

*City of New York  
Board of Correction*

**MEMORANDUM**

To: Members of the Board of Correction

From: Richard T. Wolf, Executive Director

Date: October 19, 2009

Subject: Bi-monthly staff report: Close Custody Housing

---

Summary

The Department of Correction (DOC) confines in Close Custody Housing (CCH) areas prisoners who DOC determines: (1) require protection from other prisoners (“Protective Custody” [CCH/PC]), or (2) require isolation “for the safety and security of other inmates and/or staff” (“Non-Protective Custody” [CCH/Non-PC]).<sup>1</sup> The Department currently operates four CCH areas, which have a combined capacity of between 90 and 100 beds. The two categories of prisoners are confined in separate single-cell housing areas. Both categories are defined as DOC’s “most restrictive security status”. Prisoners may request placement in CCH/PC, or the Department may initiate the placement for the protection of the prisoner.

Wherever they are housed and regardless of CCH category, almost all prisoners – many of whom have been confined in CCH for months – remain in their cells for all but an hour or two each day. Extensive lock-in is a feature CCH has in common with punitive segregation, but it is important to note that, unlike punitive segregation, prisoners in Close Custody have not committed disciplinary infractions and are not being confined as punishment. Rather, they are isolated for their own protection or the protection of other prisoners and/or staff.

CCH prisoners have limited scheduled opportunities to come out of their cells. They are allowed to watch television from individual Plexiglas cubicles in the dayroom, for one hour (and sometimes two hours) each day. Prisoners are offered the opportunity to take a shower, which is available on the tier. Prisoners also are offered an hour of outdoor exercise, but few prisoners opt to attend because it is offered early in the morning: as early as 7:30 a.m. at one facility (North Infirmery Command) and 8-8:30 a.m. at another (Robert N. Davoren Center).

Prisoners also may leave their cells to attend visits or get a haircut (in the housing area), or to be seen by a correctional health professional in a mini-clinic in the housing

---

<sup>1</sup> NYC Department of Correction, Directive 6006R-D (“Close Custody Housing”), effective May 28, 2009, §II A (“Policy”), p. 1.

area. All other services are provided in the cell. CCH prisoners remain in their cells and communicate through a solid door with a narrow expanded metal “window” when they speak with social services personnel and religious advisors.

### Introduction

At its September 11, 2009 meeting, the Board of Correction directed its staff to prepare a primer on Close Custody Housing (CCH) for review by the Members.

This report includes information from Department of Correction Operations Orders, Directives, and Institutional Memoranda, data from jail records documenting census and CCH prisoners’ activities,<sup>2</sup> field inspections, and interviews with DOC uniformed staff members and CCH prisoners housed in Building 3 Lower at the Robert N. Davoren Center on Rikers Island.

This report: (1) reviews the history of CCH, summarizes the events that spurred CCH’s development, and discusses the pending *Jackson v. Horn* lawsuit and the Board’s deliberations on Close Custody Housing during the Minimum Standards Review process; (2) presents DOC’s explanation of why CCH operations are consistent with language in the Minimum Standards; (3) contrasts the purposes and procedures of Close Custody to those of punitive segregation; (4) describes the Close Custody housing areas in four NYC jails; and, (5) presents several staff findings.

At the Board’s direction, the report offers no opinion as to whether CCH violates provisions of the Minimum Standards.

### History

On October 14, 2005 DOC formally established Close Custody Housing by issuing Directive 6006.<sup>3</sup> However, the events leading to its creation began one year earlier.

On October 3, 2004 adolescent detainee Tyree Abney was beaten to death in his housing area. DOC reported it had identified seven alleged perpetrators and asked the Board for variances authorizing the Department to lock down the seven until it conducted infraction hearings, which BOC was assured would result in the seven adolescent detainees being confined in punitive segregation within a few days.<sup>4</sup> DOC explained that it was concerned for the safety of the accused adolescents and also wanted to isolate them from each other to prevent them from talking with each other about the incident. On October 4, 2004 the Board granted short-term variances from Minimum Standards §1-06 (“Lock-In”)<sup>5</sup>

---

<sup>2</sup> BOC staff examined records for the week of September 13, 2009 through September 19, 2009.

