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Correctional Association of NY

Statement Opposing Reductions in NYC Jail Minimum Standards, and Calling for an End to the Torture of Solitary Confinement, and Enhanced Family & Community Connections

Public Hearing of the NYC Board of Correction

October 16, 2015

The Correctional Association of NY (CA) would like to thank the Board of Correction (“Board”) for the opportunity to comment at this public hearing on the Board’s proposed rule to modify the minimum standards applicable to people incarcerated in the New York City (NYC) Department of Correction (DOC) jails. The CA has had statutory authority since 1846 to visit New York State’s prisons and to report its findings and recommendations to the legislature, other state policymakers, and the public. Our access provides us with a unique opportunity to observe and document actual prison practices and to learn from incarcerated persons and staff. Although the CA does not directly monitor conditions in NYC jails, our findings from the state prisons provide us with direct insight into comparable conditions, services, programs, and housing unit options.

The CA opposes the proposed expansion of the use of solitary confinement, limitations on procedural protections for people released from the ESHU, and harsh restrictions on visitation and packages. These measures run counter to growing positive trends around the country, will inflict substantial harm on incarcerated persons and their families and friends, and will more likely *increase* violence in the city jails. The Board should reject these proposed reductions in the NYC jail minimum standards, and should instead continue its positive efforts by further *limiting* the use of solitary confinement and *enhancing* visitation and package protections.

Solitary Confinement

The Board should reject the current proposed expansion of the use of solitary confinement in the city jails (*punitive segregation*), and should instead further limit the use of solitary to a maximum of 15 consecutive days, in line with international standards. As the Board is well aware, the sensory deprivation, lack of normal human interaction, and extreme idleness that result from the conditions in solitary confinement have long been proven to lead to intense suffering and physical and psychological damage,¹ and to increase the risk of suicide and self-harm.²

¹ See, e.g., <http://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>; Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, Journal of Law & Policy, Vol. 22:325 (2006), available at: <http://law.wustl.edu/journal/22/p325grassian.pdf> (“*Psychiatric Effects of Solitary*”); Craig Haney, *Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement*, 49 Crime & Delinq. 124 (Jan. 2003), available at: <http://www.supermaxed.com/NewSupermaxMaterials/Haney-MentalHealthIssues.pdf>; Stuart Grassian and Terry

Moreover, solitary is also recognized as causing a deterioration in people’s behavior, while restrictions on the use of solitary have had neutral or positive effects on institution safety.³ Further, solitary is disproportionately imposed on Black and Latino people.⁴

There is a growing trend and consensus around the country and internationally toward ending this torture of solitary confinement. President Obama, Supreme Court Justice Kennedy, and the Pope have all strongly denounced the use of solitary confinement.⁵ The newly revised “United Nations Standard Minimum Rules for the Treatment of Prisoners” – otherwise known as the “Nelson Mandela Rules” or “Mandela Rules” – place an absolute prohibition of solitary confinement *beyond 15 consecutive days*.⁶ These rules are the product of five years of negotiation and deliberation involving UN member countries (including the United States, whose

Kupers, *The Colorado Study vs. the Reality of Supermax Confinement*, Correctional Mental Health Report, Vol. 13, No. 1 (May/June 2011); Sruthi Ravindran, *Twilight in the Box: The suicide statistics, squalor & recidivism haven’t ended solitary confinement. Maybe the brain studies will*, Aeon Magazine, Feb. 27, 2014, available at: <http://aeon.co/magazine/living-together/what-solitary-confinement-does-to-the-brain/>; Joseph Stromberg, *The Science of Solitary Confinement*, Smithsonian Magazine, Feb. 19, 2014, available at: <http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/#.Uwoq5RSWaQ.email>.

² Homer Venters, et. al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, American Journal of Public Health, Mar. 2014, Vol. 104, No. 3, available at:

<http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742>. A separate recent panel of scientists at the annual meeting of the American Association for the Advancement of Science also further reported on the harmful psychological and neurological effects of solitary. See Joseph Stromberg, *The Science of Solitary Confinement*, Smithsonian Magazine, Feb. 19, 2014, available at: <http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/#.Uwoq5RSWaQ.email>.

³ http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf.

