

Out-of-cell time in Restorative Housing Units

SPECIAL REPORT

New Jersey Office of the Corrections Ombudsperson

OCTOBER 2023 |

Executive summary

On any given day, hundreds of people in New Jersey prisons are held in restorative housing units (RHUs) as a disciplinary measure for rule violations like assaultive behavior, threats, drug possession, or refusing orders. These individuals are generally sanctioned to the RHU for months at a time. While state law and administrative code prohibit cell confinement in an RHU for any more than 20 hours per day, many people have contacted the Corrections Ombudsperson Office this year to report concerns about how much time they are confined to their cells.

To better understand and assess out-of-cell time, the Corrections Ombudsperson Office conducted unannounced inspections at four facilities, surveyed large portions of the population housed in RHUs, and reviewed institutional logs and data. Both self-reported data and official logs showed less than 4 hours of out-of-cell time offered to RHU residents on an average day, with the notable exception of those housed in the RHU at Edna Mahan Correctional Facility.

Increasing out-of-cell time in the RHUs likely requires innovation, resources, and support, as the Department of Corrections must contend with physical space limitations, regular schedule disruptions and staffing issues, and a need to manage safety risks.

On July 1, 2023, the Department implemented a new policy aimed at incentivizing behavior change for those sanctioned to serve time in an RHU. The policy rewards good behavior with increased privileges and an eventual return to the prison's general population. In concert with this new policy, the Corrections Ombudsperson Office recommends¹ that the Department of Corrections:

- Set and monitor performance goals related to out-of-cell time,
- Issue fewer and shorter RHU sanctions, particularly for non-assaultive behavior,
- Create activity schedules for the RHUs that anticipate and make up for daily disruptions,
- Curb use of sanctions on top of RHU time that take away opportunities for recreation, and
- Explore options for retaining consistent line staff and supervisors on the RHUs.

The Corrections Ombudsperson Office looks forward to working closely with the Department of Corrections to support and monitor these changes.

¹ These recommendations are explained in more detail on pp. 10-11 of this report.

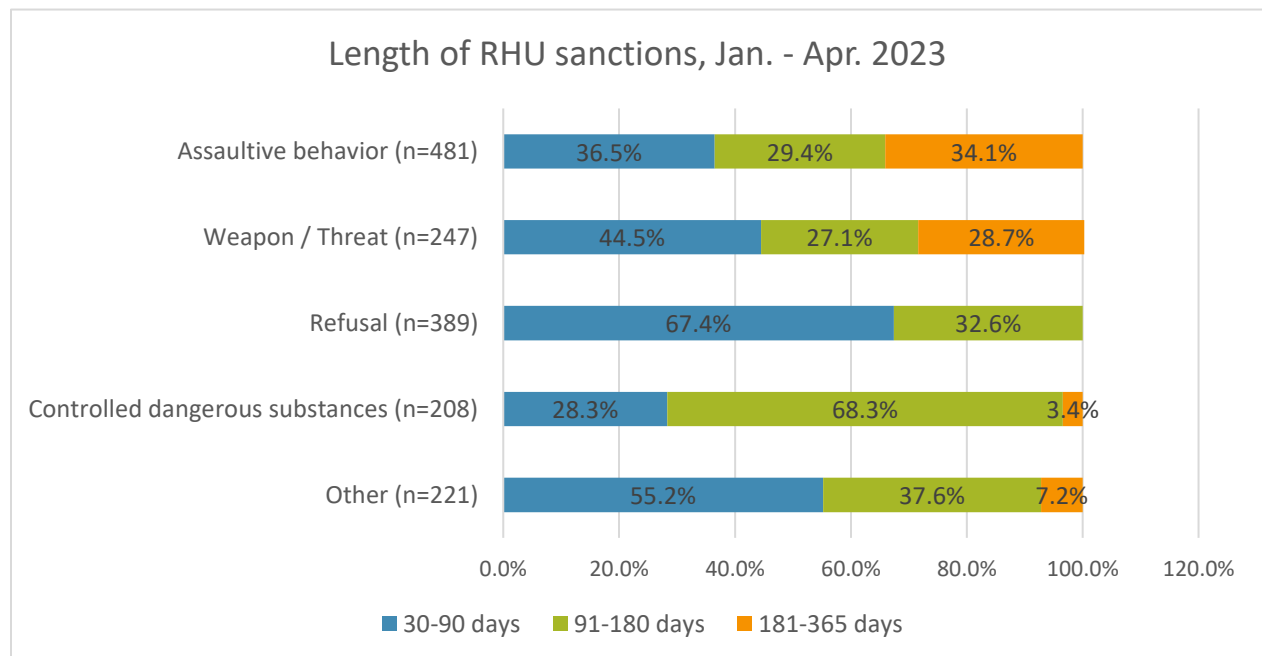
Background

On an average day, roughly 750 people are living in a restorative housing unit (RHU) inside a New Jersey state prison. Four of the state’s nine prisons operate an RHU, and additional housing units throughout the prison system are utilized when needed for RHU overflow. People are removed from a prison’s general population and placed in an RHU as a disciplinary measure for serious rule violations.

