

April 21, 2021

BY EMAIL

Jennifer Jones Austin, Chair  
Members of the Board  
Board of Correction  
1 Centre Street, Room 2213  
New York, NY 10007  
[coc@coc.nyc.gov](mailto:boc@coc.nyc.gov)

**Re: Public Comment on Restrictive Housing Rulemaking**

Dear Chair Jones Austin and Members of the Board:

Solitary confinement has no place in New York City jails. The Board of Correction must adopt rules that truly eliminate solitary confinement in a real and meaningful way. The Board's proposed rules simply create a new system of inhumane and abhorrent treatment that amounts to solitary confinement by another name. We urge the Board to amend its rules in the following ways:

**1. The Alternatives to Solitary Confinement Must Be Rehabilitative and Not Extremely Restrictive Environments that Amount to Solitary Confinement by Another Name**

"Out-of-cell" time must include access to meaningful congregate interactions with at least several people at a time in the same open space that is conducive for healthy human interaction and engagement. People must be treated as human beings, have opportunities for regular activities with other human beings, in spaces that are conducive for human beings to interact meaningfully.

**2. The Rules Must Provide Access to Meaningful Programming**

All people in City jails, including those separated from the general jail population, should have access to at least 14 hours out of cell per day, with access to at least seven hours of congregate out-of-cell programming and activities. The proposed rules allow for the required five hours of daily programming in the Risk Management and Accountability System ("RMAS") to take place in-cell or out-of-cell without any requirement for the programming to be congregate in nature. The rule should require out-of-cell, congregate programming with other incarcerated people or program staff. Programs like CAPS in NYC jails, Merle Cooper in a New York prison (now closed), and the RSVP program in San Francisco jails offer interventions that do not restrict out-of-cell time, focus on meaningful pro-social programming and engagement, and actually work to reduce violence and improve safety.

**3. The Rules Must Include Limits on the Amount of Time People Can Be Held in Isolation**

There must be absolute limits on the length of time that people spend in the RMAS levels. The length of the time limit is dependent upon the provision of meaningful programs and activities. The proposed rule creates a highly restrictive environment in which individuals in Level 1 spend

their “out-of-cell” time in separate cages without meaningful human engagement. Thus, there should be an absolute limit of 15 days in RMAS Level 1.

To the extent that the Board amends its rules to require programs and activities in each level of RMAS, the time limits could be longer, particularly if people have access to at least seven hours of congregate out-of-cell time with other people. But there must be hard limits and the presumption that individuals will progress through each level if they do not engage in violent behavior in RMAS.

#### **4. The Proposed Rules Must Exclude Vulnerable Populations from Restrictive Housing**

The rules should prohibit from placement in the RMAS or other forms of restrictive housing all young people aged 25 and younger, elderly people aged 55 and over, people with mental health needs, people with physical disabilities, and people with medical conditions and comorbidities. These categories of incarcerated people are particularly vulnerable to the harms of isolation.

#### **5. The Proposed Rules Must Provide Access to Counsel**

People should have access to their own counsel or legal advocate at hearings that can result in placement in RMAS and in the placement review process. They should have the right to present evidence and cross-examine witnesses. Both the person incarcerated and their attorney of record should be provided timely written notice of the reason for proposed placement in restrictive housing. This notice should include specific information regarding the allegations, which the proposed rule does not require. A failure to provide such notice should constitute a due process violation warranting dismissal. Counsel should be provided adequate time to prepare for such hearings, including requests for adjournments. People should not be required to remain in isolated confinement for the duration of the disciplinary process.

At a minimum, providing access to counsel will provide some semblance of fairness and accountability for the operation of these hearings and the placement of people in highly restrictive and damaging environments. Access to counsel is also critical to ensuring that the periodic placement reviews are meaningful and that any decision to continue placement is supported by evidence that meets the standard set forth in the rules.

#### **6. The Rules Must Not Allow People to Be Chained and Shackled During Out-of-Cell Time**

While the proposed rules purport to end the use of so-called restraint desks and other restraints during out-of-cell time, they do not place limitations on restraints until November 2021. The proposed rules also continue to allow people to be chained to desks or placed in five-point restraints or in other forms of restraints not in response to an immediate threat of harm but if a person “recently” engaged in serious violent conduct, with a review every seven days. The rules should be amended to ban restraint desks and other forms of restraint during out-of-cell time entirely, or at the very least ensure that every use of restraints is in response to an immediate threat of imminent and serious harm. To the extent that restraint desks or other forms of restraint are used, the rules must require correctional health staff to provide medical and mental health rounds during each tour.

**7. The Rules Must Not Allow Isolation for Non-Violent Conduct Such as Drug Possession**

The proposed rules should only allow placement in a more restrictive environment than the general jail population at most in response to contemporaneous grave and dangerous behavior that resulted in injury or presents a specific, significant, and imminent threat to the safety and security of people who live and work in the facility. The rules should not continue to allow people to be placed in restrictive housing for non-violent conduct, including the possession of drugs or tobacco products.

