Legislation Details (With Text)

File #:	Int 0549-2022 **Version:** A	**Name:**	Banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins.
Type:	Introduction	**Status:**	Enacted
		In control:	Committee on Criminal Justice
On agenda:	6/16/2022		
Enactment date:	1/30/2024	**Enactment #:**	2024/042

Title: A Local Law to amend the administrative code of the city of New York, in relation to banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins

Sponsors: Public Advocate Jumaane Williams, Carlina Rivera, Tiffany Cabán, Crystal Hudson, Julie Won, Lincoln Restler, Shahana K. Hanif, Alexa Avilés, Sandy Nurse, Pierina Ana Sanchez, Mercedes Narcisse, Shekar Krishnan, Shaun Abreu, Farah N. Louis, Amanda Farías, Carmen N. De La Rosa, Sandra Ung, Chi A. Ossé, Jennifer Gutiérrez, Kristin Richardson Jordan, Rita C. Joseph, Justin L. Brannan, Julie Menin, Lynn C. Schulman, Charles Barron, Francisco P. Moya, Nantasha M. Williams, Keith Powers, Christopher Marte, Althea V. Stevens, Selvena N. Brooks-Powers, Erik D. Bottcher, Eric Dinowitz, Diana I. Ayala, Kevin C. Riley, Oswald Feliz, Gale A. Brewer, Adrienne E. Adams, (by request of the Brooklyn Borough President)

Indexes: Agency Rule-making Required, Report Required

Attachments: 1. Summary of Int. No. 549-A, 2. Summary of Int. No. 549, 3. Int. No. 549, 4. June 16, 2022 - Stated Meeting Agenda, 5. Hearing Transcript - Stated Meeting 6-16-22, 6. Minutes of the Stated Meeting - June 16, 2022, 7. Committee Report 9/28/22, 8. Hearing Testimony 9/28/22, 9. Hearing Transcript 9/28/22, 10. Proposed Int. No. 549-A - 12/19/23, 11. Committee Report 12/20/23, 12. Hearing Transcript 12/20/23, 13. December 20, 2023 - Stated Meeting Agenda, 14. Hearing Transcript - Stated Meeting 12-20-23, 15. Committee Report 1/30/24, 16. Hearing Transcript 1/30/24, 17. Committee Report - Stated Meeting, 18. Mayor's Veto Message, 19. January 30, 2024 - Stated Meeting Agenda, 20. Hearing Transcript - Stated Meeting 1-30-24 (1:30 pm), 21. Minutes of the Stated Meeting - January 30, 2024 (PM), 22. Int. No. 549-A (FINAL), 23. Fiscal Impact Statement, 24. Local Law 42

Date	Ver.	Action By	Action	Result
6/16/2022	*	City Council	Introduced by Council	
6/16/2022	*	City Council	Referred to Comm by Council	
9/28/2022	*	Committee on Criminal Justice	Hearing Held by Committee	
9/28/2022	*	Committee on Criminal Justice	Laid Over by Committee	
12/20/2023	*	Committee on Criminal Justice	Hearing Held by Committee	
12/20/2023	*	Committee on Criminal Justice	Amendment Proposed by Comm	
12/20/2023	*	Committee on Criminal Justice	Amended by Committee	
12/20/2023	A	Committee on Criminal Justice	Approved by Committee	Pass
12/20/2023	A	City Council	Approved by Council	Pass
12/20/2023	A	City Council	Sent to Mayor by Council	
1/19/2024	A	Mayor	Vetoed by Mayor	
1/30/2024	A	Committee on Criminal Justice	Hearing Held by Committee	
1/30/2024	A	Committee on Criminal Justice	Approved by Committee	Pass

1/30/2024 A City Council Overridden by Council Pass

Int. No. 549-A

By the Public Advocate (Mr. Williams) and Council Members Rivera, Cabán, Hudson, Won, Restler, Hanif, Avilés, Nurse, Sanchez, Narcisse, Krishnan, Abreu, Louis, Farías, De La Rosa, Ung, Ossé, Gutiérrez, Richardson Jordan, Joseph, Brannan, Menin, Schulman, Barron, Moya, Williams, Powers, Marte, Stevens, Brooks-Powers, Bottcher, Dinowitz, Ayala, Riley, Feliz, Brewer and The Speaker (Council Member Adams) (by request of the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code is amended by adding a new section 9-167 to read as follows:

§ 9-167 Solitary confinement. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Advocate. The term "advocate" means a person who is a law student, paralegal, or an incarcerated person.

Cell. The term "cell" means any room, area or space that is not a shared space conducive to meaningful, regular and congregate social interaction among many people in a group setting, where an individual is held for any purpose.