Between January and April of this year, 1,029 individuals—more than half of those adjudicated guilty of an institutional charge—were sanctioned to spend a period of time in an RHU.² Most people sanctioned to time in an RHU were found guilty of assaulting or threatening staff or other incarcerated people, or possession of a weapon. But more than 200 sanctions to an RHU were for drug charges (controlled dangerous substances), and nearly 400 sanctions to an RHU were for refusing to follow orders.

The length of an RHU sanction can be up to 365 days, however the large majority of sanctions are six months or less. [See Figure 1.]

Figure 1. Length of RHU sanctions, by charge type



² A total of 1,775 unique individuals were found guilty of disciplinary charges between January and April of 2023, and 1,029 of those individuals received RHU sanctions. This number excludes any sanctions that were suspended or diverted to the Drug Diversion Program. Some individuals received more than one RHU sanction during this period, producing a total of 1,546 RHU sanctions for the 1,029 unique individuals. In instances where a single incident resulted in multiple disciplinary charges, the categories listed in the graph represent only the individual charges for which RHU was ordered as a sanction.

Utilizing the office’s authority to access people housed in state prisons and to analyze data and documents maintained by the Department of Corrections, the Ombudsperson office conducted a survey of people incarcerated in the Department’s RHUs and reviewed institutional logs and disciplinary data. See below for a brief description of the office’s methodology.

With limited exceptions, state law prohibits an incarcerated person from being placed in isolated confinement for more than 20 consecutive days or for more than 30 days during any 60-day period.³ In a state correctional facility, “isolated confinement” means keeping a person in a cell or similar holding space, alone or with a cellmate, for approximately 20 hours or more per day with severely restricted activity, movement, and social interaction.⁴ State administrative code echoes the statutory law, prohibiting cell confinement in the RHU for 20 hours or more per day with severely restricted activity, movement, or interaction.⁵

This report does not attempt to make a determination about the Department’s compliance with state law and administrative code. It looks instead at the narrow question of how much time people in the restorative housing units are confined to their cells on a normal day.

Methodology

Between March and May of 2023, the Corrections Ombudsperson Office conducted unannounced inspections of the four facilities that house the large majority of RHU beds, including Northern State Prison, New Jersey State Prison, South Woods State Prison, and Edna Mahan Correctional Facility. During each facility inspection, members of the Ombudsperson office hand-delivered and collected anonymous surveys among a sample of the general population and the RHU population, asking a variety of questions related to out-of-cell time, programming, work assignments, and access to loved ones.⁶ This report distills findings from survey questionnaires completed by people housed in the RHUs. [See Table 1 for raw numbers and sample sizes.]

Table 1. Completed RHU survey questionnaires

<i>Facility</i>	Completed surveys from people housed in the RHU (#)	Portion of RHU population completing surveys (%)
<i>Northern State Prison</i>	68	25%
<i>New Jersey State Prison</i>	88	40%
<i>South Woods State Prison</i>	94	69%
<i>Edna Mahan Correctional Facility</i>	14	45%

³ N.J. Rev. Stat. § 30:4-82.8(a)(9). Exceptions listed under N.J. Rev. Stat. § 30:4-82.8(d).

⁴ “Isolated Confinement” means confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day in a State correctional facility... with severely restricted activity, movement, and social interaction. N.J. Rev. Stat. § 30:4-82.7.

⁵ N.J.A.C. § 10A:5-1.1.

⁶ Blank or incomplete responses on questionnaires were removed when calculating numbers and percentages. All calculations were quality checked by more than one analyst. More detailed information on data cleaning and methodology and the survey questionnaire itself can be provided upon request.