<sup>3</sup> Directive 6006, “Close Custody Housing”, effective date 10/14/05.

<sup>4</sup> The Board expected that the variances would remain in effect only until DOC could conclude its internal investigation, serve disciplinary infraction charges, and conduct mandatory due process hearings on the charges.

<sup>5</sup> Amendments to the Standards, effective June 2008, resulted in renumbering of the sections. The Lock-In provisions are now in §1-05.

Before DOC could hold disciplinary hearings, the Bronx District Attorney's office requested that DOC halt its internal investigative and disciplinary processes until the DA authorized DOC to move forward.<sup>6</sup> DOC complied, and began sending the Board weekly updates, reporting that the affected inmates (1) remained in isolation and (2) were receiving basic services (in-cell) that were variance conditions imposed by BOC.

On November 26, 2004 DOC requested that the Board grant variances, and then adopt amendments to the Minimum Standards, which would authorize DOC to "place protective custody inmates on 23-hour lock-in and to provide in-cell religious services to protective custody inmates...rather than offer attendance at congregate religious services."<sup>7</sup>

Before the Board formally took up DOC's requests, one of the alleged perpetrators filed a lawsuit challenging his prolonged isolation. In a January 22, 2005 decision, Judge Phyllis Skloot-Bamberger ruled that the inmate-petitioner's "23-hour lock-in status at the Rikers Island Detention facility is invalid." The judge, noting that DOC failed to provide a due process hearing to the inmate before placing him in "pre-hearing detention", ordered DOC to return the inmate to general population housing.<sup>8</sup>

Three days before the public meeting at which the Board was to consider DOC's requests for variances authorizing 23-hour lock-in for prisoners in protective custody and pre-hearing detention, DOC withdrew its requests.<sup>9</sup> At the March 10, 2005 public meeting, Commissioner Horn announced that DOC would not rely on variances to isolate protective custody inmates and those who were deemed to be threats to jail security. He said that DOC now was providing inmates in 23-hour lockdown with due process reviews of their status every 28 days.

One of the many proposed amendments published by the Board in January, 2007 was to change Minimum Standards §1-05 (a) to exempt three groups of prisoners from the provisions requiring DOC to minimize the time spent involuntarily in cells. The proposed amendment would have exempted prisoners in punitive segregation, prisoners confined for medical reasons in contagious disease units, and prisoners in Close Custody.

During the public comment period and at the April 17, 2007 public hearing, the Board received 17 comments opposing any action by the Board authorizing DOC to

---

<sup>6</sup> DOC's General Counsel told us the DA was concerned that a record might be created that could compromise planned criminal prosecutions.

<sup>7</sup> Letter from DOC Commissioner Martin F. Horn to Richard T. Wolf, November 26, 2004, p. 1. The Department sought relief from the provisions of §1-06(b)(2) ["Lock-In"] and §1-08(c)(1) ["Religion – Congregate religious activities"], p. 3.

<sup>8</sup> See Memorandum to the Members of the Board of Correction, from Richard T. Wolf, "Lockdown, restrictive housing and Judge Skloot-Bamberger's decision, February 9, 2005, attached as an Appendix to this report.

<sup>9</sup> Letter from DOC Commissioner Martin F. Horn to Richard T. Wolf, March 7, 2005.

confine CCH prisoners in their cells for more than 10 hours per day. The only comment supporting the proposal was submitted by DOC.<sup>10</sup>

On November 8, 2007 the Board voted on each of the many amendment proposals before it. During the discussion of Proposal 16, three Members expressed concern about the proposal concerning CCH prisoners.<sup>11</sup> Chair Hildy Simmons suggested that the Board consider an amended proposal: the reference to CCH prisoners would be deleted, and the revised proposal would exempt from the lock-in/lock-out requirements only prisoners in punitive segregation and prisoners confined for medical reasons in contagious disease units.<sup>12</sup> The Board approved Proposal 16, as revised – omitting the reference to CCH prisoners.