De-escalation confinement. The term "de-escalation confinement" means holding an incarcerated person in a cell immediately following an incident where the person has caused physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons.

Emergency lock-in. The term "emergency lock-in" means a department-wide emergency lock-in, a facility emergency lock-in, a housing area emergency lock-in, or a partial facility emergency lock-in as defined in section 9-155.

Out-of-cell. The term "out-of-cell" means being in a space outside of, and in an area away from a cell, in a group setting with other people all in the same shared space without physical barriers separating such

powered by Legistar™

people that is conducive to meaningful and regular social interaction and activity or being in any space during the time of carrying out medical treatment, individual one-on-one counseling, an attorney visit or court appearance.

Pre-hearing temporary restrictive housing. The term "pre-hearing temporary restrictive housing" means any restrictive housing designated for incarcerated persons who continue to pose a specific risk of imminent serious physical injury to staff, themselves, or other incarcerated persons after a period of de-escalation confinement has exceeded time limits established by this section and prior to a hearing for recommended placement in restrictive housing has taken place.

Restraints. For the purposes of this section, the term "restraints" means any object, device or equipment that impedes movement of hands, legs, or any other part of the body.

Restrictive housing. The term "restrictive housing" means any housing area that separates incarcerated persons from the general jail population on the basis of security concerns or discipline, or a housing area that poses restrictions on programs, services, interactions with other incarcerated persons or other conditions of confinement. This definition excludes housing designated for incarcerated persons who are: (1) in need of medical or mental health support as determined by the entity providing or overseeing correctional medical and mental health, including placement in a contagious disease unit, (2) transgender or gender non-conforming, (3) in need of voluntary protective custody, or (4) housed in a designated location for the purpose of school attendance.

Solitary confinement. The term "solitary confinement" means any placement of an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for a count not to exceed two hours in any 24-hour period.

Suicide prevention aide. For the purposes of this section, the term "suicide prevention aide" means a person in custody who has been trained to identify unusual and/or suicidal behavior.

Violent grade I offense. The term "violent grade I offense" shall have the same meaning as defined by

the rules of the department of correction as of January 1, 2022.

b. Ban on solitary confinement. The department shall not place an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for count not to exceed two hours in any 24-hour period, unless for the purpose of de-escalation confinement or during emergency lock-ins.

c. De-escalation confinement. The department's uses of de-escalation confinement shall comply with the following provisions:

1. De-escalation confinement shall not be located in intake areas and shall not take place in decontamination showers. Spaces used for de-escalation confinement must, at a minimum, have the features specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and be maintained in accordance with the personal hygiene and space requirements set forth in such sections;

2. Department staff must regularly monitor a person in de-escalation confinement and engage in continuous crisis intervention and de-escalation to support the person's health and well-being, attempt de-escalation, work toward a person's release from de-escalation confinement and determine whether it is necessary to continue to hold such person in such confinement;

3. The department shall conduct visual and aural observation of each person in de-escalation confinement every 15 minutes, shall refer any health concerns to medical or mental health staff, and shall bring any person displaying any indications of any need for medical documentation, observation, or treatment to the medical clinic. Suicide prevention aides may conduct check-ins with a person in de-escalation confinement at least every 15 minutes and refer any health concerns to department staff who will get medical or mental health staff to treat any reported immediate health needs. No suicide prevention aide shall face any retaliation or other harm for carrying out their role;

4. Throughout de-escalation confinement, a person shall have access to a tablet or device that allows such person to make phone calls outside of the facility and to medical staff in the facility;

5. A person shall be removed from de-escalation confinement immediately following when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others;

6. The maximum duration a person can be held in de-escalation confinement shall not exceed four hours immediately following the incident precipitating such person's placement in such confinement. Under no circumstances may the department place a person in de-escalation confinement for more than four hours total in any 24-hour period, or more than 12 hours in any seven-day period; and

7. In circumstances permitted in subdivision g of this section, the department may transfer a person from de-escalation confinement to pre-hearing temporary restrictive housing.

(a) The department shall not place any incarcerated person in a locked decontamination shower nor in any other locked space in any facility that does not have, at a minimum, the features specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and maintained in accordance with the personal hygiene and space requirements as set forth in such sections.