**8. The Rules Should Ensure that All People in the City Jails Have Access to at Least 14 Hours Out of Cell Per Day and Not Carve Out a Second Class of People in City Jails for Whom Inhumane Treatment Is Allowed**

The proposed rules continue to perpetuate the idea that treating some people as less than other people in the jails (and indeed in this case less than any human being should be treated) is somehow acceptable and is somehow going to miraculously improve safety when all evidence indicates otherwise. The City should not create classes of people who are subject to more limits on out-of-cell time. Limiting people's out-of-cell time does not address safety or violence concerns, but it can cause devastating harm. We need an approach that is actually about addressing safety and protecting the health and well-being of people who are incarcerated. All people in the City jails, regardless of what unit they are in or if they are separated from the general jail population, should have access to at least 14 hours out-of-cell per day, again with at least seven hours of out-of-cell congregate programming and activities.

**9. The Proposed Rules Should Provide Time Limits on Other Forms of Solitary to Prohibit Indefinite Solitary Confinement**

There should be strict and precisely defined limits on the scope, reasons for, and lengths of time for emergency lock-ins and "deescalation confinement," if they are to be permitted at all. Emergency lock-ins and placement in deescalation should be reviewed at least every hour and should never last more than four hours in any 24-hour period nor more than 12 hours in any seven-day period.

**10. The Board's Rules Must Not Require Construction of Additional Inhumane Units**

No human being should be locked in the types of units envisioned under the rule. Putting people in small cages to allow them to communicate with one other person in a separate nearby cage, and holding people in those conditions for months and even indefinitely, is not how any human being should be treated.

There is no need to construct any new units, and certainly the City should not construct more punitive and isolative units. People should have out-of-cell time in large spaces that are conducive to human beings interacting in a meaningful way. The Board's rules should not require the City to spend precious resources to construct more units that are abhorrent to humanity.

## Conclusion

In line with the Mayor's and the Board of Correction's promise, the Board must amend the proposed rule to actually end solitary confinement once and for all in New York City. Evidence shows that in addition to being more humane, what actually works to address violence are opportunities for real and meaningful human engagement and pro-social programming. By contrast, the proposed alternatives to solitary in this poorly conceived rule are the exact opposite of these essential program needs, and will allow people to be held in isolated conditions for months, possibly years, and indefinitely. Ultimately, the Board must enact rules that treat all people as human beings and allow them to engage with other people in spaces and in manners that are suitable for human beings.

Sincerely,

#LetMyPeopleGoNow!Campaign

A Little Piece Of Light

Appellate Advocates

Black and Pink NYC

Brainlink International

Brooklyn Community Bail Fund

Canterbury Choral Society, Inc.

Center for Appellate Litigation

Center for Community Alternatives

Center for Constitutional Rights

Certain Days

Children's Rights

Close Rosie's

Coalition for Women Prisoners

Community Service Society of New York

Correct Crisis Intervention Today-NYC

Doing Good Business Well

Empire State Indivisible

Freedom Agenda

Getting Out and Staying Out (GOSO)

Granny Peace Brigade

Greater New York Labor-Religion Coalition

#HALTsolitary Campaign

Incarcerated Nation Network

Interfaith Center of New York

Inwood Indivisible

Jails Action Coalition

Jim Owles Liberal Democratic Club

The Legal Aid Society

Latino Pastoral Action Center, Inc.

Mental Health Advocacy and Resilience

Metropolitan Anarchist Coordinating  
Council (MACC)

Mothers On the Inside

National Alliance on Mental Illness of NYC  
(NAMI-NYC)

NAMI NYS Criminal Justice

NAMI Queens/ Nassau

National Lawyers Guild - NYC Chapter

New Abolitionist Movement

New York City Jericho Amnesty Movement

New York Communities for Change  
New York County Defender Services  
New York Lawyers for the Public Interest  
North Star Fund  
NYC Books Through Bars  
NYPAN of the Southern Finger Lakes  
NYU Law Ending Prison Industrial  
Complex (EPIC)  
NYU Law Solitary Confinement Project  
(SCP)  
Public Interest Resource Center, Fordham  
Law School  
Pumpkin Hollow Foundation  
Prison Families Anonymous  
Reconstructionist Synagogue of the North  
Shore  
Rise and Resist NYC  
Srs. of Charity, NY

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Alice Sturm Sutter, retired family nurse  
practitioner  
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Anna Siftar  
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Barbara Higgins  
Betty Davis  
Brenda Lehrman  
Brooke Taylor  
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Social Justice Network  
Social Responsibilities Council of First  
Unitarian Universalist Society of Albany,  
NY  
Social Workers & Allies Against Solitary  
Confinement  
T'ruah: The Rabbinic Call for Human Rights  
The Bronx Defenders  
The Osborne Association  
Unitarian Universalist Society of So. Suffolk  
Uptown Progressive Action  
Urban Justice Center  
Visionary V  
VOCAL-NY  
Women & Justice Project  
Women's Community Justice Association  
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