URBAN JUSTICE CENTER | Mental Health Project

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
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Re: Public Comment on Restrictive Housing Rulemaking

Dear Chair Jones Austin and Members of the Board:

We call on the Board to enact a rule that not only ends solitary confinement but also requires that any restrictive housing units promote rehabilitation and violence prevention by treating people humanely. For far too long, the New York City Department of Correction (DOC) has used isolation, shackling, deprivation, and demeaning treatment as its response to disruption and violence. This approach has proven not only cruel but ineffective. This Board must require the Department to respect incarcerated individuals' human rights and operate the jails in a manner that promotes safety for everyone.

The proposed rule should be amended as follows:

- The Risk Management and Accountability System (RMAS) should not be operated as a punitive system as currently formulated but instead reconfigured based on rehabilitative approaches that have proven effective in reducing violence. The rule should require unrestricted lockout time in a physical space that allows for congregate programming and activities on a unit managed by trained civilian and security staff with steady posts.
- To the extent that the Board moves forward with the current punitive model, the rule must be amended to comply with the provisions of the Humane Alternatives to Long-Term Solitary Confinement Act and provide other protections for individuals in these units, including access to counsel at disciplinary hearings and throughout the placement review process.
- Other elements of the proposed rule should be strengthened, including requiring an immediate end to the use of restraint desks and other forms of shackling during lockout periods.

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The Urban Justice Center Mental Health Project has advocated for people with mental health concerns involved in the criminal legal system for more than 20 years. We are deeply familiar with the difficulties people with mental health concerns have within correctional facilities and in accessing essential mental health services, housing, and benefits upon release. We represent the *Brad H.* Class, all incarcerated individuals who receive mental health treatment while in City jails. Currently the *Brad H.* Class includes more than half of the City jail population. We are extremely concerned that the jail environment, especially placement in solitary confinement, harms these individuals not only while they are incarcerated but after their release.

I. The rule should require that incarcerated persons who need to be separated from the general jail population be afforded services and programming in a supportive, non-punitive environment designed to address violence.

During the 2019 restrictive housing rulemaking process, *A Blueprint for Ending Solitary Confinement in NYC Jails* put forward by the Jails Action Coalition and the #HALTsolitary Campaign was endorsed by more than 60 organizations as well as the New York City Council Speaker, Public Advocate, Comptroller, and other city and state lawmakers.[1] The vision set forth in the *Blueprint* was for an alternative to solitary confinement that is the opposite of isolation and punishment – an environment where there could be actual human engagement and programs to address the reasons that people needed to be separated and prevent future violence and harm.

In the *Blueprint*, we pointed to the Resolve to Stop the Violence Program (RSVP) in the San Francisco county jails as a possible model.[2] The goal of RSVP is

> to attempt to address areas where ordinary corrections have failed: (1) to use the jail to create an alternative environment that curbs rather than engenders violence; (2) to help prepare [individuals] for shaping productive lives for themselves in their communities while refraining from violence; and (3) to provide avenues for them to contribute to healing the harm they have caused while providing necessary emotional and practical support to their victims and to the general community.[3]

RSVP includes an intensive, 12-hours-a-day, 6-days-a-week program that teaches "male-role reconstitution, accountability, empathy, alcohol and drug recovery, creative expression, and awareness of one's contribution to the community."[4] Some of the structural elements that brought about a shift in the culture of the RSVP dorm were "(1) direct supervision; (2) consistent supervision; (3) a racial and ethnic composition of instructors that reflect the population; and (4)

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[1] *See* Individuals and Organizations Endorsing the 'Blueprint for Ending Solitary Confinement in NYC Jails' (January 31, 2020) available at https://www1.nyc.gov/site/boc/jail-regulations/rulemaking-2017.page.

[2] Gilligan, J. & Lee, B. (2005). The Resolve to Stop the Violence Project: Transforming an In-house Culture of Violence Through a Jail-based Programme. *Journal of Public Health*, 27(2), 149. https://doi.org/10.1093/pubmed/fdi018

[3] *Id.* at 150.

