



NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Commissioner

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Jacqueline Sherman, Interim Chair
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

RE: Comments on BOC Restrictive Housing Rulemaking

Dear Interim Chair Sherman,

Thank you for the Board's commitment to meaningful corrections reform in the City of New York. We are encouraged by the productive dialogue between our agencies in the formulation of the proposed restrictive housing rules published by the Board of Correction ("Board") on October 29, 2019. As you are aware, the New York City Department of Correction ("Department"), in collaboration with the Board, has implemented some of the most progressive restrictive housing reforms in the nation over the past six years.

As an agency, we are not new to significant and systematic reform and the hard work such progress requires. In 2013, the Department eliminated the use of punitive segregation for all seriously mentally ill ("SMI") individuals in custody. In 2014, the Department eliminated the use of punitive segregation for adolescents (16-17 year olds) in recognition of the practice's negative consequences on juvenile brain development. In 2015, the use of punitive segregation for adults in Department custody was fundamentally transformed by the creation of a tiered system of proportional responses and long-term management alternatives. Previously, punitive segregation had been the only response to all infractions. In 2015, however, Punitive Segregation II ("PSII") was created as a response to non-violent or Grade II infractions. In PSII, individuals receive seven hours of out-of-cell time each day. With the addition of this unit, punitive segregation now narrowly applies to only violent Grade I infractions. In June 2016, the Department led the nation in the elimination of punitive segregation for all 18 year olds in custody. The Department further led the elimination of punitive segregation for the remaining young adult population (19-21 year olds) in October 2016.

During this time, the Department further implemented some of the most progressive punitive segregation sentencing reforms in the nation. For example, all violent infractions, with the exception of assaults on staff that cause serious injury, currently result in a maximum penalty of thirty days. Most violent infractions, however, result in penalties of fewer than 30 days and take the individual's infraction history into account during sentencing. Further, infractions from previous incarcerations are no longer applied to an individual's current incarceration. This practice differs vastly from the practices of many correction departments across the country, where indefinite punitive segregation sentence lengths are imposed in response to non-serious or non-violent behavior. More recently, in June 2019, the Department implemented an out-of-cell structure in

punitive segregation that affords all individuals a minimum of four hours out of cell each day, including three hours for engagement in outdoor recreation and congregate activities, where additional hours may be provided for mandated services. As of June 2019, the Department no longer operates punitive segregation units that operate with twenty-two (22) hour lock-in. This differentiates the Department's punitive segregation units from those defined as solitary confinement under the United Nation's Mandela Rules.

We are incredibly proud of these achievements and the Department's place as a national champion of restrictive housing reform, and must recognize the work and dedication from staff that has proven so integral to implementing these changes. We are incredibly thankful to our partners at the Correctional Health Service ("CHS"), whose creativity and passion for this important work has led to the creation and co-management of Clinical Alternatives to Punitive Segregation ("CAPS") units. CAPS units provide standard general population lockout time and 24/7 on-unit clinical support for individuals with serious mental illness ("SMI") who commit violent infractions and previously would have qualified for punitive segregation placement prior to the aforementioned reforms.

Department staff have also worked incredibly hard to create alternatives to punitive segregation for young adults, such as Enhanced Supervision Housing ("ESH") and the Secure Unit. These units provide for the safe management of the young adults with the most violent behavior in custody, while ensuring access to rehabilitative programming designed to address root causes of violent behavior and criminogenic risk factors. The Department, in collaboration with the Board, has made significant improvements to these units in order to ensure consistent access to meaningful services and a clear pathway for level or phase progression and re-entry into general population. The Department frequently receives visits from correctional leaders representing agencies across the country who are interested in replicating these reforms and punitive segregation alternatives in their own jurisdictions. All of these achievements and the dedication from staff that made them a reality have resulted in fundamental changes to the operation of punitive segregation units and a landmark reduction in the use of punitive segregation. The Department has approximately 80% fewer people in punitive segregation today than just five years ago.

We are not the same Department that we were just a few years ago. While these achievements represent significant progress, we recognize the need to go further. We are eager to continue building upon these reforms and we support many of the proposed rules, including: the elimination of an automatic \$25 dollar fee imposed on guilty infraction findings; the further limitation of punitive segregation sentence lengths, while maintaining a maximum of sixty days for individuals who cause serious harm to DOC, CHS, or program provider staff and volunteers; the increase in the frequency of reviews for individuals in the most restrictive level of ESH, thereby potentially reducing the time a person spends in a program desk; further changes to the use of program desks during lockout in facility housing units; and the provision of additional levels of review and support for due process around restrictive housing placements.

While we support these reforms and the rulemaking process, we acknowledge that there are areas of the proposed rulemaking where additional discussion is needed in order to ensure that the Department is able to safely and effectively operationalize any final rules. These include, for example, the potential for individuals who commit multiple serious infractions within the same few months to go without meaningful disciplinary action for each act due to the proposed limits to the punitive segregation backlog and the six month sentence limit; reduced incentives for level progression in ESH; the regulation of de-escalation protocols, which are a security operation and not a form of restrictive housing; restrictions on strategies for managing individuals who have persistently engaged in serious violence; and the requirement to videotape various due process refusals, which will duplicate current mechanisms for accurate recording while requiring substantial spending that may otherwise be utilized for expanded programming and services.

While these latter impacts require further discussion in the coming weeks, we acknowledge that the rulemaking process is important and fair. We are confident that this process will produce a set of proposed rules that will ensure that individuals who commit serious violence while in the Department's care receive an appropriate consequence that imposes the least restriction possible and maintains safety for everyone. We are committed to upholding values of rehabilitative and procedural justice, and we believe these rules are aligned with that commitment. The safety of all people who stay and work in our facilities remains our ultimate concern, and we look forward to continuing our discussions with the Board as the Board works to finalize rules that ensure safety while further affirming the Department's place as a national and global leader of restrictive housing reform.

Sincerely,



Cynthia Brann

cc: Michelle Ovesey, Acting Executive Director & General Counsel