



Testimony by Council Member Keith Powers
New York City Board of Correction Hearing
Re: Proposed Restrictive Housing Rule
December 16, 2019

Thank you for the opportunity to testify today. Before I start my testimony, I want to thank the Board for holding multiple hearings—both during the day and after the work day—on an important topic. For individuals that cannot or would not be able to make it on one particular day or during work hours, this provides them the opportunity to testify.

In June, I joined Council Speaker Corey Johnson in a letter calling for the Board to update its standards to severely reduce the use of punitive segregation, with an aim toward ending the practice of solitary confinement. We joined advocates across the City and country who have long called for change—including at the State level, where the Humane Alternatives to Long-Term Solitary Confinement (HALT) Act failed to pass through the legislature last session.

I am encouraged that the Board of Correction has taken up this rulemaking process to update restrictive housing rules in our City jails. New York City has been a leader in a number of issues related to the criminal justice system, but most notably our reduction in solitary confinement and restrictive housing.

Background

Solitary confinement has been condemned by human rights organizations and international bodies like the United Nations for its extreme psychological effects. Studies have shown that subjecting someone to prolonged confinement leads to increased anxiety, anger, and suicidal thoughts. A 2014 study analyzing medical records of incarceration in New York City jails from 2010 to 2013 found that although 7.3% of admissions included solitary confinement, over half of the recorded acts of self-harm occurred in that group.¹ Incarcerated people sent to solitary were nearly seven times more likely to attempt hurting themselves.²

Furthermore, it does not address the underlying causes of violence, with a 2016 U.S. Department of Justice report finding “little evidence that administrative segregation has had effects on overall levels of violence.”³ A UT Dallas study that tracked over 3,000 people incarcerated in Texas

¹ Kaba, Fatos et al. “Solitary confinement and risk of self-harm among jail inmates.” *American Journal of Public Health*. Vol. 104,3 (2014): 442-7. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/>

² Ibid.

³ Forst, Natasha & Monteiro, Carlos. “Administrative Segregation in U.S. Prisons.” U.S. Department of Justice: National Institute of Justice (2016): 3. <https://www.ncjrs.gov/pdffiles1/nij/249750.pdf>

prisons found that people put in solitary were more—not less—violent after the punishment, compared to people who had committed similar offenses but did not get the same punishment.⁴

Solitary has also been shown not to prevent recidivism, but instead contribute to it. In 2011, the U.N. Special Rapporteur on torture commented that solitary confinement was “contrary to rehabilitation, the aim of the penitentiary system.”⁵ A 2019 study in the *Journal of the American Medical Association* that looked at a 15-year span in North Carolina found that people put in solitary were 78% more likely to commit suicide after release than those who were not, as well as 127% more likely to die of an opioid overdose in the first two weeks after release.⁶ They were also more likely to be reincarcerated.⁷

Recommendations

First, I would like to recognize that a system that keeps people out of detention and moves individuals through the judicial process more quickly is the best way to prevent any harm. That is why I advocated for reforms that were passed at the State level—and are soon be implemented—and it is why the City has invested so much in alternatives to incarceration. We should continue to work to not only make our City jails more humane but attempt lower the population who enters our custody in the first place.

With that being said, I appreciate the Board’s efforts to create a clearer set of guidelines around restrictive housing and to limit the use of harmful housing practices. As the Board moves forward with rulemaking, I ask that the Board consider the following changes to the proposed rules.

- **Clarify qualifications for punitive segregation and strengthen exclusions.** Throughout the Board rules, “Grade 1 violent infractions” are referred to as the standard for placement in punitive segregation without a clear definition in the rules of what constitutes a Grade 1 violent infraction. In fact, the definition of Grade 1 violent infraction that I have seen only defines it an infraction that places an individual into PSEG-1. The Board should consider clearly delineating what constitutes a Grade 1 violent infraction in the rules themselves. Infractions which qualify individuals to be placed in PSEG-II should also be defined. Similarly, there are a number of exclusions from PSEG II: People with serious medical conditions, intellectual disabilities, elderly individuals and pregnant women should not be placed in any type of punitive segregation unit. I ask that the Board also ensure that these exceptions exist for PSEG-I.
- **Allow individuals sent to punitive segregation to have legal representation.** This would ensure that those placed in confinement for 15 days—or in the case of a serious assault of staff in BOC’s rules, 60 days—would have a fair hearing with representation.

⁴ Morris, Robert. “Exploring the Effect of Exposure to Short-Term Solitary Confinement Among Violent Prison Inmates.” *Journal of Quantitative Criminology* (2015). <https://link.springer.com/article/10.1007/s10940-015-9250-0>

⁵ “Solitary confinement should be banned in most cases, UN expert says.” *UN News* (2011).

<https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>

⁶ Brinkley-Rubinstein, Lauren et al. “Association of Restrictive Housing During Incarceration With Mortality After Release.”

Journal of the American Medical Association (2019). <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350>

⁷ Ibid.

At the minimum, I ask the Board of Corrections and Department of Corrections to consider a pilot program for this in the short term.

- **Create a meaningful appeals process.** There should also be a meaningful appeal process for placement in any alternative unit, and reviews every 15 days that include program and clinical staff.
- **Set clearer policies for lock-ins.** The current rule requires greater reporting on lock-ins from DOC to BOC, with notifications on lock-ins extending longer than 24 hours, as well as medical and mental health rounds after 10 consecutive hours of lock-in. They also require reporting on which services were negatively impacted for which housing areas during lock-downs. These policies should go further to limit the use of lock-ins—with a maximum time for lock-in before approval is required by the Board. I join many people who aspire to ensure that lock-ins are not used as an alternative method for isolating individuals.
- **Explicitly require congregate programming and individualized needs assessments in restrictive housing units.** The current proposed rules allow for non-congregate programming in restrictive housing, so long as these services are specified in writing to the Board. They also say that people held in PSEG-I longer than 15 consecutive days will be offered “evidence-based programming aimed at addressing the root causes of behavior” that led them to PSEG-I. However, congregate programming for all that addresses the root causes of violent behavior will be crucial in creating real rehabilitation. Programming should include therapeutic and restorative justice programs. Furthermore, the Board’s proposed rules include the creation of a programming plan for all individuals placed in restrictive housing, tailored to their “literacy, education level, and capacity to complete programming.” This should be expanded to a full individual needs assessment that includes mental health needs and programming goals.
- **End the use of restraint desks on a faster timeline.** The current proposal requires DOC to end the use of restraint desks and restraints during lockouts in all housing units in two years. While any change requires time to get right, two years is a long timeline. The BOC should amend the proposal to allow for a quicker implementation.

Having heard from individuals that have been placed in solitary confinement as well as the Department, the Board, correctional officers, and advocates for criminal justice reform, I know that we must approach this issue carefully and comprehensively. It is important that we have an environment and rules that keep both the employees and incarcerated individuals safe. I recognize that there are practical considerations in implementing reforms, and it is important that we ensure the safety of all individuals who work in our City’s jails.

The opportunity to institute sweeping reforms to restrictive housing practices at DOC facilities does not come often, so it is crucial that we get it right. A practice widely condemned throughout the world has no place in New York City. We should ensure that these reforms uphold our commitment to a fairer, more humane justice system. Thank you.