[4] *Id.*

positive role modelling with sworn staff and service providers so as to maintain a coherent message."[5]

Within the RSVP program dorm, the program succeeded in not only reducing violence on the RSVP unit compared to a regular unit, but upon return to the community, violent recidivism also reduced.[6] Research into the program showed that this type of therapeutic community achieved the goal of reducing violence on the unit compared to a unit with a similar composition of incarcerated people. There were 24 violent incidents serious enough to constitute felonies in the 62-bed dorm during the year before RSVP began. In the first month RSVP was in place, there was one such incident, and in the following year, there were none. During the same year, there were 28 violent incidents in the control dorm that still followed traditional jail practices.[7]

This is the type of transformational change that the community is calling for – a repudiation of punishment and degradation. Despite the success that the Department and Correctional Health Services (CHS) have achieved with Clinical Alternatives to Punitive Segregation (CAPS) for incarcerated people with serious mental health needs who receive infractions,[8] the proposed rule does not adhere to that vision of engagement and interaction to bring about behavior change. Instead, the rule promotes replicating some of the most restrictive environments in the jails currently while adding requirements of individual behavioral support plans, programming, and case management, which are unlikely to be effective when merely tacked on to these punitive units.

As a foundational matter, the 10 hours of "out-of-cell" time in RMAS Level 1 is not actually time out of cell. The photos of existing cells in North Infirmary Command (NIC) and the rendering of RMAS Level 1 provided by DOC[9] make clear that time spent out of one's cell in this unit will not involve healthy interaction with others in an environment that promotes individual growth and development. Instead, it will just be time spent in a cage in front of one's cell surrounded by metal mesh that allows for slightly more contact with the person in the adjoining cell than what could be had when separated by a solid concrete wall. The proposed rule requires only that an individual confined in RMAS Level 1 be allowed an "opportunity to lock out at the same time as at least one other person in custody in a setting where individuals can meaningfully engage both visually and aurally . . . without the need to raise their voices to be heard."[10]

Essentially the proposed rule authorizes the Department to expand the size of a punitive segregation cell by adding a front section separated from others in the adjoining cells by material that is porous enough to allow sound to pass through and with openings that allow for people to

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[5] *Id.*
[6] *Id.* at 153.
[7] *Id.* at 149.
[8] Glowa-Kollisch, S., Kaba, F., Waters, A., Leung, Y. J., Ford, E., & Venters, H. (2016). From Punishment to Treatment: The "Clinical Alternative to Punitive Segregation" (CAPS) Program in New York City Jails. *International journal of environmental research and public health*, *13*(2), 182. https://doi.org/10.3390/ijerph13020182
[9] *See* DOC RMAS Level 1 Rendering (April 14, 2021) available at https://www1.nyc.gov/site/boc/jail-regulations/restrictive-housing-rulemaking-2021.page.
[10] Proposed rule § 6-17(c).

see one another. There is no requirement that individuals leave these isolated areas for programming or other congregate activities.

The proposed rule requires the Department to provide people in RMAS with in- and out-of-cell programming and productive activities.[11] However, given that "out-of-cell time" in Level 1 happens in the cage attached to one's cell, programming and productive activities will presumably occur there as well. Any instruction related to the programming would have to be provided by staff standing in the corridor outside the adjoining cages. The corridor is separated from the caged areas by metal mesh as well as plexiglass, yet another impediment to meaningful programming. For this environment to lead to productive engagement with people in these cells is inconceivable.

Whether the required 12 "out-of-cell" hours in RMAS Level 2 will be actual time outside of a cell with other people is unclear because the Department has not provided a rendering of this unit. The proposed rule requires only "the opportunity to lock out at the same time as at least three (3) other people in custody in a setting where individuals can meaningfully engage both visually and aurally . . . without the need to raise their voices to be heard."[12] Notably it does not require that individuals be allowed to lock out in the same physical space with three other people. How programming will be offered in RMAS Level 2 is not specified in the proposed rule.

The proposed rule provides for five hours of daily programming but does not require congregate programming. The structural design of RMAS Level 1 makes group programming appear unfeasible. Whether individuals in RMAS Level 2 will have congregate programming is unclear because the Board has not provided any information regarding the configuration of that space.

In addition, the proposed rule has no requirement that the unit have steady staffing to promote consistency. Staff buy-in is essential to creating an environment that will bring about culture change.

For the Board to sanction the Department building additional restrictive housing units rather than putting resources into a rehabilitative approach is deeply troubling. With the City's commitment to closing Rikers Island, it is shocking that the proposed rule promotes additional construction in the facilities there. The Board should reverse course on modeling RMAS units on NIC and the Secure Unit and instead require a design that promotes engagement and interaction in a safe environment. At a minimum, the rule should compel the Department to adopt a different approach to the design of RMAS in the borough-based jails, include a timeframe for the Department to present the Board with renderings and a program plan for RMAS in the borough-based facilities and the requirement of public comment on the design and the Board's approval of it.