Attention recently has been re-focused on Close Custody Housing by the lawsuit, *Jackson v. Horn*. Filed on April 30, 2009, *Jackson* was argued before Judge Marcy Friedman in NYS Supreme Court, New York County, on July 23<sup>rd</sup>. All papers have been submitted, and the matter is pending.<sup>13</sup> In *Jackson*, the Prisoners' Rights Project, attorneys for the Petitioners, contends that the procedures by which the Department of Correction (DOC) operates CCH violate §1-05 the Board's Minimum Standards for NYC Correctional Facilities ("Lock-In") because prisoners in CCH housing areas are confined to their cells for more hours than permitted by subdivisions (b)(1) and (2): "At night for count or sleep, not to exceed eight hours in any 24-hour period; and "During the day for count or required facility business...not to exceed two hours in any 24-hour period."

DOC responded that the lawsuit (1) mischaracterizes CCH and exaggerates the extent to which CCH prisoners are "isolated" and (2) CCH procedures are authorized by Minimum Standards §1-02.<sup>14</sup> DOC argues that CCH prisoners are "in the most restrictive security status", and that DOC may therefore deny to them the opportunities afforded to prisoners in general population to lock-out of their cells.

#### How DOC squares Close Custody Housing (CCH) with the Minimum Standards

In its comments on the Board's proposed amendments to the Minimum Standards, DOC described Close Custody as follows:

Inmates in close custody housing may endanger others or are in significant danger from others and need to be kept separate at all times. Close custody houses inmates separately for their own protection, or for the safety and security of other

---

<sup>10</sup> Proposal 16. Memorandum to Members of the Board of Correction, "Comment Summaries (proposal-by-proposal)", August 20, 2007, pp.21-26.

<sup>11</sup> Transcript, Meeting of the Board of Correction, November 8, 2007, pp. 91-96.

<sup>12</sup> Chair Simmons added, "If at some future date we want to engage in conversations with the Department on other related policies for this very small group of inmates for whom there are difficulties, and we all acknowledge that, then we have the opportunity to do so." Transcript, pp. 96-7.

<sup>13</sup> Copies of the Verified Petition, Verified Answer, and Affidavit of former Commissioner Martin Horn were distributed to the Members via email on August 25, 2009.

<sup>14</sup> §1-02(e)(v) states, "prisoners placed in the most restrictive security status shall only be denied those rights, privileges and opportunities that are directly related to their status and which cannot be provided to them at a different time or place than provided to other prisoners."

inmates and/or staff. A protective custody area is designated for those inmates who have been placed into close custody solely for their own protection, when no other less restrictive housing would be adequate to provide for their safety. Inmates in close custody are housed in cells and kept separate from one another. Close custody is not a punitive segregation area. Inmates in close custody are afforded all services – but individually. Most services are provided directly to close custody inmates in their cells. Close custody inmates receive one hour of individual recreation per day and also have individual access to the housing area dayroom...<sup>15</sup>

The approach taken by the Department to enable it to lock-down close custody prisoners for up to 23 hours per day – without obtaining variances – began with a newly-created definition. In Directive 6006 (“Close Custody Housing”)<sup>16</sup>, the Department announced that “Close Custody, along with Punitive Segregation and Pre-Hearing Detention, shall be considered the most restrictive security status assigned to an inmate.”<sup>17</sup> The Department then looked to the Minimum Standards, §1-02 (“Classification of Prisoners”). Subdivision (e) reads, “Prisoners placed in the most restrictive security status shall only be denied those rights, privileges, and opportunities that are directly related to their status and which cannot be provided to them at a different time or place than provided to other prisoners.” (Emphasis added.) Because close custody prisoners were now defined to be in “the most restrictive security status”, DOC interpreted the Standards provision as authorizing the Department to deny optional lock-out because optional lock-out “cannot be provided to them at a different time or place than provided to other prisoners.”<sup>18</sup>