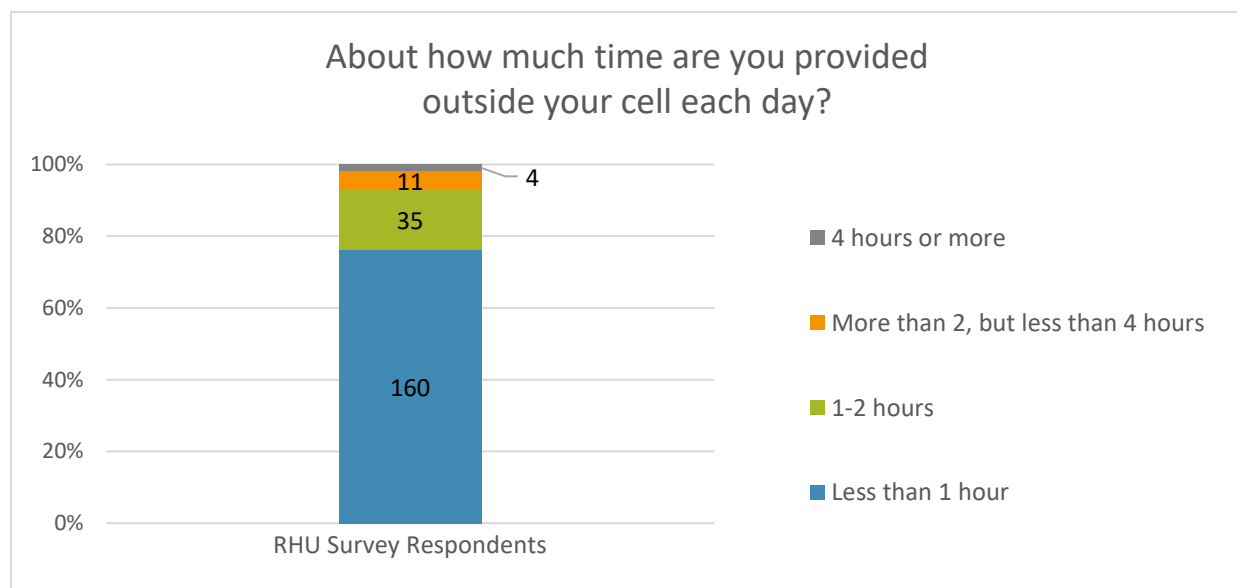
When distributed to a large number of people, anonymous surveys allow incarcerated individuals to share their experiences without fear of retaliation. They offer the Ombudsperson office an avenue to assess whether contacts made through calls or letters to the office reflect individual experiences or commonly shared experiences, and help to verify or dispel allegations that a problem is systemic. Surveys are not a perfect measure, but they allow the incarcerated population to speak for themselves about their living conditions rather than have those conditions described by spokespeople or government officials.

The Ombudsperson office also requested institutional logs kept by facility staff that track out-of-cell time offered to each individual in the RHU. The Department of Corrections provided copies of logs on dates close to the Ombudsperson inspections. Information is entered into these logs by institutional staff working in the RHUs. The logs reflect every individual housed in the RHU on the sampled days. All individuals who were being held in a close custody status other than RHU (e.g., pre-hearing detention or temporary administrative housing) were excluded from both the Ombudsperson survey data and the institutional log data. This report attempts to summarize data from logs over a consecutive period of 3-7 days, however, in some cases logs were not provided for a particular day or were not usable for analysis due to missing or inconsistent information.

Restorative Housing Unit survey results

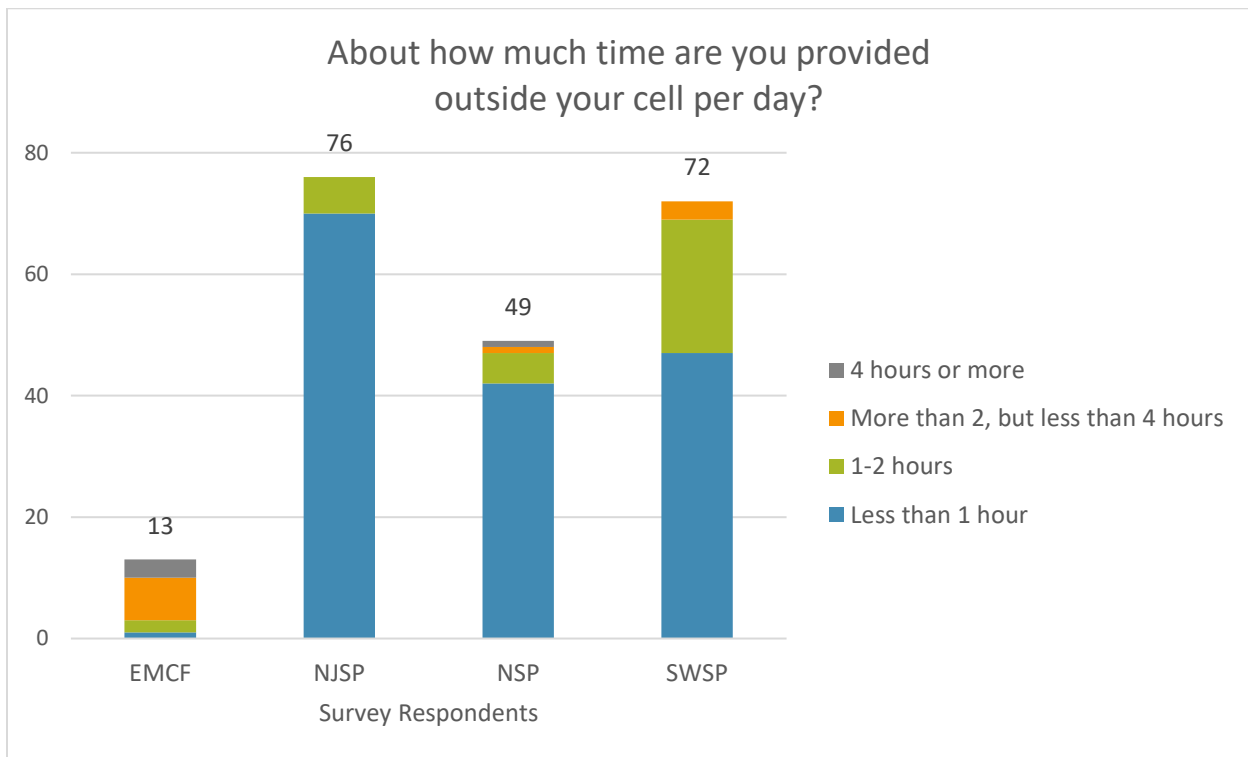
Between March and May 2023, the Corrections Ombudsperson Office surveyed 264 people living in close custody units, asking, among other things, how much time they were provided out of their cells each day. Of the 251 people who answered the out-of-cell time question, 210 were serving a restorative housing unit (RHU) sanction. One hundred and sixty (76%) of those on RHU status reported being provided less than an hour out of their cells per day. Thirty-five people (17%) reported being provided 1-2 hours outside of their cells. Eleven people (5%) reported more than 2 but less than 4 hours, and 4 people (2%) reported being provided more than 4 hours outside of their cells. [See Figure 2.]

