



## **New York City Jails Action Coalition**

c/o Urban Justice Center  
40 Rector Street, 9<sup>th</sup> floor  
New York, NY 10006  
[www.nycjac.org](http://www.nycjac.org)

December 15, 2015

Stanley Brezenoff, Chair  
Members of the Board of Correction  
51 Chambers Street  
New York, NY 10007

### **Re: Final Rule and Proposed Variance**

Dear Chair Brezenoff and Members of the Board:

The New York City Jails Action Coalition (JAC) urges the Board to reject the Final Rule and requested Variance for the following reasons:

- 1) The rule change and proposed variance permit extended sentences to punitive segregation which constitute torture according to current international norms;
- 2) The rule change allows Department of Correction (DOC) to limit contact during a visit through the use of a partition without delineating the circumstances in which a partition may be used, in effect allowing DOC to subject *all* visitors to limited contact visits.

### **Punitive Segregation**

Recognizing the well-documented harms inflicted on individuals subjected to placement in solitary confinement, in January 2015 the Board limited the maximum amount of consecutive punitive segregation to 30 days. No evidence has come to light since then to suggest that prolonged isolated confinement is any less harmful. In fact, an absolute prohibition on solitary confinement beyond 15 consecutive days is included in the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (also known as the Mandela Rules), which were adopted this year by the UN Commission on Crime Prevention and Criminal Justice and are expected to be adopted by the entire UN General Assembly in the near future. At the October 16, 2015 hearing and in written comments, numerous individuals and organizations voiced objections to the Board sanctioning the use of torture in NYC jails. We remain opposed to the use of solitary confinement in our jails and urge the Board to reject any expansion of its use.

For the same reasons, we oppose the variance requested by the Department to override the seven-day reprieve from isolation after each 30-day stay. If adopted, this variance will permit the harmful use of long-term, uninterrupted placement in solitary confinement. Minimum Standard § 1-17(d)(3) already allows for the extension of solitary confinement placement beyond 60 days in

6 months. There have been *no* instances in which an override would be utilized since DOC initially proposed this variance as a rule change. The variance indicates that DOC needs two years to establish appropriate secure housing alternatives. Two years is an exceptionally long period of time to resolve the long-standing problem of overuse of solitary confinement in our jails. The DOC has been well aware of the need to reduce and eliminate its use for years. The practice is acknowledged as a violation of human rights and ending the practice demands urgency, with the Board's involvement throughout the process. This variance is unnecessary and should be rejected as a step in the wrong direction.

According to the Board's November 10, 2015 report regarding the use of overrides to the 60-day limit to stays in solitary confinement, a large proportion of the incidents leading to overrides resulted from behavior such as "advancing toward officers" or splashing. People subject to overrides for spitting or splashing had spent on average more than 250 days in solitary confinement during their present incarceration.<sup>1</sup> Close to 90 percent of people with overrides were on the mental health caseload.<sup>2</sup> This report suggests that the expansive definition of mental health conditions which would exclude people from solitary confinement is not being implemented as described earlier this year. The same individuals who are presently subject to overrides of the 60-day limit will be subject to overrides of the seven-day reprieve, and will once again compose the population of people on Rikers Island serving years in solitary confinement, while suffering mental illness.

The Department has a range of restrictive units throughout the jails, including the Enhanced Supervision Housing Unit, which are designed to manage individuals safely, while permitting out-of-cell time and access to programming. Due to the apparent rarity of the circumstances when such an override would be needed, the Board should create a mechanism for DOC, in consultation with the Correctional Health Authority, to request action from the Board based upon the individual circumstances, rather than adopting a variance which will likely be utilized too broadly and usher in a return of long-term solitary confinement in NYC jails.

## **Visits**

We commend the Board in eliminating the draconian changes to the visit rules included in the initial rule. However, the Final Rule allows DOC to impose an across-the-board limitation on contact with visitors through the use of partitions separating incarcerated persons and their visitors. All of the evidence regarding visitors and contraband, elicited during the rulemaking process, established that only a tiny fraction of visits result in contraband entering the facility; a limitation on contact between all incarcerated persons and their visitors is unwarranted. Full contact visits should remain the norm, as is true in the State prison system, with a range of sanctions available based on individual incidents during a visit. Rather than sanctioning the use of a partition, the Board should specify when DOC can impose such an intrusion upon a contact visit.