The Directive established placement criteria, required a review by mental health providers and a “clearance” for isolation, and other processing procedures. In particular, the Directive required that an inmate who was to be assigned involuntarily to close custody housing must receive a written notice “of the reason for the assignment” and a hearing at which the inmate could contest the assignment.<sup>19</sup> Each of the due process deficiencies identified by Judge Skloot-Bamberger in her 2005 decision was addressed in the Directive.<sup>20</sup>

### Comparing Close Custody Housing to Punitive Segregation

The purpose of punitive segregation is “to isolate inmates who have demonstrated violent behavior or have violated the law or department rules while incarcerated...”<sup>21</sup> In contrast, placement in CCH is not for punishment: it is not punitive segregation. Whereas CCH is an area “designated to house inmates for their own protection or for the

---

<sup>15</sup> Commissioner Martin F. Horn, Letter to Richard Wolf, July 2, 2007, p. 12.

<sup>16</sup> Directive 6006 has been revised several times, most recently on May 28, 2009 (Directive 6006R-D).

<sup>17</sup> Directive 6006, §II A (“Policy”), p. 1.

<sup>18</sup> *Minimum Standards*, § 1-02(e)(v).

<sup>19</sup> Directive 6006R-C §II B, effective 3/29/07, p.1.

<sup>20</sup> Directive 6006R-C §III E. A separate subsection provides for a 28-day review of all CCH placements (§III F).

<sup>21</sup> NYCDOC, Directive 4501R-A (“Pre-Hearing Detention and Punitive Segregation Status Inmates”), effective 10/14/05, §II(B).

safety and security of other inmates and/or staff”,<sup>22</sup> punitive segregation is “designated for inmates who have been found guilty of a serious infraction...”<sup>23</sup>

Despite clear differences in the purposes of CCH and punitive segregation, the two designations share one overriding condition of confinement – DOC does not allow prisoners in either designation to exercise optional lock-in/lock-out.<sup>24</sup> As a result, prisoners in both CCH and punitive segregation housing areas are locked in their cells for most of the day.

This is not to suggest that CCH housing areas are operationally identical to punitive segregation areas: they are not. Some examples of significant differences:

- Punitive segregation prisoners must wear uniforms; CCH detainees do not.<sup>25</sup>
- Punitive segregation prisoners are restricted to one personal telephone call per week; CCH detainees are entitled to place one personal call each day and CCH sentenced prisoners may make two personal calls per week.<sup>26</sup>
- Punitive segregation prisoners are subject to special search procedures, including 3-point search areas;<sup>27</sup> CCH prisoners are not.

#### CCH areas in four NYC jails

The Department currently operates CCH units in four jails, the Robert N. Davoren Center (RNDC), the Manhattan Detention Complex (MDC), the North Infirmery Command (NIC), and the Rose M. Singer Center (RMSC).

#### *RNDC*

Cell housing areas 3 Lower North and 3 Lower South confine CCH adolescent and adult male prisoners who DOC has determined require protective custody. Prisoners may be confined in CCH/Protective Custody following their request for protective custody, or based on DOC’s own assessment that protective custody is required. Each side contains 33 single cells. During the study period, there were an average of 34 CCH/PC prisoners housed in 3 Lower.

---

<sup>22</sup> NYCDOC, Operations Order 04/05 (“Department Definitions of Housing Categories”), effective 10/14/05, §III (B).

<sup>23</sup> *Id.*, §III (D).