Figure 2. Out-of-cell time for people serving RHU sanctions, self-reported



Based on this self-reported data, Edna Mahan Correctional Facility, which operates a relatively small RHU for people housed at the women’s prison, appeared to be providing more out-of-cell time than the three men’s facilities that operate larger RHUs. At Edna Mahan, 3 of the 13 survey respondents (23%) reported being provided 4 hours or more outside of their cells per day, and 7 respondents (54%) reported getting more than 2 but less than 4 hours out. At New Jersey State Prison, Northern State Prison, and South Woods State Prison, upwards of 96% of the RHU survey respondents reported being provided with 2 hours or less outside of their cells per day. [See Figure 3.]

Figure 3. Out-of-cell time for people serving RHU sanctions, by facility, self-reported



Out-of-cell logs maintained by the Department of Corrections

In addition to self-reported data, the Ombudsperson office reviewed available logs maintained by RHU staff in the facilities, tracking out-of-cell time that is offered to each person. These logs also note when a person has refused an opportunity for out-of-cell time. For ease of consumption and to better reflect the collective experience of people serving RHU sanctions, the Ombudsperson office has collapsed the individual data into averages for the population in each RHU on each day, excluding those on the unit who were in a pre-hearing or other non-RHU status. The graphs below mostly show consecutive days close in time to the Ombudsperson inspections, but exclude days for which logs were incomplete or not provided to the Ombudsperson office.

Logs from Edna Mahan Correctional Facility show people being offered about 4 hours of out-of-cell time on most days—including time for recreation, congregate activity, and showers—with residents refusing to utilize a large portion of the time offered. [See Figure 4.] Logs from South Woods State Prison and

New Jersey State Prison show people being offered an average of about 1-3 hours out of their cells each day. [See Figures 5 and 6.] And logs from Northern State Prison show people on some RHU tiers being offered less than 2 hours out of their cells each day, and those on other RHU tiers being offered less than 1 hour out of their cells each day. [See Figure 7.]

Figure 4. Average out-of-cell time for people serving RHU sanctions, EMCF
 Logs maintained by Edna Mahan Correctional Facility

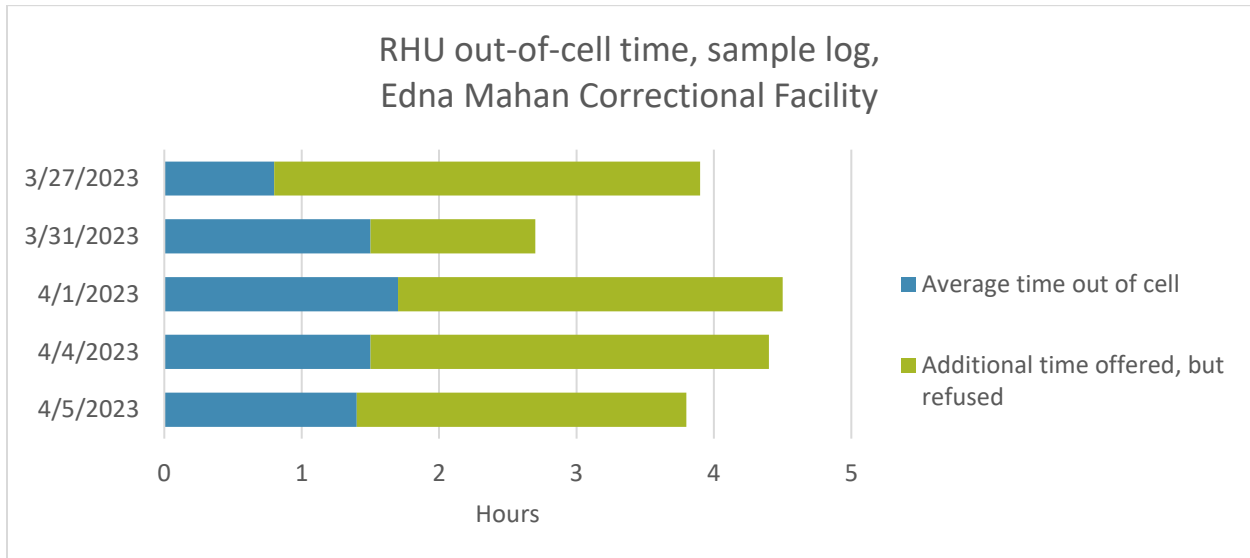


Figure 5. Average out-of-cell time for people serving RHU sanctions, SWSP
 Logs maintained by South Woods State Prison