---

<sup>1</sup> Board of Correction Report on Sixty Day Override Notices Received Through September 11, 2015 from the Department of Correction, November 10, 2015, p. 3.

<sup>2</sup> *Id.* at 4.

## **Other Concerns about the Final Rule**

The Final Rule also contains provisions which were not previously considered and about which we have the following concerns:

### Definition of family

We appreciate that in the Final Rule, the Board recognized the importance of additional relationships between individuals which were not described in the initial rule. Given that in the initial rule the “lack of a family relationship or otherwise close or intimate relationship between the inmate and the prospective visitor” was intended as a factor upon which a determination to deny, revoke, or limit visits could be made, the definition of family was extremely important. With the exclusion of these factors from the Final Rule, however, it is unclear why family needs to be defined at all.

We are concerned that the revisions to the Policy section of the visit rule to describe various familial relationships may result in DOC staff denying visits with individuals who simply identify themselves as friends, neighbors, or co-workers. The lengthy policy section contains the word “friends” only once. We encourage the Board to state the reason that this revision to the rule is needed and to make clear that DOC is not permitted to subject visitors who identify themselves as friends or other community supports to a higher level of scrutiny than visitors who report a familial connection.

If adopted, the Board should monitor DOC’s implementation of the changes to the visit rule to determine whether DOC visit denials related to the relationship between the visitor and incarcerated person increase.

### Review of punitive segregation sentence for serious assault on staff after 45 days

We support the Final Rule requirement that DOC review punitive segregation sentences and release individuals who can be placed in alternative, less isolative settings. This change is a step in the right direction, but it does not specify criteria which must be considered in the 45-day review or specify how such criteria should be weighed. We encourage the Board to identify the factors that DOC should consider in completing this review. We also encourage the Board to implement a presumption in favor of transfer out of punitive segregation for any individual who satisfies specific factors.

### Increased mental health attention for individuals serving extensive solitary confinement sentences

Daily mental health rounds are inadequate to identify individuals in distress and in need of removal from punitive segregation. Instead, mental health staff should routinely evaluate individuals who are held in extended solitary confinement in a clinical setting which allows for confidential communication.

We appreciate that the Final Rule includes a requirement that DOC, in consultation with the Correctional Health Authority, develop a behavioral intervention for those sentenced to punitive segregation. We support efforts to move away from punitive segregation as a response to inappropriate behavior and are encouraged that the Final Rule includes a requirement to implement such programming within the next year. If enacted, the Board should require regular reports on the development of this intervention and the plan for ensuring that the problems which plagued the Restrictive Housing Units are not perpetuated in this intervention.

#### Reports on punitive segregation

We support the additional reporting requirements in the Final Rule and urge the Board to require DOC and the Correctional Health Authority to disaggregate the data for each measure by race and by the number of people who are receiving mental health treatment. We also encourage the Board to add reporting requirements through which the rule regarding exclusion of individuals with serious mental disabilities from punitive segregation could be evaluated, such as reporting on the number of individuals in punitive segregation who were previously held in CAPS, PACE, or the forensic units at Bellevue or Elmhurst hospital. Finally the rule should require that the information be made public and not simply reported to the Board.

#### Rulemaking Process

We acknowledge that the Board has considered the hearing testimony and written comments submitted during the rulemaking process and that the Final Rule incorporates many of the suggested revisions. The Board should now hold a public hearing on the revised rule. We believe that the new sections of the rules, referenced above, warrant further public comment and an opportunity for the Board to make final revisions before voting.

If the Board decides to vote on the rule at its December 16, 2015 meeting, we ask that the changes to each section of the rules (Classification, Recreation, Visiting, Packages, and Punitive Segregation) be voted on separately.

\* \* \* \* \*

Thank you for considering our comments regarding the Final Rule. We encourage you to vote to disapprove the Punitive Segregation and Visiting rule changes at this time.

Sincerely,

NYC Jails Action Coalition

cc: Martha King, Executive Director