A. Individuals in RMAS must be allowed out-of-cell time in a space that provides for free movement and routine interaction with other people.

For the RMAS to be rehabilitative, it must be operated in a manner that respects the humanity of the people housed there. The proposed structure of RMAS does the opposite – confining people in cages like animals. The rule should be amended to prohibit the Department from providing "out-

[11] Proposed rule § 6-20(a).
[12] Proposed rule § 6-17(d).

of-cell" time in these cages. The rule should specify that "out-of-cell" time must be provided in a space that allows for congregate activities and facilitates programming.

B. The limits on involuntary lock-in in Minimum Standard § 1-05 should apply to everyone in custody, including people in RMAS housing.

In units where out-of-cell time is reduced, the Department has not managed to create a therapeutic environment that promotes rehabilitation. Although Enhanced Supervision Housing (ESH) was intended to promote "rehabilitation, good behavior, and the psychological and physical well-being of [incarcerated persons],"[13] it has proven to be a highly punitive environment. In fact, the Board found that "most young adults are spending nearly all day locked in their cells, rather than the minimum 7 hours provided for under the ESH standards."[14] Restricting out-of-cell time creates the perception by staff and incarcerated people that the unit is punitive. Punishment is ineffective in preventing or deterring violence.[15] Thus, all units should allow for 14 hours of actual out-of-cell time daily.

C. The rule must require congregate programming, and the amount of daily programming should be increased to seven hours.

Congregate human interaction, including at least seven hours of quality, evidence-based programming, is essential. People in RMAS should have access to trauma-informed therapeutic programming that promotes personal development and addresses the underlying causes of problematic behavior. Engagement with people in the unit should not be limited to group discussions and classes but also include individual counseling, efforts to connect with family and community members, and peer-led initiatives. The proposed rule's provisions regarding individual behavior support plans for individuals in RMAS appears to be a useful method for tailoring the programming to the person's individual needs.[16]

D. The rule should require that RMAS be staffed with civilians and correction officers who are trained in the operation and ethos of the units and assigned to work there on a regular basis.

For the RMAS units to promote a culture of non-violence, all staff who work on the unit should be trained on the purpose of the unit and committed to its successful operation. Civilian staff should be included in the operation and management of RMAS. The proposed rule's requirement that each person placed in RMAS be assigned a case manager is an important component.[17] But additional requirements regarding staffing should be added to the rule. Merely requiring the Department to retain records regarding security staff who work in the unit and to provide the Board

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[13] Minimum Standard (Min. Std.) § 1-16(a).
[14] An Assessment of Enhanced Supervision Housing for Young Adults, NYC Board of Correction, July 2017, at iii, available at https://www1.nyc.gov/site/boc/reports/BOC-Reports/assessment-of-enhanced-supervision-housing.page.
[15] Gilligan, J. and Lee, B. Report to the Board of Correction, September 5, 2013, at 5, available at https://solitarywatch.org/wp-content/uploads/2013/11/Gilligan-Report.-Final.pdf.
[16] Proposed rule § 6-12.
[17] Proposed rule § 6-11.

with the staffing plan is inadequate.[18] The proposed rule should specify that at least 55% of correction officers assigned to RMAS be assigned to steady posts and at least half of the staff be civilians trained in providing the required programming or correction staff with a master's degree in social work or other related degree.[19] In addition, considering the widespread need for mental health treatment in the jails and the pervasive history of trauma among the jail population, the Board should consider requiring CHS to provide therapeutic groups in the RMAS units.

E. The rule should prohibit the routine use of strip searches in RMAS units.

The rule should prohibit the Department from requiring that RMAS participants be strip searched whenever they leave their cell to go to the program space or recreation areas. Currently correction officers routinely strip search individuals in restrictive housing units whenever they leave their cells. Strip searches contribute to the confrontational environment that should be avoided, and they are one of the inhumane practices that should be eliminated.

II. To the extent that the Board moves forward with the proposed punitive model, the rule must be amended to provide protections to people confined in RMAS units.

A. The proposed design of RMAS continues the practice of isolated confinement, so the rule must be amended to comply with the requirements of the Humane Alternatives to Long-Term Solitary Confinement Act.

