



ELI GLOBAL REFORM
FOUNDATION

April 21, 2021

Chairwoman Jennifer Jones-Austin
NYC Board of Correction
1 Centre St., Room 2213
New York, NY 10007

**Re: MEMO OF OPPOSITION TO THE ELIMINATION
OF PUNITIVE SEGREGATION IN NEW YORK CITY JAILS**

Dear Chairwoman and Board:

The Board is scheduled for rule-making to amend punitive segregation (PS) in New York City jails. This current change adversely impacts the ability of the Department of Correction to enforce the law when crimes are committed by incarcerated people. It will block New York City jail officials from segregating violent incarcerated individuals who assault other incarcerated individuals, civilian staff, and Correction Officers. Nowhere in the rule-making does the Board address the victims of the violence perpetrated by incarcerated individuals. And, saddest, this violence is primarily against other incarcerated individuals.

The very extensive rule-making language used by the Board is contrary and expands extensively the language in the current Administrative Code, Title 9, Section 1. Nowhere in the current Code is there any mention or reference to “solitary confinement.” The reason there is no reference is because the framers of the Administrative Code recognized and understood the difference between “punitive segregation” and “solitary confinement.” They understood the fact that there are NO solitary confinement cells in NYC jails.

Every NYC jail cell has a window, a toilet, a sink, and a bed. In addition, ALL cell doors have windows or are facing windows. *In NYC’s jails*, whether an incarcerated individual is housed in General Population, Punitive Segregation or other Restrictive Housing, the cells are all the same. It is important to understand that NYC jails don’t have cells designed for punishment. There are no housing units in which a person cannot see or speak to others.

Moreover, the Courts and the framers of the Code recognized that the security in the Jails is the obligation of the Commissioner of the Department of Correction.

The idea that there is a “one-size-fits all” notion when it comes to jails is flawed and has not worked for NYC jails. We believe this is best expressed by NYC Correction Commissioner, Cynthia Brann, who in her testimony recently stated “. . . the reduction or elimination of punitive segregation requires careful and considerate balancing to ensure the safety of staff and people in



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custody.” She shares this view with most correction professionals (especially those who worked in NYC jails) who understand that safety and accountability should be paramount.

NYC jails have witnessed an increase in violence. Between the years of 2014 and April 2020, the legislation and rule changes imposed by the Mayor, City Council, Board of Corrections, Department of Correction, Federal Monitor, and the courts have done nothing to reduce the violence in the NYC jails.

BACKGROUND:

On **January 13, 2015** the Board voted to amend the Minimum Standards on punitive segregation (who engage in violent behavior) as follows:

- *Punitive segregation time owed, from a previous incarceration, is expunged;
- *No inmate may be sentenced to punitive segregation for more than thirty consecutive days for any single infraction;
- *Any inmate who has served thirty consecutive days in punitive segregation must be released from punitive segregation for at least seven days before returning to punitive segregation;
- *No inmate may be held in punitive segregation longer than sixty days in a six-month period, except in instances in which the inmate continues to engage in persistent acts of violence; and,
- *Inmates with certain ill-defined disabilities or conditions may not be confined in punitive segregation.

In **October 2016**, the City of New York elected to eliminate punitive segregation for 18 to 21 year-olds who engage in violent behavior.

Over the last six years, in an effort to reduce the use of punitive segregation, the DOC created various alternatives. Some of the alternatives includes establishing the following:

- *Secure Unit (SU)
- *Enhanced Supervision Housing (ESH)
- *Transitional Restorative Unit (TRU)
- *Clinical Alternative to Punitive Segregation (CAPS) and
- *Punitive Segregation Lite

It is true, the legislation, consent decrees, and rule changes imposed from 2014-2020 reduced the number of incarcerated individuals in punitive segregation. However, because of the lack of accountability, it has not been effective in reducing violence in the New York City jails.



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The first priority of the Board should be safer jails for all. Unfortunately, the board has failed to acknowledge that, eliminating punitive segregation has NOT created a safe jail system. **Despite over 6 years of evidence-based data** reported by the Office of the Mayor of the City of New York (included below), the board is moving forward to eliminate punitive segregation in New York City jails.

Performance Indicators	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
Admissions	81,758	77,141	67,672	63,758	58,226	49,455	39,420	23,317
Average Daily Populations (ADP)	11,827	11,408	10,240	9,790	9,500	8,896	7,938	5,841
Average Daily Populations - Adolescent Inmates	681	489	216	187	167			
Inmates in Security Risk Groups (% ADP) -Gangs	9.9%	8.2%	11.8%	13.3%	14.7%	15.4%	16.4%	18.5%
Fight/Assault Infractions	7,622	8,827	9,424	11,240	12,650	12,047	12,008	11,191
Jail based arrest of inmates in custody (Rearrest)	798	995	795	1,538	1,126	742	490	258
Violent Inmate on Inmate Incidents (monthly rate per 1,000 ADP)	27.2	32.9	37.8	47.8	55.2	55.8	69.5	80.1
Serious injury to inmates-by-inmates (monthly rate per 1,000 ADP)	1.4	1.8	2.5	2.5	2.7	2.0	2.5	9.6
Inmate assault on staff (monthly rate per 1,000 ADP)	4.7	5.9	8.6	7.9	8.4	9.2	12.6	15.8%
Serious injury to staff as a result of inmate assault on staff (monthly rate per 1,000 ADP)	0.20	0.39	0.35	0.20	0.24	0.42	0.49	0.65
Stabbing and Slashings					165	96	106	123