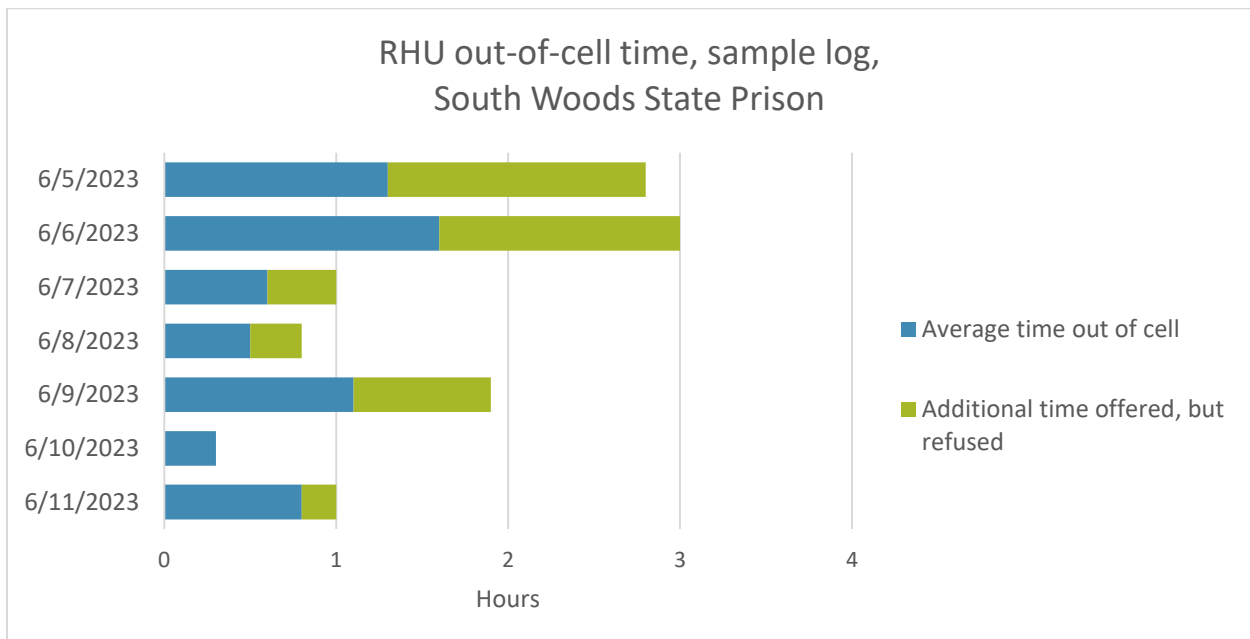


Figure 6. Average out-of-cell time for people serving RHU sanctions, NJSP
 Logs maintained by New Jersey State Prison (broken out by RHU tier)