<sup>24</sup> NYC Board of Correction, *Minimum Standards for New York City Correctional Facilities* (“*Minimum Standards*”), § 1-05 (“Lock-in”), amended effective June 16, 2008, subdivision (c). Making permanent a longstanding variance, the Board amended § 1-05 to specifically exempt from its provisions prisoners in punitive segregation.

<sup>25</sup> A longstanding variance (April 22, 1991) authorizes DOC to require prisoners in punitive segregation to wear uniforms. Sentenced CCH prisoners are required to wear uniforms, as are all other sentenced prisoners. See *Minimum Standards* § 1-03(g)(2).

<sup>26</sup> *Minimum Standards*, § 1-10 (“Telephone Calls”), subdivisions (c), (d), and (i)(2).

<sup>27</sup> See Otis Bantum Correctional Center, Institutional Order CPSU 60/96R, effective 11/21/97, which provides for such searches – which include a strip search, magnetometer search, and transfrisker search – whenever an inmate is to exit the housing area, attend outdoor recreation, etc. CPSU inmates are handcuffed to and from the shower area.

When CCH was instituted in 2005, DOC mixed adolescent and adult prisoners on both sides. Now, all adolescent prisoners are confined on the south side. Then, as now, commingling among prisoners was strictly prohibited. Recently however, partly in response to BOC's criticism of aspects of CCH, RNDC implemented a pilot project to allow commingling among a very small number of prisoners, two on the north side and four on the south side.

For all other CCH prisoners in RNDC, conditions of confinement remain unchanged. There are two televisions in each side's dayroom, which prisoners watch from inside one of five individual Plexiglas cubicles.<sup>28</sup> CCH prisoners are allowed to watch television for one hour per day, and sometimes for a second hour if a cubicle is available. Outdoor exercise is offered for one hour, usually beginning between 8 and 8:30 a.m. Until recently, prisoners had been confined to small individual exercise pens made of expanded metal, which contained no exercise equipment at all. These now have been replaced by eight larger pens, five of which are equipped with basketball hoops. As discussed below, all but a few CCH/PC prisoners exercise alone.

Showers are available daily. Medical and mental health rounds are conducted at the cell, with examination and treatment, and meetings with mental health providers taking place in a "mini-clinic" room adjacent to the dayroom. Other programs and services are offered on an in-cell basis. These include social services, law library, school study, and meetings with religious advisors. Telephone calls are made from inside the cell.



Outside a cell door in RNDC's 3 Lower

---

<sup>28</sup> A sixth cubicle contains a typewriter for use by prisoners doing legal work. If not used for this purpose, the sixth cubicle may be used for watching television.

### *MDC*

Housing area 9 South's 24 single cells confine "non-Protective Custody" CCH male prisoners.<sup>29</sup> Unlike CCH prisoners who are confined for protective custody, MDC's CCH prisoners do not leave their cells to watch television. Instead, each cell is equipped with a television. Prisoners may leave their cells only for individual outdoor exercise, showers, and for correctional health services that are provided in a mini-clinic. During the study period, 9 South housed 21 CCH prisoners.

### *NIC*

Tier 2D contains 10 single cells that are available to house adolescent CCH /non-protective custody prisoners. Six adolescents were housed in 2D during the study period. Outdoor exercise is scheduled for 7:30 a.m. to 8:30 a.m. each day, and the adolescents are offered the opportunity to do in-cell school work.

### *RMSC*

Building 8, B side contains 16 single cells that are available to house female CCH prisoners. One adult CCH prisoner was housed in 8B during the study period.

### Findings<sup>30</sup>

Board staff reviewed logbooks, activity sheets, and individual activity cards for all prisoners housed in RNDC's two Protective Custody/Close Custody Housing (PC/CCH) wings, 3 Lower South and 3 Lower North.<sup>31</sup> On October 6, 2009, Board staff interviewed 16 of the 45 inmates confined in the two wings of 3 Lower, and two officers assigned to RNDC's close custody areas.