Individuals in RMAS Level 1 can be confined to a cell area for 23 to 24 hours a day. The proposed rule's requirement of 10 hours in an individual cell area with one person nearby does not exempt these units from the definition of segregated confinement set forth in the Humane Alternatives to Long-Term Solitary Confinement Act (HALT Act) (S2836/A2277A) which was signed into law on March 31, 2021.[20] Thus, at a minimum, the rule should be revised to include the protections required by the HALT Act:

- Maximum confinement of 15 consecutive days or 20 days in any 60-day period in RMAS Level 1;
- Exclusion of vulnerable populations, including all young people 21 and younger, people 55 and older, pregnant women, new mothers, people with mental health needs, and people with physical disabilities;

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[18] Proposed rule § 6-18.

[19] *See* § 1-16(e) of the Jails Action Coalition and #HALTsolitary Campaign Proposed Changes to the Board of Corrections Minimum Standards, in Order to End Solitary Confinement in NYC Jails available at http://nycaic.org/wp-content/uploads/2019/10/Proposed-BOC-Rules-to-End-Solitary-Confinement-in-NYC-Oct-2019.pdf. On October 29, 2019, members of the HALT campaign and JAC petitioned the Board to adopt this rule. *See* HALTsolitary & JAC Petition for Rulemaking to End Solitary Confinement (October 29, 2019) available at https://www1.nyc.gov/site/boc/jail-regulations/rulemaking-2017.page.

[20] *See* HALT Act, section 1, which amends the definition of segregated confinement in subdivision 23 of section 2 of the correction law to "the confinement of an [incarcerated individual] in any form of cell confinement for more than seventeen hours a day other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment."

- Minimum of four hours of out-of-cell programming per day; and
- Permission to be represented by lawyers, paralegals, law students, or another incarcerated person at disciplinary hearings.

In addition, the proposed rule must be revised to require that individuals in RMAS Level 2 be allowed to spend their out-of-cell time in the same physical space as other people. As written, the proposed rule allows some circumstances in which an individual in Level 2 has out-of-cell time alone in a cell with other people in a separate nearby cell. Given the HALT Act's limits on the use of segregated confinement, the Department cannot transfer an individual to Level 2 and restrict their out-of-cell time in this way after the person has spent 15 consecutive days in Level 1. The HALT Act also limits the criteria for placing an individual in segregated confinement for more than three consecutive days to specified acts related to serious physical injury, sexual assault, extortion, rioting, possession of a deadly weapon, and escape. Grade I non-violent offenses and Grade II offenses are unlikely to meet the criteria for placing an individual in segregated confinement, so the Department must not be allowed to place an individual in Level 2 for such offenses and restrict their out-of-cell time to a cell area separate from other people.

B. The rule must be amended to allow access to counsel at the disciplinary hearing and in the placement review process, and additional requirements should be added to promote due process and procedural justice.

The proposed rule does not include the essential protection which was promoted during the last round of restrictive housing rulemaking – namely, access to counsel for those subjected to restrictive housing. Allowing persons in custody to have their own counsel or legal advocate represent them in disciplinary hearings and the placement review process is critical to ensuring a fair process. The public defender offices have made clear their willingness to represent their clients in these hearings if the Department allows them access. Timely written notice of the reason for proposed placement in restrictive housing, including specific information regarding the allegations, must be provided to both the incarcerated person and their attorney of record. The 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.

In addition, access to counsel is also critical to ensuring the integrity of the periodic placement review process. While the proposed rule includes reporting requirements related to periodic reviews, the Board cannot monitor whether the Department is complying with these requirements at the individual level. The inclusion of counsel in this process can ensure that individuals' rights are protected. For instance, the proposed rule allows for continued placement in any RMAS level based on "specific documented intelligence that the person will engage in violence" if they progress to the next level. The involvement of counsel in the placement review process can ensure that individuals do not stagnate in RMAS based on an officer's vague belief that the person *may* engage in violence in the future.

The proposed rule includes some steps toward improving the disciplinary process, such as requiring the videotaping of refusals to sign a notice of infraction or attend a hearing and notifying defense counsel when a person is charged with a Grade I violent offense. But they are not enough.

The rule should give the person charged and counsel the right to cross-examine witnesses; merely having the right to review the Department's evidence prior to the hearing is insufficient. The rule should also include additional requirements of hearing adjudicators to ensure that their role within the Department is independent from facility operations. In addition, the Board should amend the rule to require that the hearing adjudicator communicate the determination to the person directly. The Vera Institute of Justice recommended this change to allow the person an opportunity to ask questions about their placement in restrictive housing in an effort to increase transparency and trust in the disciplinary process.[21]

C. Progression through RMAS levels should not be contingent upon program participation, and continued placement in Level 2 or Level 3 must be justified based on credible evidence that establishes that the person presents a specific, significant, and imminent threat to the safety of others.