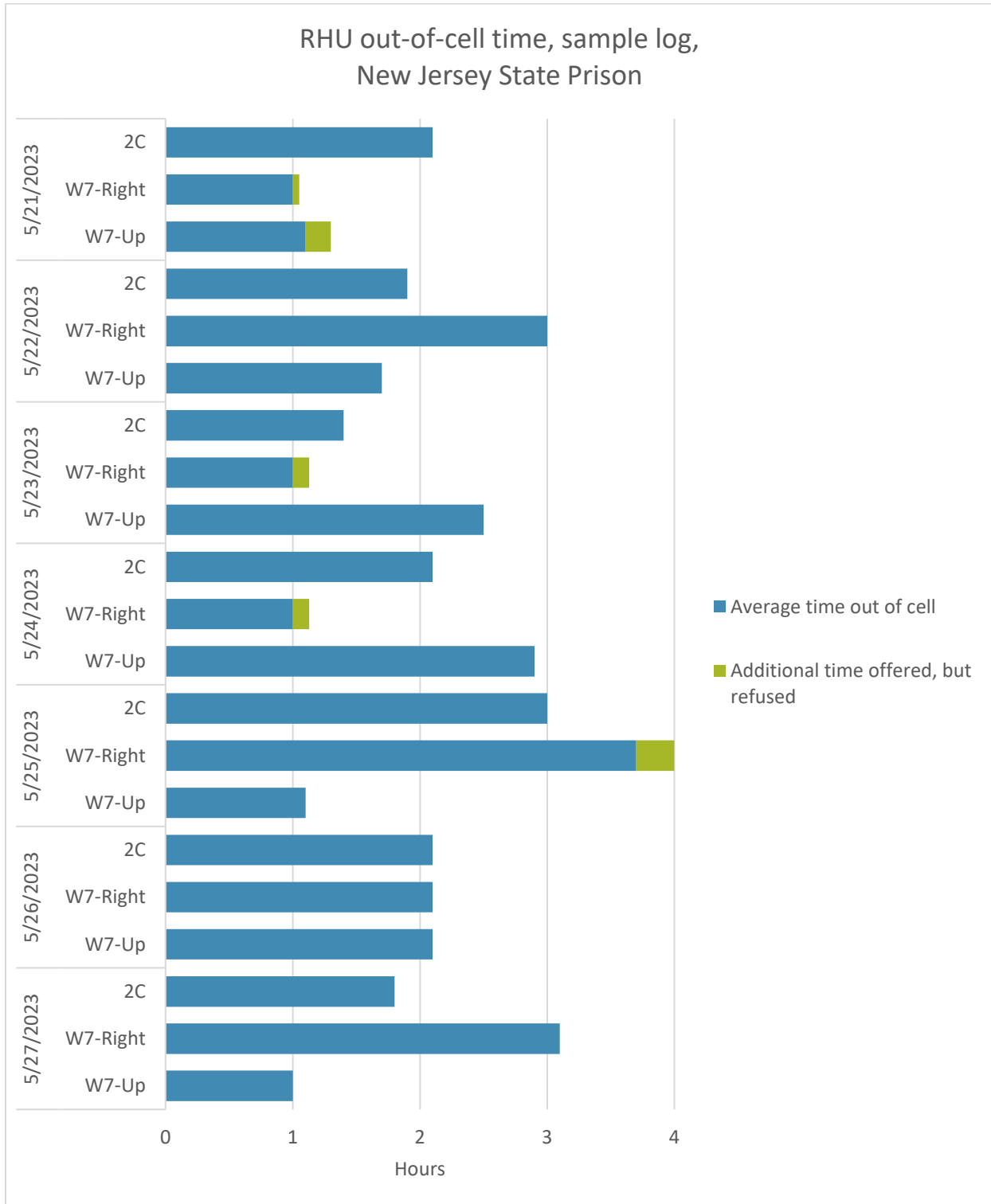
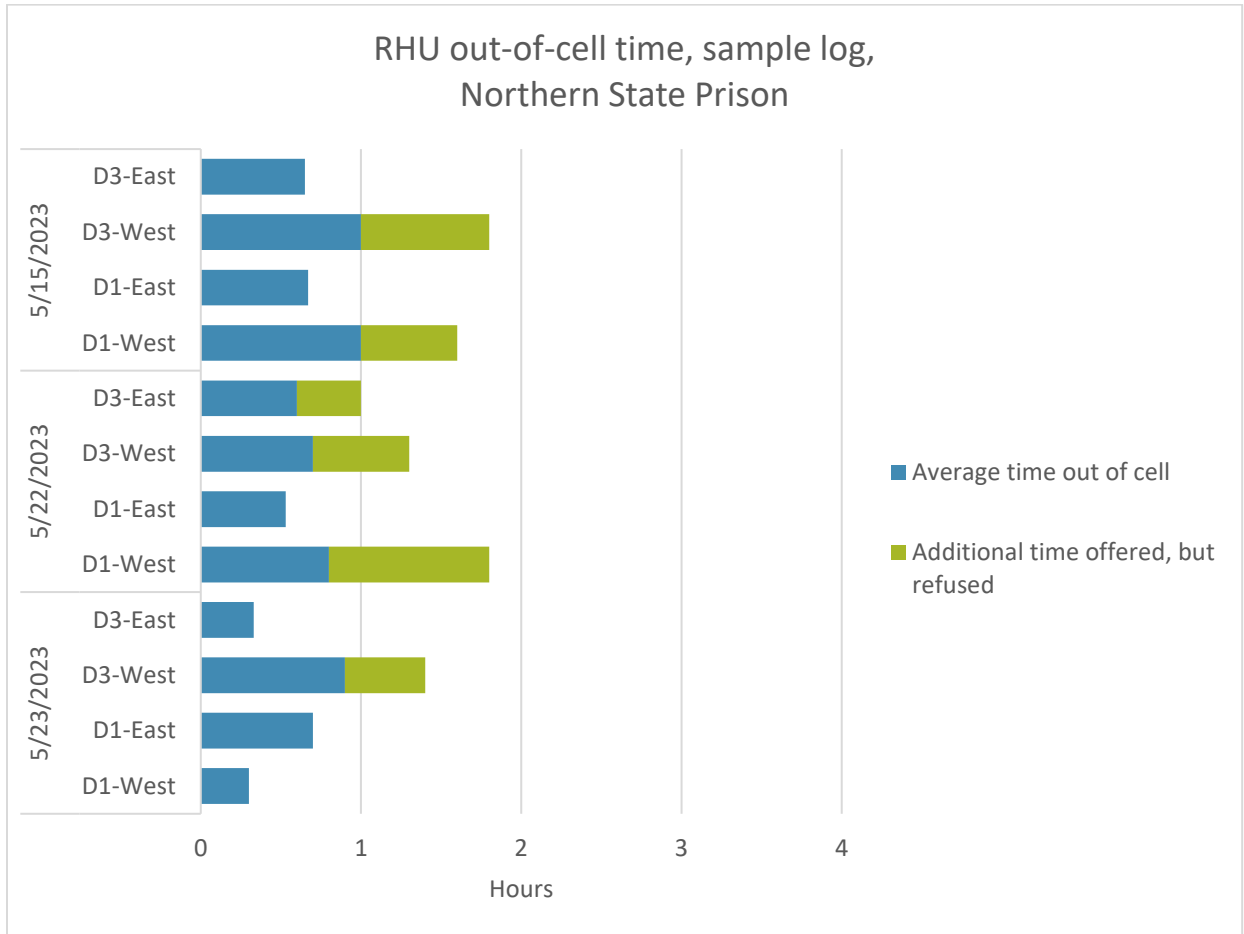