⁴ *Criminal Justice Case Processing of 16-17 Year Olds*, New York State Division of Criminal Justice Services, Office of Justice Research and Performance, p. 3, Jan. 4, 2013 (documenting disproportionate arrests and sentencing to incarceration for black and Latino youth). Although we do not have current data on the imposition of solitary confinement in the city jails, even if people of color were subjected to solitary confinement at the same rates as white people once they are in the city jails, the disproportionate arrests, prosecutions, sentencing, and incarceration of Black and Latino persons means that these individuals face solitary confinement at a higher rate. Moreover, if the state prison system is any indication, people of color are even more disproportionately sent to solitary than their already disproportionate incarceration. See, e.g., New York Civil Liberties Union, “*Boxed In – The True Cost of Extreme Isolation in New York’s Prisons*”, p. 24 (2012) available at: <http://www.nyclu.org/publications/report-boxed-true-cost-of-extreme-isolation-new-yorks-prisons-2012> (documenting that people subjected to isolated confinement in New York State prisons are disproportionately African American, representing 60% of the people in SHU compared to the already vastly disproportionate 50% of people in NYS prisons and 18% of the total NYS population); analysis of NYS Department of Corrections and Community Supervision data for 2014 (indicating that during a snapshot of the major isolated confinement units in New York State that hold people in isolation for the longest periods of time – namely Southport and Upstate Correctional Facilities, which are entire prisons dedicated to isolated confinement (essentially supermax prisons), and the SHU 200s or S-blocks, which are 200-bed freestanding isolated confinement units – black youth represented an even more disproportionate 66% of the young people aged 21 or younger in isolated confinement, compared to 61% of all youth 21 and under in the DOCCS system).

⁵ See, e.g., <http://solitarywatch.com/2015/07/14/obama-in-criminal-justice-speech-denounces-the-overuse-of-solitary-confinement-in-u-s-prisons/>; <http://solitarywatch.com/2015/06/23/supreme-court-justice-kennedy-denounces-human-toll-of-solitary-confinement-and-invites-constitutional-challenge/>; <http://solitarywatch.com/2014/10/26/pope-francis-denounces-solitary-confinement-calls-for-prison-conditions-that-respect-human-dignity/>.

⁶ See Rules 43-44, <http://www.penalreform.org/wp-content/uploads/2015/05/MANDELA-RULES.pdf>.

delegation included corrections commissioners), intergovernmental organizations, civil society groups, and independent experts. The Mandela rules were adopted earlier this year by the UN Commission on Crime Prevention and Criminal Justice as well as the entire UN Economic and Social Council, were further presented this month here in New York,⁷ and are expected to be considered and adopted by the entire UN General Assembly later this year.⁸ The rules reflect and indicate the growing international consensus that solitary confinement beyond 15 consecutive days amounts to torture and should be banned for all people.

The Board took positive first steps in the right direction of this growing trend earlier this year when it limited the use of solitary confinement for all people in the city jails to a maximum of 30 days for a single rule violation, 30 consecutive days overall with a mandatory minimum seven days out of solitary after 30 days, and 60 days total in a six month period (absent exceptional circumstances). These limitations were put into place after a tremendous amount of deliberation, public comment, consultation with experts, negotiation, and compromise as part of a larger package of rule modifications that included the adoption of the Enhanced Supervision Housing Units (ESHU). The changes helped the city jails and the Board be leaders in the efforts to reduce the use of solitary confinement across the country.

Yet now, the current proposed rule changes – allowing up to 60 days for a single rule violation of assault-on-staff and removing the requirement of seven days out of solitary after 30 consecutive days – would amount to a severe roll-back of the positive steps taken, an expansion of the use of solitary confinement in the city jails, and a movement in the opposite direction of the growing trend toward progressive reform.

Under the proposed rules, an individual would seem to be able to be subjected to up to 120 consecutive days of solitary confinement without any respite – eight times the maximum allowable under the Mandela Rules. Allowing this expanded use of solitary confinement will lead to severe harm to the people subjected to these torturous conditions. The DOC has not provided sufficient justification or evidence to indicate such considerations as: how the changes will decrease violence or increase safety in the city jails; why the ESHU – established purportedly to house people posing “the most direct security threats,” including people who “committed slashing and stabbings or . . . repeated assaults,” – is not suitable for housing people who have already spent 30 days in solitary; why measures further inflicting harm on incarcerated people rather than using proven violence-reducing programs and ending violence carried out or instigated by staff will increase safety in NYC jails; or what has changed since January 2015 that requires undoing the compromises and rule changes made at that time. In addition, to respond to the small number of individuals the rules are purported to address, the BOC has not attempted to utilize proven alternative measures rather than isolation, in the ESHUs or otherwise. Before

⁷ <http://www.un.org/apps/news/story.asp?NewsID=52190#.Vh0nmnpViko>.

⁸ See Remarks by President of the UN General Assembly, Oct. 7, 2015, *available at*: <http://www.un.org/pga/70/2015/10/07/high-level-presentation-of-the-nelson-mandela-rules/>.

asking for changes to the rules to allow for further isolation – proven to only exacerbate difficult behavior – the DOC should implement programs specifically designed to address any violent or difficult behaviors exhibited.