In addition to the automatic removal of individuals from Level 1 after 15 days, individuals should progress from Level 2 to Level 3 and Level 3 to general population after 15 days unless there is credible evidence that they present a specific, significant, and imminent threat to the safety and security of people who live and work in the facility. Individuals in Levels 2 and 3 should not be held back simply for refusing to participate in programming. High quality, engaging programming should be offered to promote participation – participation should not be coerced. To date, DOC has not consistently provided adequate programming, so conditioning progression through the levels on engagement in programming is unwarranted. There must also be limits on the amount of time an individual can spend in Levels 2 and 3. Individuals should not be held in Level 2 or 3 for more than 30 consecutive days without a finding that the person committed a Grade I or II offense within the placement review period.

D. The RMAS units should be reserved for individuals who engage in violent conduct.

Placement in RMAS should be the 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 rule should not allow people to be placed in restrictive housing for non-violent conduct, including the possession of drugs or tobacco products. These offenses should be addressed through the disciplinary process that the Department is required to develop.[22]

E. The rule should prohibit the routine use of strip searches in RMAS units.

As discussed above, individuals in restrictive housing units are routinely subjected to strip searches whenever they leave their cells. Just as the proposed rule sets limits on the use of restraints and canines, the rule should be amended to include limits on the use of strip searches in RMAS.

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[21] Anthony-North V, Roberts S, and Sullivan S. The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the New York City Department of Correction, June 2017, (Vera Report) 47-8, available at https://www.vera.org/downloads/publications/safe-alternatives-segregation-initiative-findings-recommendations-nycsas.pdf.

[22] Proposed rule § 6-23.

III. The Board should strengthen other aspects of the proposed rule.

A. The use of restraint desks should be abolished immediately.

The Board should prohibit the use of restraint desks and other forms of restraint during lockout periods in all facility housing units as of the effective date. Restraint desks are dehumanizing and have no place in the City jails. According to the proposed rule, a core principle of the new restrictive housing section is "ensuring that all people in custody and all staff who work in facilities are treated with dignity and respect" and "prohibiting restrictions that dehumanize or demean people in custody."[23] It is difficult to imagine how shackling a person in a restraint desk can be viewed as anything but demeaning and dehumanizing.

To the extent that the Board permits individualized use of restraint desks or other forms of restraint during lockout periods, the rule must require that every use of restraints is in response to an immediate threat of imminent and serious harm. The rule should also include much stricter due process requirements for extending the use of restraints beyond a single lockout period, including immediate notice to the person's criminal defense counsel and the Board, daily review of whether the criteria for using restraints is met, the involvement of the Chief of Department when the use of restraints extends beyond three days, and a process through which the person can appeal a determination to continue the use of restraints to the Board. In addition, the rule must require correctional health staff to provide medical and mental health rounds during each tour in which an individual is in restraints during the lockout period.

B. Cell confinement should occur in the context of deescalating a person or housing area and should be used for as short a time as necessary to quell the danger and restore order.

We support the Board's comprehensive regulations regarding de-escalation confinement, especially the requirements regarding immediate notification to Correctional Health Services (CHS) so that access to care is not interrupted; conditions in intake and the provision of meals and snacks; calculation of time in de-escalation from time of initial placement through movement to other de-escalation areas; observation every 15 minutes; DOC's obligation to inform the Board of all areas used for de-escalation; and DOC tracking of individual placements and reporting to the Board.[24] However, the Board should adopt more restrictive time limits on placement in de-escalation confinement. Placement in de-escalation confinement 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. The Board should also give CHS authority for determining that a person should be removed from de-escalation confinement based on their mental health needs or other health risks.

We support the Board adopting rules regarding emergency lock-ins, especially the requirement of immediate notification of the Board and CHS as soon as an emergency lock-in occurs and of the

[23] Proposed rule § 6-01(a)(1)(i)-(ii).
[24] Proposed rule § 6-05.

public when visits are affected.[25] However, the rule should include defined limits on the scope of, reasons for, and length of time of emergency lock-ins. Correctional Health Services staff should be required to complete medical and mental health rounds in housing areas where lock-in has continued more than four hours.