Figure 7. Average out-of-cell time for people serving RHU sanctions, NSP
 Logs maintained by Northern State Prison (broken out by RHU tier)



Barriers to out-of-cell time in the RHUs

Running an RHU is a complex operation. Among other things, it involves providing people housed there with food, medication, showers, recreation, and opportunities for congregate interaction. Because a significant portion of the population in the RHU has engaged in assaultive behavior, operating the RHU also involves security precautions to manage potential risks to officers, civilian staff, and other incarcerated people. Any time a person will be in direct contact with staff, policy dictates that they must be handcuffed and escorted by two officers.⁷ If a person is taken off the housing unit for an appointment, they must be strip searched.⁸ The logistics of moving people takes time and personnel.

The facility design and physical space limitations impose additional hurdles to out-of-cell time. This is a particular concern at New Jersey State Prison which was designed as a maximum-security setting, but even in the other facilities, secure recreation modules (what the population refers to as “rec cages”) have limited space and cannot accommodate large numbers of people. Providing out-of-cell programming and recreation within these space limitations requires either limiting the number of participants or moving people out in shifts.

Creating a schedule for the RHU is helpful for working through the puzzle of ensuring out-of-cell activity for those housed on the unit, but frequent (in some cases daily) disruptions to that schedule occur. The Ombudsperson office heard reports from staff and incarcerated people that a delay in the start time for medication distribution could cause a recreation period to be shortened or canceled altogether—an issue that requires close coordination between the Department of Corrections and Rutgers University Correctional Health Care. Additionally, a fight, assault, or medical emergency would trigger a security and health care response that requires the population to remain in their cells. These responses must be thorough and can be lengthy, cutting into the time people are provided out of their cells.

RHU operations have an added layer of complexity when people who are pre- and post-hearing are placed in the same housing unit, because their privileges and activities are governed by different policies.⁹ Officers and civilian staff who are experienced in serving the RHU population can capably manage a population of mixed close-custody statuses, but staff turnover and having to pull officers from other posts to ensure adequate coverage in the RHU can pose challenges to maintaining a daily routine that meets the unique and varied needs of the population.

This combination of factors—physical space limitations, risk-management measures, schedule disruptions, a mixed pre- and post-hearing population governed by different policies, and staff turnover—pose layered and complicated barriers to increased out-of-cell time. This means solutions will require thoughtful innovation and support.

⁷ New Jersey Department of Corrections policy IMM.004.RHU.03.

⁸ Id.

⁹ Rules and policies governing what possessions a person has when held in pre-hearing close custody, for example, or whether they can come out of their cells for recreation, are different from those that apply to people serving an RHU sanction. When cells on the same tier include some people on pre-hearing status and others on RHU status, decisions impacting out-of-cell time require knowledge of the policy differences and extra planning and attention to detail.

Recommendations for increasing RHU out-of-cell time

1. Use data to set goals and monitor improvement.

We applaud the Department for maintaining logs in the RHUs that record individuals' opportunities for out-of-cell activity. Measuring out-of-cell time provides the Department with data and focuses the attention of staff members on a key priority. We recommend standardizing the logs so they look the same from one facility to the next, instituting them in all RHUs—including overflow units—and checking them daily for accuracy and completeness.

If the Department has not already done so, we also recommend implementing a process for recurring data analysis and quality assurance. This process would involve monitoring out-of-cell logs for extended stretches of time in which people appear to be getting less than 4 hours of out-of-cell activity, working with correctional supervisors and administrators to understand and troubleshoot barriers that contribute to those trends, and setting performance goals for the next data collection period.

2. Reduce the number of people housed in the RHUs.

A smaller population on the RHU would reduce the time and personnel required to securely escort people when out of their cells, reduce opportunities for assaults and fights to occur, and pose less of a problem with physical space in the recreation modules. One likely explanation for why people appear to get more opportunities for out-of-cell activity at Edna Mahan Correctional Facility is that staff are working with a much smaller population. This simplifies the logistics of running the unit.

The Department has two main avenues for reducing the RHU population: admissions and length of stay. To reduce the number of people coming into the RHU, we encourage the Department to further expand alternative methods for managing problematic behavior. We applaud the development of the Department's drug diversion program, the use of other alternative sanctions for rule infractions, and incentives for remaining charge-free. We recommend that the Department expand the use of these alternative sanctions and incentives, especially for non-assaultive behavior, and utilize other measures in place of RHU sanctions like multi-disciplinary behavior reviews, targeted counseling and mentoring, conflict mediation, and behavior contracts with goals and incentives tied to the person's specific behavior problem.