1. Most CCH prisoners remain confined in their cells for 22-23 hours per day, leaving their cells only to watch television or take a shower. (CCH prisoners are much more likely to watch television than to attend outdoor recreation.) The routine varies only when CCH prisoners go to court, attend a visit or outdoor recreation, or if they are being seen by a correctional health provider in the mini-clinic adjacent to the dayroom.

---

<sup>29</sup> If additional space is required, a non-PC CCH prisoner may be confined in a cell in housing area 9 North, which otherwise houses prisoners for whom "lockdown" has been ordered by a court.

<sup>30</sup> For this report, the Board directed staff to focus primarily on CCH's Protective Custody component. Thus, in addition to reviewing documents, we conducted interviews with CCH/Protective Custody prisoners housed in RNDC. We did not interview prisoners in MDC's or NIC's CCH/Non-PC housing area, or the one prisoner in CCH/PC at RMSC.

<sup>31</sup> These documents covered the week beginning on Monday, September 13, 2009 and ending on Sunday, September 19, 2009. The combined census averaged 35 CCH prisoners per day.



Cell in RNDC's 3 Lower housing area

Cell lock-in differentiates CCH's operations from those of earlier protective custody and "administrative segregation" housing areas. In years past, prisoners housed in those areas were kept apart from general population prisoners, and were escorted whenever they left the housing area, but they were allowed to commingle with prisoners in their housing area in the dayroom. That is, they were given the option to lock-in or lock-out of their cells.

2. Prisoners are confined in Close Custody housing for long periods of time.
  - The average length-of-stay of RNDC's Protective Custody Close Custody prisoners was one-half that of the Non-Protective CCH prisoners housed in MDC.<sup>32</sup>
  - During the study period, prisoners housed in RNDC's 3 Lower had been in CCH for an average of 110 days, compared to 226 days for prisoners in MDC.
  - Of RNDC's 35 Protective Custody prisoners, 11 had been in CCH for less than a month. 10 had been confined in 3 Lower for more than six months; of these, three had been in CCH for 18 months or more.
  - Of MDC's 21 Non-Protective Custody CCH prisoners, all but one had been there for at least one month. Eight had been there for six months or more, with three prisoners having been in CCH for 21, 23 and 24 months respectively.<sup>33</sup>
3. The lack of Spanish-speaking staff on either side of RNDC's 3 Lower during the day tour makes CCH especially difficult for non-English-speaking prisoners.

During our interviews at RNDC, we learned that four CCH prisoners spoke no English. Two described their feelings of isolation at being unable to understand directions given by uniformed staff, or what is going on in the housing area.

---

<sup>32</sup> See RNDC's "Commissioner's Close Custody Report" and MDC's "Commissioner's Close Custody Report", September 14, 2009.

<sup>33</sup> Time in CCH does not always accurately reflect the amount of time a Non-PC CCH prisoner may have spent in confinement. Many were brought to MDC's CCH area after serving punitive segregation time in CPSU or elsewhere in the system.

There were no Spanish-language newspapers or magazines in the housing areas when BOC staff conducted inspections. We were informed that occasionally a Spanish-language newspaper, required by Minimum Standards §1-01(c)(5), is provided

4. The number of CCH prisoners “known to mental health” varies according to CCH category. The system-wide percentage of CCH prisoners on the mental health caseload (30.5) is at or slightly above DOHMH’s estimates for all categories of prisoners. DOHMH estimates that system-wide, approximately 25-30% of all NYC prisoners are on the mental health caseload. Our review of inmate records revealed the following:

- During the week of September 14, 2009, 27% of CCH/Protective Custody prisoners were the mental health caseload at RNDC.
- One of six adolescent CCH prisoners housed in the North Infirmery Command was known to mental health.<sup>34</sup>
- 38% of MDC’s CCH/Non-Protective Custody prisoners were on the mental health caseload.