(b) The department shall not maintain any locked decontamination showers. Any other locked spaces in any facility for holding incarcerated people must at least have the features specified in and maintained in accordance with the personal hygiene and space requirements set forth in 40 RCNY § 1-03 and § 1-04.

d. Reporting on de-escalation confinement. For each instance an incarcerated person is placed in de-escalation confinement as described in subdivision c of this section, the department shall prepare an incident report that includes a detailed description of why isolation was necessary to de-escalate an immediate conflict and the length of time the incarcerated person was placed in such confinement. Beginning on July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide the speaker of the council and the board of correction all such reports for the preceding quarter and post all such reports on the department's website. The department shall redact all personally identifying information prior to posting such reports on the department's website. Beginning July 31, 2024, and within 30 days of the end of each subsequent

quarter, the department shall provide to the speaker of the council and the board of correction, and post on the department's website, a report with data for the preceding quarter on the total number of people placed in such confinement, disaggregated by race, age, gender identity and mental health treatment level, as well as the total number of people held in such confinement disaggregated by whether confinement lasted less than one hour, between one and two hours, between two and three hours, and between three and four hours.

e. Use of restraints. 1. The department shall not place an incarcerated person in restraints unless an individualized determination is made that restraints are necessary to prevent an imminent risk of self-injury or injury to other persons. In such instances, only the least restrictive form of restraints may be used and may be used no longer than is necessary to abate such imminent harm. Restraints shall not be used on an incarcerated person under the age of 22 except in the following circumstances: (i) during transportation in and out of a facility, provided that during transportation no person shall be secured to an immovable object; and (ii) during escorted movement within a facility to and from out-of-cell activities where an individualized determination is made that restraints are necessary to prevent an immediate risk of self-injury or injury to other persons. The department is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements.

2. The department shall not place an incarcerated person in restraints beyond the use of restraints described in paragraph 1 of this subdivision, or on two consecutive days, until a hearing is held to determine if the continued use of restraints is necessary for the safety of others. Such hearing shall comply with the rules of the board of correction as described in paragraph 1 of subdivision f of this section. Any continued use of restraints must be reviewed by the department on a daily basis and discontinued once there is no longer an imminent risk of self-injury or injury to other persons. Continued use of restraints may only be authorized for seven consecutive days.

f. Restrictive housing hearing. Except as provided in subdivision g of this section, the department shall not place an incarcerated person in restrictive housing until a hearing on such placement is held and the person

is found to have committed a violent grade I offense. Any required hearing regarding placement of a person into restrictive housing shall comply with rules to be established by the board of correction.

1. The board of correction shall establish rules for restrictive housing hearings that shall, at a minimum, include the following provisions:

(i) An incarcerated person shall have the right to be represented by their legal counsel or advocate;

(ii) An incarcerated person shall have the right to present evidence and cross-examine witnesses;

(iii) Witnesses shall testify in person at the hearing unless the witnesses' presence would jeopardize the safety of themselves or others or security of the facility. If a witness is excluded from testifying in person, the basis for the exclusion shall be documented in the hearing record;

(iv) If a witness refuses to provide testimony at the hearing, the department must provide the basis for the witness's refusal, videotape such refusal, or obtain a signed refusal form, to be included as part of the hearing record;

(v) The department shall provide the incarcerated person and their legal counsel or advocate written notice of the reason for proposed placement in restrictive housing and any supporting evidence for such placement, no later than 48 hours prior to the restrictive housing hearing;

(vi) The department shall provide the legal counsel or advocate adequate time to prepare for such hearings and shall grant reasonable requests for adjournments;

(vii) An incarcerated person shall have the right to an interpreter in their native language if the person does not understand or is unable to communicate in English. The department shall take reasonable steps to provide such interpreter;

(viii) A refusal by an incarcerated person to attend any restrictive housing hearings must be videotaped and made part of the hearing record;

(ix) If the incarcerated person is excluded or removed from a restrictive housing hearing because it is determined that such person's presence will jeopardize the safety of themselves or others or security of the

facility, the basis for such exclusion must be documented in the hearing record;

(x) A restrictive housing disposition shall be reached within five business days after the conclusion of the hearing. Such disposition must be supported by substantial evidence, shall be documented in writing, and must contain the following information: a finding of guilty or not guilty, a summary of each witness's testimony and whether their testimony was credited or rejected with the reasons thereof, the evidence relied upon by the hearing officer in reaching their finding, and the sanction imposed, if any; and

(xi) A written copy of the hearing disposition shall be provided to the incarcerated person and their counsel or advocate within 24 hours of the determination.

2. Failure to comply with any of the provisions described in paragraph 1 of this subdivision, or as established by board of correction rule, shall constitute a due process violation warranting dismissal of the matter that led to the hearing.

g. Pre-hearing temporary restrictive housing. In exceptional circumstances, the department may place a person in pre-hearing temporary restrictive housing prior to conducting a restrictive housing hearing as required by subdivision f of this section.