The Department has recently revised its RHU policy in an attempt to build a clearer incentive structure for behavior change. These changes have the potential to reduce lengths of stay on the RHU, and we applaud the effort to utilize incentives through a two-level graduated release process. We recommend that the Department adopt clear timelines—perhaps weekly—for reviewing a person's eligibility for movement from RHU Level 1 to RHU Level 2 and back to general population. We also recommend that the Department revise disciplinary policies to reduce the lengths of RHU sanctions that may be imposed.

The Department reports that its Isolated Confinement Restriction Act (ICRA) committee continues to meet and review strategies, best practices, and outside resources for managing the population and outcomes in the RHUs. We look forward to updates and welcome future opportunities to discuss our findings and recommendations with the committee members.

3. Anticipate disruptions and build redundant recreation and programming periods into the schedule.

Staff and incarcerated people cite disruptions as a chief reason out-of-cell time is limited. Frequent interruptions to the normal schedule occur, for example, when the nursing staff arrives during a recreation period to distribute controlled medication or when a fight or assault takes place requiring a security and health care response. We recommend that the Department or each facility administration team design a schedule for the RHU that includes additional redundant periods of time for recreation and congregate interaction. This would allow those operating the RHUs to make up for lost out-of-cell time by instituting a back-up option when an earlier opportunity was disrupted or cut short.

The Department reports that it is exploring and piloting new efforts to address schedule disruptions and to provide peer support to people engaging in disruptive behavior, and the Ombudsperson office looks forward to learning more about the results of those efforts.

4. Pause the use of additional disciplinary sanctions on top of RHU placement that take away recreation time.

The Department's revised RHU policy affords people on Level 1 a minimum of five hours of recreation time per week, plus congregate interaction time, structured activities, and supportive services. The Department's disciplinary process, however, appears to also authorize hearing officers to recommend a loss of recreation time for a specified number of days. This sanction would be imposed over and above the standard restrictions on privileges for those in RHU Level 1. As the Department implements and monitors the effectiveness of the new two-level incentive structure for RHU, we recommend a temporary moratorium on these additional loss-of-recreation-time sanctions for those who will already be subject to the restrictions of the RHU. If the two-level incentive structure is effective at changing behavior, the additional sanctions are overly restrictive and work against the Department's goals for out-of-cell time.

5. Explore options for retaining consistent line staff and supervisors on the RHUs.

Given the complexity of operating an RHU, particularly when people with different close-custody statuses are placed in the same tier of the housing unit, consistent and experienced staff may prove to be the difference between a successful and unsuccessful policy roll-out. This, of course, can be difficult when staff members get injured or sick, but to the extent that the Department sees additional steps that can be taken to ensure stability in the personnel operating the RHU, we would encourage and applaud those efforts. Consider, for example, making the RHU a more coveted post by negotiating hazard pay and quicker promotion options for staff assigned there, or increasing the number of officers stationed in the RHUs above the minimum number needed to safely operate the unit in order to avoid pulling less experienced staff members in when there is a call-out.

We make this recommendation acknowledging the larger pressing concerns regarding under-staffing and staff recruitment and retention at the Department of Corrections, and we strongly urge the state to negotiate more competitive salaries for correctional police officers and supervisors.

Acknowledgements

Thank you to facility administrators and staff at Edna Mahan Correctional Facility, Northern State Prison, New Jersey State Prison, and South Woods State Prison for accommodating the Ombudsperson office's unannounced inspections. We want to acknowledge and thank the Department of Corrections legal team for providing disciplinary data and institutional logs for analysis, and the Department's executive leadership for providing notes and feedback on an earlier draft of this report.

The following staff members at the Corrections Ombudsperson Office conducted site visits, designed and fielded survey questionnaires, provided Spanish translation and interpretation services, analyzed data, and helped draft and revise this report: Terry Schuster, Danielle Romano, Ron Pierce, Rachel Fromhold, Kristin King, 'Lola Ogunnubi, Michelle Berry, Lauren Sagar, Kelly Santizo, Victoria Morgan, Roshunda Simmons, Carla Gardner, Meg Farrell, and Melissa Matthews.

Contacting the Corrections Ombudsperson

The Office of the Corrections Ombudsperson provides independent prison oversight to protect the safety, health, and well-being of incarcerated people.

People in state prisons can contact us in writing by placing correspondence in secure Ombudsperson mailboxes at each facility, or sending legal mail to:

Office of the Corrections Ombudsperson
P.O. Box 855
Trenton, NJ 08625

The office also operates a small call center, where people can reach us on a variety of hotlines, including:

- (555) 555-5555 from any phone in the state prison system
- (800) 305-1811 from any halfway house contracted with the state
- (888) 909-3244 for family members and friends of the incarcerated population
- (609) 633-2596 for the general public

Members of the public are encouraged to reach us by email at info@oco.nj.gov, and to visit our website: www.nj.gov/correctionsembudsperson/.