- A. In 2016, punitive segregation was eliminated for 18–21-year-old inmates.
- B. The percentage of gang members (SRG's) increased each year from FY2014 to FY20
- C. There was an increase in assault against Correction Officers from FY14 to FY20
- D. There was an increase in assault against Civilians from FY14 to FY20
- E. Inmate on inmate violence increased each fiscal year from FY14 to FY20



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Similar to the proposed rule-making at the BOC, is a bill to ban solitary confinement in the city council (bill Intro No. 2173-2020). On December 11, 2020, the city council heard testimony from all the stakeholders. It was remarkable. It is not often or common when a coalition of Activist, Advocates, NYC Board of Corrections, DOC Management and Labor unions agree. On December 11, 2020, this is exactly what happened.

Margaret Egan, Executive Director of the New York City Board of Corrections wrote “The jail system must be able to hold people accountable for serious incidents.”

Margaret Egan, Executive Director of the New York City Board of Corrections “Paramount in our planning is safety. Safety for all. People in custody and staff.”

Margaret Egan, Executive Director of the New York City Board of Corrections “First, we believe that separating someone after a violent incident is critical. It is critical for the victim, the person who committed the violent incident and for staff.”

Cynthia Brann, Commissioner of New York City Department of Correction “However, the reduction or elimination of punitive segregation requires careful and considerate balancing to ensure the safety of staff and people in custody.”

Brooklyn Defender Services wrote “We have serious concern with the legislation as written and cannot support Intro. No. 2173 as currently drafted.” “While separating people may be necessary at times, it should be done in a limited and targeted fashion that ensures everyone’s safety.”

The Jails Action Coalition and HALTsolitary wrote “While we appreciate the city council intention to end solitary confinement, the council must do it right, and this bill falls short of that goal.”

The Fortune Society “Instead this bill would replace solitary confinement with simply more restricted housing.”

Robert F. Kennedy Human Rights states “The Robert F. Kennedy Human Rights commends the City Council’s intention to end solitary confinement, however the proposed bill falls short of that goal.”

The Bronx Defenders stated, “We strongly encourage the council to amend the bill before passing it.”

Children’s Rights wrote “We urge the committee to amend the proposed bill to end solitary confinement in all forms”



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Melania Brown - Activist and Sister of Layleen Polanco “The City Council bill being considered must go further in order to truly end solitary.”

COBA President - Benny Boscio “You should examine the impact this will have on the safety and security of our jails.”

The one thing that is clear from testimony of ALL SIDES was this bill should not be accepted in its current form. It should be blocked and voted down by the city council. The status of this bill is “in committee.”

A REAL ALTERNATIVE TO PUNITIVE SEGREGATION

The Mayor, City Council, Board of Corrections, Federal Monitor, the courts, and this Board continue to ignore the question -- When punitive segregation and alternatives fail to work - **What should be done with incarcerated individuals who consistently assault other incarcerated individuals, civilians, and Correction Officers?**

The Eli Global Reform Foundation is recommending that if after 30 consecutive days in punitive segregation or alternative units, IN ANY given year, the behavior of the incarcerated individuals has not changed, he/she should be placed in a mental health facility or unit like Bellevue Hospital Prison Ward for further evaluation and treatment by the department of health and mental hygiene (DOHMH) and the health and hospital corporation (HHC).

Certainly, these individuals need a mental health solution for their persistent acts of violence/assaults on others. The fact is that unlike other jurisdictions, these incarcerated individuals are not being evaluated and appropriately housed in mental health facilities where their illness can be diagnosed and treated. And treatment is a very real part of the violence driven by a small population of incarcerated people. As we know, this incarcerated population are a major detriment to any reform plan and most of all, to safer jails.

The mental health staff at DOC has been unable to work with the most violent incarcerated individuals. How is it that someone with a record of violence can continue to be denied proper treatment? The DOHMH and HHC must find mental health or medical solutions such as they do with violent incarcerated individuals in other jurisdictions?

This recommendation is based on policies forced on the DOC, which have created a dangerous environment. The current policies in place have not been effective in reducing or controlling the violence. The segregation/separation of incarcerated individuals who are violent is inevitable but must include an active role from the DOHMH and HHC.



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In conclusion, what's been done by the Mayor, City Council, Board of Corrections, Federal Monitor, the courts, and the Board for the last 6 years, to address jail violence, is the perfect definition of insanity. We believe the current approach to rule-making will continue to lead to unintended outcomes and cause further damage to Rikers and NYC jail system.

We urge the Board to establish a deliberate process in which all the parties impacted by this rule change – and especially the NIC and other experts -- can participate and provide their perspectives, concerns, and expertise. A moratorium should be had on this matter until a responsible system is established to replace what some consider in need of change and reform.

Any process short of that will result in rule-making that is ill-conceived, unfair, and destined to further diminish the safety of NYC jails and erode the public's confidence in the rule-making process. No responsible rule-making on this issue can take place against this backdrop.

This is especially true, since members of the Board are appointed by the Mayor, the City Council and the judiciary, chances are some members of this Board won't be here to answer for the harm they are going to do.

Yours,

Elias Husamudeen

President – Eli-Global Reform Foundation