1. Such placement shall only occur upon written approval of the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security. Such written approval shall include: the basis for a reasonable belief that the incarcerated person has committed a violent grade I offense, and whether such person has caused serious physical injury or poses a specific and significant risk of imminent serious physical injury to staff or other incarcerated persons.

2. A restrictive housing hearing shall occur as soon as reasonably practicable following placement in pre-hearing temporary restrictive housing, and must occur within five days of such placement, unless the person placed in such restrictive housing seeks a postponement of such hearing.

3. If a person is found guilty at a restrictive housing hearing, time spent in pre-hearing temporary restrictive housing prior to such hearing determination shall be deducted from any sentence of restrictive

housing and such time shall count toward the time limits in restrictive housing.

4. Pre-hearing temporary restrictive housing shall comply with all requirements for restrictive housing, including but not limited to those established in subdivision h of this section.

5. During the first day of placement in pre-hearing temporary restrictive housing, department staff must regularly monitor the person and engage in continuous crisis intervention and attempt de-escalation, work toward a person's release from pre-hearing temporary restrictive housing and determine whether it is necessary to continue to hold the person in pre-hearing temporary restrictive housing.

h. Restrictive housing regulations. The department's use of restrictive housing must comply with the following provisions:

1. The department shall not place an incarcerated person in restrictive housing for longer than necessary and for no more than a total of 60 days in any 12 month period.

2. Within 15 days of placement of an incarcerated person in restrictive housing, the department shall meaningfully review such placement to determine whether the incarcerated person continues to present a specific, significant and imminent threat to the safety and security of other persons if housed outside restrictive housing. If an individual is not discharged from restrictive housing after review, the department shall provide in writing to the incarcerated person: (i) the reasons for the determination that such person must remain in restrictive housing and (ii) any recommended program, treatment, service, or corrective action. The department shall provide the incarcerated person access to such available programs, treatment and services.

3. The department shall discharge an incarcerated person from restrictive housing if such person has not engaged in behavior that presents a specific, significant, and imminent threat to the safety and security of themselves or other persons during the preceding 15 days. In all circumstances, the department shall discharge an incarcerated person from restrictive housing within 30 days after their initial placement in such housing.

4. A person placed in restrictive housing must have interaction with other people and access to congregate programming and amenities comparable to those housed outside restrictive housing, including

access to at least seven hours per day of out-of-cell congregate programming or activities with groups of people in a group setting all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction. If a person voluntarily chooses not to participate in congregate programming, they shall be offered access to comparable individual programming. A decision to voluntarily decline to participate in congregate programming must be done in writing or by videotape.

5. The department shall utilize programming that addresses the unique needs of those in restrictive housing. The department shall provide persons in restrictive housing with access to core educational and other programming comparable to core programs in the general population. The department shall also provide persons in restrictive housing access to evidence-based therapeutic interventions and restorative justice programs aimed at addressing the conduct resulting in their placement in restrictive housing. Such programs shall be individualized and trauma-informed, include positive incentive behavior modification models, and follow best practices for violence interruption. Staff that routinely interact with incarcerated persons must be trained in de-escalation techniques, conflict resolution, the use of force policy, and related topics to address the unique needs of those in restrictive housing units.

6. The department shall use positive incentives to encourage good behavior in restrictive housing units and may use disciplinary sanctions only as a last resort in response to behavior presenting a serious and evident danger to oneself or others after other measures have not alleviated such behavior.

7. All housing for medical or mental health support provided to persons recommended to receive such support by the entity providing and,or overseeing correctional medical and mental health, including placement in contagious disease units, housing for people who are transgender or gender non-conforming, housing for voluntary protective custody, and housing for purposes of school attendance, shall comply with subdivisions (b), (c), (e), (i), (j) and (k) of this section and paragraphs 4, 5, and 6 of this subdivision.

8. For purposes of contagious disease units, after a referral from health care staff, a person may be held in a medical unit overseen by health care staff, for as limited a time as medically necessary as exclusively

determined by health care staff, in the least restrictive environment that is medically appropriate. Individuals in a contagious disease unit must have comparable access as individuals incarcerated in the general population to phone calls, emails, visits, and programming done in a manner consistent with the medical and mental health treatment being received, such as at a physical distance determined appropriate by medical or mental health staff.Such access must be comparable to access provided to persons incarcerated outside of restrictive housing units.