It should be noted that the number of prisoners in each category is relatively small, and the significance of the higher-than-system-average percentage for Non-PC CCH prisoners on the mental health caseload is unclear.<sup>35</sup>

5. Few CCH prisoners attend outdoor recreation.

For most PC/CCH prisoners, outdoor recreation is provided in one of eight expanded metal exercise pens in a yard accessed from the rear of the housing area. (See pictures below.) Five of the eight pens are equipped with basketball hoops. Most prisoners must exercise alone.

Entries in the “Daily Inmate Activity Logbook” are supposed to record the names of all CCH prisoners who attend outdoor recreation each day. However, complete entries were made for both sides of 3 Lower on only four of the seven days we reviewed. Nonetheless, the entries, summarized below, confirm that very few CCH/PC prisoners attend outdoor recreation.

	North side	South side	Totals
Monday, Sept. 13	4 of 19	0 of 15	4 of 34 inmates attended
Tuesday	3 of 20	0 of 15	3 of 35
Wednesday	0 of 19	1 of 17	1 of 36
Thursday	1 of 17	Incomplete	
Friday	Incomplete	0 of 15	
Saturday	3 of 20	0 of 16	3 of 36
Sunday, Sept. 19	Incomplete	2 of 14	

<sup>34</sup> 5 of NIC’s 6 CCH prisoners have been identified as co-conspirators in the Christopher Robinson homicide.

<sup>35</sup> On September 23, 8 of MDC’s 21 CCH prisoners were on the mental health caseload.

In interviews, the prisoners complained that recreation was offered too early in the morning (8 – 8:30 a.m.). Some said they were uninterested in “going from one cell to another cell.” Another claimed he never heard DOC staff announcing outdoor recreation.



RNDC’s eight exercise pens



Exercise pen with basketball hoop

6. A few CCH/PC prisoners participate in a “Dayroom Pilot project”, and receive lock-out and other privileges unavailable to the other CCH/PC prisoners. Two inmates on the South side and four on the North side are permitted to lock-out of their cells virtually all day.<sup>36</sup> RNDC has installed breaker gates approximately 2/3 down the corridor.



Corridor breaker-gate creates “dayroom”

Program participants – selected because officers expect they will commingle safely – use the rear 1/3 of the corridor as a “dayroom”, in which they are able to watch television while sitting at a plastic table. A fan helps with air circulation.

---

<sup>36</sup> At the Board’s September meeting, we pointed out that the prisoners who had been selected for this “pilot project” were those who had been housed in Building 3 for the longest time. DOC representatives denied that length in CCH was the criterion by which prisoners were selected for the pilot.

Recently,<sup>37</sup> the facility began allowing the program participants to play basketball together.<sup>38</sup> All other CCH/PC prisoners must exercise alone.

7. For most CCH/PC prisoners, the only “regular” time out of their cells is when they are watching TV from inside a Plexiglas pen in the dayroom.



Plexiglas individual TV viewing booths

DOC uniformed staff told us that television time slots are allocated based on seniority in CCH, with prisoners with most “seniority” being given the more desirable evening slots. These same prisoners are the first ones to be offered additional TV time when it is available.

8. The facility provides no books or magazines to CCH/PC prisoners.

In interviews, several prisoners told us they have no reading materials in the cells, although some said they have Bibles. DOC staff said the prisoners share books and magazines brought to them by family members or friends. Most prisoners said they would welcome the opportunity to read books to help pass the time.

9. Commissary items most desired by many prisoners – foodstuffs, especially cakes – are not made available for purchase by RNDC’s CCH/PC prisoners.

---

<sup>37</sup> At the Board’s September meeting, we observed that although the prisoners participating in the “pilot project” were comingling in the breaker-gate dayroom, they were not allowed to play basketball together. Chief of Department Carolyn Thomas disputed our assertion and said prisoners in the pilot project *were* allowed to play basketball together. In fact, participating prisoners **now** are playing basketball together, but they were not allowed to do so until **after** the September 10<sup>th</sup> BOC meeting. The Memorandum announcing the change is dated September 10, 2009, and DOC staff confirmed that the new policy was implemented approximately two weeks later. (See footnote 26.)

