, "vocational classes" and something I can learn from.

Response:

The focus for those that are admitted to the Special Housing Unit (SHU) is for participants to identify the behavior which led to their disciplinary confinement, develop and practice emotional regulation strategies, review strategies and expectations for their next level of programming, i.e., general population, Residential Rehabilitation Unit (RRU), Step Down Program (STP) to General Confinement or Community, and Residential Mental Health Therapeutic Unit (RMHTU), and gain an understanding of holistic health and rehabilitation. This lesson plan was developed to assist in behavioral modification and emotional regulation so that participants will thereafter be able to complete their mandatory Department of Corrections and Community Supervision (DOCCS) programs.

Nevertheless, I will present your recommendation to the Deputy Commissioner for Program Services for appropriate consideration.

Request and Recommendation:

The Justice Center requests the DOCCS and OMH expand the definition of disability so that people who have been determined by OMH to need ongoing mental health treatment are included in the definition of special population. Solitary confinement poses serious risks to a person's mental health and people with ongoing mental health needs should be provided with more access to therapeutic programming rather than placement in solitary confinement for any period of time.

Response:

With regard to your recommendation of expanding the criteria for who meets the definition of special population, DOCCS and OMH are in agreement that individuals who are Seriously Mentally Ill (SMI) are not defined as a Special Population, but are specifically excluded from Restricted Housing pursuant to Correction Law 137(6)(d)(ii)(C). Following consultation with the Office of Mental Health (OMH), the determination for who is included within the category of "persons with a disability," was made based on various pre-existing laws/agreements, as well as on community standards.

Moreover, for other OMH caseload individuals who may be housed in segregated confinement for a maximum of fifteen days, the HALT law has dramatically changed the daily conditions of such confinement to now include 4-hours of out-of-cell time, three of which are for therapeutic programming. In addition, these individuals can access two tablets -- one that has the capabilities to make phone calls and provide educational and self-help materials, and the second that provides access to law library materials. By contrast, individuals housed in general confinement do not have comparable amenities.

Finally, since HALT's implementation, no individuals designated as SMI (1S or 2S) have been placed in a SHU cell. DOCCS staff are automatically alerted whenever an incarcerated individual is designated as a Special Population individual, which includes anyone designated as an SMI, thereby avoiding altogether their placement in a Special Housing Unit (SHU).

Request and Recommendation:

The Justice Center requests that DOCCS provide an explanation as to why the four incarcerated individuals were not transferred to an RRU in the appropriate timeframe set forth by HALT.

Response:

In preparation for the implementation of HALT, DOCCS established over 1,000 Residential Rehabilitation Unit beds. DOCCS could not predict the dramatic increase in violence with assaults against staff and other incarcerated individuals. Hence, there was insufficient RRU capacity to meet the overall increase in violence. DOCCS immediately worked to increase our RRU bed capacity.

Request and Recommendation:

Please provide the Justice Center with documentary evidence as to why incarcerated individual 4 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 nine days to complete.

Response:

According to incarcerated individual 4's DOCCS Disciplinary Hearing Packet, the hearing for contraband began on April 27, 2022, and ended on May 6, 2022.

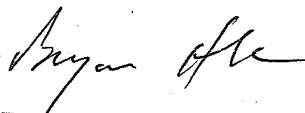
Incarcerated individual 4's date of incident was April 24, 2022. As such, the hearing was to be completed in five days and the outcome rendered by April 29, 2022, since he was confined.

However, under the terms of HALT, if an incarcerated individual requests assistance or representation for a hearing, the hearing officer then has 15 days to complete the hearing. In this case, the incarcerated individual requested witnesses, which changed the timeframe for completion to 15 days.

The hearing commenced on April 27, 2022, and was completed on May 6, 2022, which is a total of 12 days and in compliance with the timeframes determined by HALT.

Thank you for the opportunity to comment on your report. I look forward to continuing to work productively with the Justice Center to improve the services for our population.

Sincerely,



Bryan Hilton,
Associate Commissioner

Attachment

cc: Michael Capra, Superintendent, Sing Sing Correctional Facility
Roberta D. Murell, RN, Facility Review Specialist, Justice Center