9. Reporting on restrictive housing. For each instance a disciplinary charge that could result in restrictive housing is dismissed or an incarcerated individual is found not guilty of the disciplinary charge, the department shall prepare an incident report that includes a description of the disciplinary charge and the reasons for the dismissal or not guilty determination. For each instance an incarcerated person is placed in restrictive housing, the department shall prepare an incident report that includes a detailed description of the behavior that resulted in placement in restrictive housing and why restrictive housing was necessary to address such behavior, including if a person was placed in pre-hearing temporary restrictive housing and the reasons why the situation met the requirements in paragraph 1 of subdivision g of this section. For each instance in which confinement in restrictive housing is continued after a 15-day review of an incarcerated person's placement in restrictive housing, the department shall prepare an incident report as to why the person was not discharged, including a detailed description of how the person continued to present a specific, significant and imminent threat to the safety and security of the facility if housed outside restrictive housing and what program, treatment, service, and/or corrective action was required before discharge. Beginning on July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide the speaker of the council and the board of correction all such reports for the prior quarter and post all such reports on the department's website. The department shall redact all personally identifying information prior to posting the reports on the department's website. Beginning July 31, 2024, and within 30 days of the end of each subsequent quarter, the department shall provide to the speaker of the council and the board of correction, and post on the department's

website, a report with data for the preceding quarter on the total number of people placed in restrictive housing during that time period, disaggregated by race, age, gender identity, mental health treatment level and length of time in restrictive housing, and data on all disposition outcomes of all restrictive housing hearing during such time period, disaggregated by charge, race, age, gender identity and mental health treatment level.

i. Out-of-cell time. 1. All incarcerated persons must have access to at least 14 out-of-cell hours every day except while in de-escalation confinement pursuant to subdivision c of this section and during emergency lock-ins pursuant to subdivision j of this section.

2. Incarcerated persons may congregate with others and move about their housing area freely during out-of-cell time and have access to education and programming pursuant to section 9-110 of the administrative code.

j. Emergency lock-ins. 1. Emergency lock-ins may only be used when the Commissioner, a Deputy Commissioner, or another equivalent member of department senior leadership with responsibility for the operations of security for a facility determines that such lock-in is necessary to de-escalate an emergency that poses a threat of specific, significant and imminent harm to incarcerated persons or staff. Emergency lock-ins may only be used when there are no less restrictive means available to address an emergency circumstance and only as a last resort after exhausting less restrictive measures. Emergency lock-ins must be confined to as narrow an area as possible and limited number of people as possible. The department shall lift emergency lock-ins as quickly as possible. The Commissioner, a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security shall review such lock-ins at least every hour. Such lock-ins may not last more than four hours.

2. Throughout an emergency lock-in, the department shall conduct visual and aural observation of every person locked in every fifteen (15) minutes, shall refer any health concerns to medical or mental health staff, and shall bring any person displaying any indications of any need for medical documentation, observation, or treatment to the medical clinic. Throughout an emergency lock-in, other than in a department-wide emergency

powered by Legistar™

lock-in or a facility emergency lock-in, each person locked in shall have access to a tablet or other device that allows the person to make phone calls both outside of the facility and to medical staff in the facility.

3. The department shall immediately provide notice to the public on its website of an emergency lock-in, including information on any restrictions on visits, phone calls, counsel visits or court appearances.

4. For each instance an emergency lock-in is imposed, the department shall prepare an incident report that includes:

(a) A description of why the lock-in was necessary to investigate or de-escalate an emergency, including the ways in which it posed a threat of specific, significant and imminent harm;

(b) A description of how other less restrictive measures were exhausted;

(c) The number of people held in lock-in;

(d) The length of lock-in;

(e) The areas affected and the reasons such areas were subject to the emergency lock-in;

(f) The medical and mental health services affected, the number of scheduled medical and or mental health appointments missed and requests that were denied;

(g) Whether visits, counsel visits or court appearances were affected;

(h) What programs, if any, were affected;

(i) All actions taken during the lock-in to resolve and address the lock-in; and

(j) The number of staff diverted for the lock-in.

Beginning July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide the speaker of the council and the board of correction all such reports for the preceding quarter and shall post all such reports on the department's website with any identifying information redacted. Beginning July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide to the speaker of the council and the board of correction a report on the total number of lock-ins occurring during the preceding quarter, the areas affected by each such lock-in, the length of each such lock-in and number of

powered by Legistar™

incarcerated people subject to each such lock-in, disaggregated by race, age, gender identity, mental health treatment level and length of time in cell confinement.

k. Incarcerated persons under the age of 22 shall receive access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.

§ 2. This local law takes effect 180 days after it becomes law. The board of correction shall take any actions necessary for the implementation of this local law, including the promulgation of rules relating to procedures and penalties necessary to effectuate this section before such date.

Session 12
AM
LS # 7797
6/2/22

Session 11
AM
LS # 2666/2936/12523/12658/12676/12913
Int. # 2173- 2020