The Board should thus reject the proposed expansion of the use of solitary confinement because these measures are inhumane and are more likely to increase violence in the city jails and in outside communities than to decrease it. Instead, the Board should further limit solitary to a maximum of 15 consecutive days for all people, and should create more humane and effective alternatives – premised on meaningful out-of-cell rehabilitative and therapeutic programming – that actually aim to address issues of violent conduct and safety concerns. As discussed during previous testimonies before the Board, the Board should look to proposed legislation in New York State, the Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A.4401 / S. 2659, as a model for potential rule changes.⁹ The Board should follow the direction of President Obama, Supreme Court Justice Kennedy, the Pope, and the international community and implement rules that are humane, evidence-based and effective to address people’s needs and the safety of all.

ESHU Procedures

The proposed limitations on the procedural protections of people who are released from ESHUs similarly infringe on people’s rights without sufficient justification or evidence of the need for or efficacy of the proposed change. The procedural protections for people facing ESHU confinement are already limited, and the proposed rules would only weaken these protections. Under the proposed rules, any person who is placed in an ESHU and released from the unit can be placed back in the ESHU within 45 days of release without any hearing. A person can thus be returned to ESHU presumably based on the original basis for which the person was put in ESHU in the first place, a decision that could have been made months or years prior, or based on any reason at all. A person simply has to be provided notice as to the reason for placement without a meaningful opportunity to challenge that reason. The only opportunity for the individual to challenge the placement could take place 45 days after being returned to the ESHU, and at most consists of submitting written statements “for consideration” in a cursory review, without an opportunity to appear, present evidence, or confront witnesses. Again, the DOC has not provided sufficient justification or evidence for weakening the already minimal procedural protections for people facing ESHU placement, and the Board should reject these proposed changes.

Visiting and Packages

The Board also must reject the severe and unjustifiable restrictions on visits and packages, and should instead promote more enhanced connections between incarcerated people and their families, friends, and communities. Similar to the proposed changes to solitary and the ESHU, the proposed changes regarding visiting and packages will inflict significant harm on

⁹ <http://assembly.state.ny.us/leg/?bn=A04401&term=2015>.

incarcerated persons and their families, friends, and communities, without sufficient justification or evidence supporting the changes.

For children, families, friends, and other loved ones who visit people incarcerated in the city jails, having regular contact visits is essential. The proposed rule would limit physical contact to embraces at the beginning and end of a visit only, and holding hands possibly over a partition. The existing Board minimum standards already allow the DOC to restrict contact visits in situations where it is determined, based on “specific acts” committed by the incarcerated person or “specific information received and verified” about an impending act on the next visit, that “such visits constitute a serious threat to the safety or security of a facility.” The existing standard already limits contact visits in contexts where such visits pose a serious threat. By contrast, the blanket restrictions on contact visits under the proposed rule is not tied to any risk of harm and thus punishes all people incarcerated in the city jails as well as their families and loved ones, without any indication that it will reduce violence.

In addition, the proposed rule would allow the DOC to conduct broad investigations into potential visitors, including related to their criminal records and the nature of their relationships with people incarcerated; give broad discretion to DOC to make determinations about who has a sufficiently close or intimate relationship; and grant broad discretion to DOC to deny visits based on broad and vague criteria related to purported threats to safety, security, health, or even good order of the jails. Such procedures are likely to discourage and deter people from visiting their family, friends, and loved ones incarcerated in the city jails. Also, particularly given documented biases surrounding, as well as the disproportionate and targeted policing and incarceration of, Black and Latino people, other communities of color, members of the LGBTI community, survivors of intimate partner violence, and others, the focus on criminal records and the broad discretion afforded the DOC will likely lead these individuals and communities to face disproportionate visit restrictions and denials.

All of these restrictions on visiting will have damaging effects on incarcerated persons and their children and other family and community members, and will likely increase, rather than decrease, violence in the jails and in outside communities after people are released.¹⁰ It is well-known that maintaining family and community ties while a person is incarcerated, especially

¹⁰ See, e.g., *Testimony of the Correctional Association of NY*, Public Protection Committee Budget Hearing, Feb. 6, 2013, available at: <http://www.correctionalassociation.org/wp-content/uploads/2013/02/cany-testimony-nys-budget-bayview-beacon-closures-feb-6-2013.pdf> (reporting that “frequent visiting and strong family connections can reduce the trauma of having an incarcerated parent and provide the support they need to become healthy adults. For mothers, not receiving visits means not only the devastation of losing touch with their children but also sometimes losing their parental rights to their children forever. . . . Maintaining positive family connections also makes prisons safer, by providing incarcerated people with hope, comfort and incentive for good behavior, and communities safer, by providing people with the supports they need to stay out of prison once they are released”).

through contact visits, is essential to help with that person's and their family's well-being and also with their successful return to their home community.¹¹

