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In the fall of 2013, Cathy Potler, the former Executive Director of the Board of Correction, requested that our Clinic research and prepare a report for this Board on solitary confinement practices for 16-18 year olds in jurisdictions around the country. Our Clinic soon learned that because New York is virtually unique in treating 16-18 year olds as adults in our criminal justice system, that there were few, if any jurisdictions, that had such a draconian approach to youth confined in its jails. As you no doubt know from various studies, including the New York Advisory Committee to the U.S. Commission on Civil Rights Report (NYAC), the U.S. Department of Justice Report and now its lawsuit, solitary confinement for 16-18 year olds violates international norms, is extremely damaging to the emotional, physical and mental development of youth, creates conditions for a culture of violence, increases the likelihood of re-offense, is costly, and is terrible policy.

Our Clinic surveyed correctional systems in a number of states and learned that effective policies required not only an elimination of solitary confinement for youth, but a more fundamental shift from a punitive correctional model to a cost-saving, effective, therapeutic one. Such a therapeutic approach has been successfully adopted by various jurisdictions including Maine, Connecticut, Mississippi, and Rhode Island. It has been adopted by New York's Office of Children and Family Services (OCFS) that fosters a positive rehabilitative environment with a

range of mental health, educational, vocational and life-skills supports and services. The institutional concern about safety has been demonstrated to be more effectively addressed by such positive behavioral interventions.

Our Clinic prepared a report and presented it to Cathy Potler for this Board's consideration. We continued to work with Ms. Potler until her untimely death in September on the anticipated rule-making process to improve conditions at Rikers. Our expectation, especially after the appointment of Commissioner Ponte, was that there would be a necessary move away from the ineffectual, dangerous and costly punitive correctional Rikers model toward rule-making that advanced a therapeutic approach including additional programming for mental health, education, recreation, a range of positive behavioral interventions, and training for correctional officers. It is an understatement to say that the culture needs significant change.

Even though there has been some movement, especially with announcement that the Department of Correction will no longer use solitary confinement for 16-17 year olds, forms of punitive segregation remain in effect for 18 year olds and certainly for all youth under 25.

There has been a new unit created for 16-17 year olds—the adolescent transitional repair unit—that adopts some programs but still does not meet this Board's minimum standards of 14 hours lockout per day. Youth are locked in for 20 hours a day. It might be better than the draconian 23 a day confinement, but it still does not comport with modern effective practices. Minor adjustments within a fundamentally flawed punitive model are just that—minor ones that will be damaging, ineffectual and costly.

The current proposal for enhanced security unit that affects youth 18 and over is yet another fundamentally flawed proposal as currently articulated. It may not be called punitive segregation or solitary confinement, but without effective programming, rules for necessary lock

out time, and training for correction officers, it has a similar, if not a potentially worse effect upon the mental, physical and emotional development of youth, than existing practices. It is likely to increase the culture of violence.

The ESHU, especially for 18 year olds, flies in the face of every set of national standards governing age and developmentally appropriate practices to manage youth in rehabilitative or correctional settings. The national standards strictly limit all forms of isolation. The Juvenile Detention Alternatives Initiative (JDAI) created comprehensive set of standards strictly limiting the use of isolation for youth up to age of 18. These standards have been adopted in more than 200 jurisdictions in more than 39 states, including upstate counties in New York. Additionally, the Performance-Based Standards Initiative (PbS) provide data-driven standards that improve conditions and services for incarcerated youth. PbS has led to a reduction in incidents of isolation. These standards, for those 18 and under, are effective practices that should be the approach for all youth at least for those 21 and under. Instead, the current ESHU proposal continues the outdated Rikers model that exacerbates mental health problems, has psychiatric consequences that causes depression, anxiety, and psychosis, and increases the risk of self-harm and suicide.

The ESHU starts from the backward premise that punishment, rather than services and programming, will provide security to the institution and reduce violence. As the NYAC Report states, all existing correctional systems that have employed some version of ESHU because of concerns for institutional safety have found that such facilities, even supermax facilities, do little or nothing to reduce overall violence.

Instead of positive interventions, this proposal seeks to restrict services—education, recreation time, religious services, library services, family contact—all of which are likely to

increase anger, frustration, acting out, and consequently, altercations and violence. It is wrong headed and dangerous. It is contrary to best practices and current research on effective strategies.

The proposal does not even meet the BOC standards for lock-out time. The recent report by the Civil Right Commission documents the fact that forms of punitive segregation to deal with problematic behavior do not result in more controlled jail environment. In fact, as isolation beds at Rikers increased 61 % from 2007-2013, use of force incidents tripled even though the population declined.

Instead, effective programming, notably for mental health, education and recreation is essential. Religious programming, library time and recreation should be increased. Family contact should encouraged, not decreased. Moreover, effective positive-behavior intervention programs exist to address gang-related issues and a host of other concerns that the DOC has raised. DOC should work with various government agencies and police departments that have addressed issues of gang violence.

Moreover, the ESU proposal is bereft of evidence-based analysis.

--Why is preemptive punitive segregation necessary?

--Why aren't existing systems and housing sufficient to provide security and programming for the less than 200 people who will be the likely targets for ESU?

--What standards will be employed to determine who should be placed in such a facility?

--What practices are in place to assure that such a system will not be applied arbitrarily?

--Why aren't there risk assessment instruments utilized as they are elsewhere to determine who needs additional services and support and how to provide those?

--Why should the current disciplinary system not be improved? Why is an improved disciplinary system not sufficient?

--How can the Board assure that this facility will not be the next dumping ground for young men with mental health issues who are then subject to increased violence?

Until there is a data-driven approach to development of another punitive structure, it is a grave mistake to create another unit—not sufficiently thought out—one that is likely to lead increase inmate/guard violence.

Institutional safety is not enhanced by such a unit. Studies of correctional systems in Illinois, Arizona, and Minnesota have found that reducing punitive segregation may not be as risky as corrections officials fear it will be. Recently, some states have begun to rethink their punitive segregation policies and limit its use to extreme circumstances. The recent advances in other jurisdictions highlight best and promising practices with regard to mentally ill and adolescent inmates. For example, the Vera Institute is working with a number of states including Pennsylvania, Illinois, Maryland, New Mexico, and Washington State on both a data-based and program-based Segregation Reduction Project (SRP).

Instead of this step backward to a more punitive correctional model, this Board should reject the ESU plan and move toward rethinking the use of such punitive segregation—especially for 18-21 year olds.

Recent press, notably a December 15, 2104 New York Times article about Norman Seabrook, demonstrates the extent of control of policy and practices exercised by the powerful Correction Officers union. Apparently, the union control is an overriding factor in failing to move toward a less punitive model.

For a city whose leaders are rightly concerned about the “tale of two cities,” Rikers is our distress signal for how we treat the poor, the marginalized, those in the so called “school to prison pipeline”—young black and brown men. We would not permit *our* own children to exist in such an environment. We should not permit this for our city’s youth.

This body—as an independent body-- must undertake responsibility to curb the appetite for needless additional punishment of black and brown youth and move into the 21st century of responsible policy for incarcerated youth. All brain science indicates that the brain is not fully formed until age 25. At the very least, this Board should consider rejecting the ESU proposal for youth 21 and under, if not those 25 and unless and until appropriate provisions are made for programs, officer training and rules and regulations to comport with due process of law.