<sup>38</sup> “Assign staff (*sic*) shall ensure that every inmate is serviced on an individual basis. However, the only deviation from the CCH policy will be inmates chosen for the Dayroom Pilot program. The program has been expanded to include comingling in the Recreation Pens. Therefore, **identified inmates** will be allowed to participate daily in the pilot program (**Which consists of dayroom access within 3 lower Northside/Southside** (located within the 3 lower housing area rear corridor/breaker gate) and **the Quad 3 Lower Recreation Pens**. As a reminder, NO CCH inmates will be escorted together.” RNDC, Unit Management “C” Memorandum #003/09, effective September 10, 2009. [Emphasis in original.]

The validity of these complaints were acknowledged by DOC staff, who told us that the desired items are blacked-out on the commissary order sheets given to the CCH/PC prisoners. The officers explained that this is done to avoid the anger and frustration prisoners used to feel when their filled commissary orders failed to include cakes and some soups they ordered that were especially favored by all prisoners. The favored items were never available because by the time CCH prisoners were allowed to “shop”, the items invariably would be sold out.<sup>39</sup>

Unfortunately however, the facility’s “solution” has failed to remedy the problem, and CCH prisoners remain frustrated and angry.

10. Prisoners complained about the “lack of professionalism” of some officers assigned to 3 Lower. Specifically, they spoke about how some officers had to be asked time and again to provide a prisoner access to the telephone, or to allow the prisoner to take a shower, or to enable the prisoner to sign up for television time. The prisoners were quick to point out that they were not complaining about all uniformed staff. Some said that they knew they would have to wait until a particular officer’s shift was over before they could shower or make a phone call.

Several prisoners complained that the reason they were in Close Custody was that their criminal charges, or the fact that they were cooperating with prosecutors, was known to “everyone”, and that the information could have been divulged only by DOC staff. One prisoner said that as a result, he was afraid to come out of his cell – even in CCH.

11. Several prisoners said that they opted for placement in CCH because DOC staff told them there was no other place where they could be safe.

Some prisoners complained that although they agreed to be housed in 3 Lower, they were not told that they would be locked in their cells most of the time. They also reported that CCH provided no orientation materials explaining which services were available when they were admitted to CCH.

Several prisoners said they were told that life in CCH/PC housing areas was “the same as in GP (general population), except that it was much safer.” Some prisoners said they would rather “take my chances” in general population rather than be “locked down”.

A state-ready prisoner, who identified himself as a gang member, said he had no choice but to accept CCH placement because the state-ready housing areas were controlled by a rival gang, whose members told DOC uniformed staff they would not allow him to be housed in the area.<sup>40</sup> Another prisoner said he could no longer “take” getting beaten up by rival gang members, so he opted for CCH. Finally, a transsexual

---

<sup>39</sup> This problem could be easily remedied. The commissary schedule could be altered, or varied to give CCH/PC prisoners opportunities to purchase desired items or the Department could order more of the most desired items.

<sup>40</sup> Each prisoner was interviewed individually.

prisoner reported that she agreed to be housed in 3 Lower, knowing that she would be “locked down”, because she knew that DOC “had no other place to put me”.

### Conclusion

This report presents some general information about DOC’s Close Custody Housing. However, its primary focus is RNDC’s CCH/Protective Custody unit -- 3 Lower North and 3 Lower South. Should the Board want additional information about the CCH areas in MDC (Non-Protective Custody), NIC (Protective Custody adolescents), or RMSC (Protective Custody female prisoners), please let me know.

As always, all of the source documents cited in this report are available for the Board’s review, including Judge Skloot-Bamberger’s decision.

Appendix: Memorandum to Members of the Board of Correction from Richard T. Wolf, “Lockdown, restrictive housing and Judge Skloot-Bamberger’s decision, February 9, 2005.