Yet, again the DOC does not provide sufficient justification or evidence for these restrictions. While the purported justifications for such restrictions are to limit the ability of weapons and other contraband that contributes to violence from entering the city jails, reports – including by the Board itself – have made clear that the main source of smuggling of weapons and drugs comes from DOC staff and not from visitors.¹² For example, the Board itself reported that the vast majority – 79% – of weapons discovered in the city jails in 2014 were made from materials found in, or authorized for use in, the jails. Overall, between 20,000 and 30,000 visitors per month currently participate in contact visits.¹³ Yet, there is only an average of approximately three visitor arrests per month for weapons.¹⁴ The proposed rule changes would thus penalize the entire visiting community for a few violations that the DOC already has sufficient mechanisms to address. Moreover, already the difficult visitor processes discourage people from visiting their family and friends incarcerated in the jails, with the ratio of contact visits per incarcerated person currently decreasing.¹⁵ The Board should ignore the false attempt to shift the blame for violence onto incarcerated people and their visitors, should reject the imposition of severely harmful visiting restrictions, and should instead be exploring ways to protect and enhance the rights of people to visit their loved ones.

Regarding packages, the proposed rules would allow the DOC to limit people to only receive packages purchased and mailed from pre-approved companies. Such a policy will again have a

¹¹ See, e.g., *Lowering Recidivism through Family Communication*, Prison Legal News, April 15, 2014, available at: <https://www.prisonlegalnews.org/news/2014/apr/15/lowering-recidivism-through-family-communication/>; Ryan Shanahan and Sandra Villalobos Agudelo, *The Family and Recidivism*, Vera Institute of Justice, AMERICANJails, p. 17-24, Sept./Oct. 2012, available at: <http://www.vera.org/files/the-family-and-recidivism.pdf>; Jeremy Travis, et al., *Families Left Behind: The Hidden Costs of Incarceration and Reentry*, June 2005, p. 6, available at: http://www.urban.org/uploadedpdf/310882_families_left_behind.pdf; American Bar Association Letter June 19, 2013, in support of contact visits rather than only video visitation, available at: http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2013june19_dcvisitation_1.authcheckdam.pdf, (citing ABA Standards for Criminal Justice: Treatment of Prisoners, Standard 23-8.5 cmt. At 260) (finding that “Maintaining personal connections through contact visits improves the lives of incarcerated individuals, their families, and the community in three important ways. First, people who receive visits from and maintain relationships with friends and family while incarcerated have improved behavior during their time in custody, contributing both to a safer and more rehabilitative atmosphere in the facility. . . . Second, individuals who maintain relationships have more successful transitions back to society than those who do not. Third, families and children who are able to visit their relatives in jail benefit greatly from maintaining family ties during a time that can often cause family trauma”).

¹² See BOC Report on DOC Data, 4/24/15 . Michael Winerip and Michael Schwirtz, *Investigator Posing as Rikers Guard Smuggled in Contraband Inquiry Finds*, The New York Times, Nov. 6, 2014, available at: <http://www.nytimes.com/2014/11/07/nyregion/rikers-island-undercover-investigator-contraband-inquiry.html?hp&action=click&pgtype=Homepage&module=second-column-region®ion=top-news&WT.nav=top-news&r=0>.

¹³ BOC Report on DOC Data, 4/24/15.

¹⁴ DOC Presentation to the BOC, May 12, 2015.

¹⁵ BOC Report on DOC Data, 4/24/15.

negative impact on maintaining family ties, and create a substantial burden on family members who would have to purchase new items to send to their loved ones rather than providing materials they already own. Particularly given that most people in the city jails are being held pre-trial because they are unable to afford bail, and given that many incarcerated people rely on packages for undergarments, writing materials, hygiene items, and other basic necessities, these changes in package rules will impose a severe financial hardship on incarcerated people and their loved ones. While the purported justification for these restrictions is again to limit contraband from entering the jails, the applicability of the rule is not tied to any specific threat of smuggling posed by a particular person. Clearly, the burdens on family members outweigh the burden on staff to search incoming packages, and again DOC has not provided sufficient justification or evidence as to why these package restrictions are necessary or would reduce smuggling or violence.

Conclusion

Overall, the proposed reductions in the minimum standards are steps in the wrong direction, are more likely to increase rather than decrease violence in the city jails, fail to address the ongoing staff brutality, inhumane conditions, and over-incarceration of people in the city jails, and will inflict severe harm on incarcerated persons, and their families, friends, and communities. In order to help make the city's jails safer and more humane, and create conditions that will help people incarcerated in the jails and their loved ones to thrive and be successful in the outside community, the Board must reject these proposed infringements on people's rights, and instead take further steps to end the torture of solitary confinement and promote greater family and community ties.