C. Pre-hearing detention should not be permitted.

The Board should not allow the Department to isolate a person in pre-hearing detention. Under the proposed rules, pre-hearing detention can result in persons in custody spending from nine to 12 days in RMAS Level 1 before their disciplinary hearing. In addition, the proposed rule provides no exclusion of vulnerable populations from pre-hearing detention and no immediate written notice to Correctional Health Services as required in proposed rule § 6-05(b).

D. Individuals in RMAS units should receive health care and have clinical encounters in the facility clinic not cell-side.

We unequivocally support the Board adopting proposed rule § 6-21(d) which requires that clinical encounters should never occur cell-side. Clients in restrictive housing regularly report that their contact with clinicians occurs at their cell or not at all. Given the history of the Department's unwillingness to bring clients in restrictive housing to the clinic, the Board must provide close oversight of compliance with this provision. We recommend enhancing the reporting requirements so that the Board can determine from the information CHS reports whether referrals made during medical and mental health rounds actually result in scheduled services for people in restrictive housing and whether these individuals are actually brought to the clinic for their scheduled appointments. The Board should periodically audit access to health care in the RMAS units.

E. Fines should not be imposed for guilty infractions.

We wholeheartedly support eliminating automatic monetary fines.[26] This change highlights the need for the Department to develop a disciplinary system to address problematic behavior through measures other than restrictive housing and monetary penalties.

F. The Department should develop a disciplinary system that does not rely on restricting out-of-cell time and services required by the Minimum Standards, and positive incentives should be used to promote good behavior.

We support the requirement that the Department develop a disciplinary system that does not rely upon restricting out-of-cell time.[27] The Department should promote good behavior and safety through positive incentives; through staff modeling professional, respectful behavior; and through consequences that do not involve the deprivation of minimal humane treatment. Positive incentives could include increased commissary, additional visits, and increased access to technology.

[25] Proposed rule § 6-06.
[26] Proposed rule § 6-22.
[27] Proposed rule § 6-23.

Between April 2015 and September 2016, the Vera Institute of Justice assessed the Department's overall use of segregation and made recommendations to advance the Department's efforts to safely reduce the use of restrictive housing. Vera's recommendations included:

- increasing privileges in general population so that the Department could respond to inappropriate behavior by limiting these privileges;[28]
- providing targeted programming to address problematic behavior, such as substance use treatment programming as a response to a positive drug test;[29] and
- using conflict resolution approaches as a response to interpersonal conflict within the jails.[30]

The Department should use these recommendations to develop a comprehensive disciplinary system that can be explained clearly to staff and incarcerated persons. The proposed rule should require that the Department's disciplinary process address non-violent Grade I and Grade II offenses. People should not be placed in restrictive housing for non-violent conduct, such as possession of drugs or tobacco products. Targeted programming to address this behavior is a more appropriate response.

G. Access to recreation should be denied only upon specified conduct which results in imminent safety concerns.

We oppose the proposed change to the circumstances in which access to recreation can be limited.[31] The Board should specify what conduct justifies denying an individual's access to recreation rather than allowing it to be denied based on "imminent safety and security risks." Such vague and subjective criteria are ripe for abuse. In addition, the Board should add procedural protections beyond the requirement that documentation be transmitted to the Board within 24 hours. Persons who are denied access to recreation should have a process for challenging such a determination including an appeal to the Board.

H. The definition of "'M' Designation" should be revised to describe accurately the requirements for being designated a *Brad H.* class member.

The definition of "'M' Designation" in the proposed rule[32] is inconsistent with the class certified in *Brad H. v. City of New York*. The *Brad H.* Class includes individuals who are incarcerated for 24 hours or longer and receive mental health treatment during their incarceration but excludes individuals "who are seen by mental health staff on no more than two occasions during their confinement in any City Jails and are assessed on the latter of those occasions as having no need for further treatment." Thus, an individual does not need to engage with the mental health system three times to have an "M" designation – an individual could be a *Brad H.* class member and have and "M" designation after being seen by mental health once or twice provided that CHS does not determine that they have no need for further mental health treatment.

[28] Vera Report at 45.
[29] Vera Report at 46.
[30] Vera Report at 77.
[31] Min. Std. § 1-06(h).
[32] Proposed rule § 6-03(b)(7).

The *Brad H.* settlement requires CHS to designate an individual a class member when their comprehensive treatment plan is completed, except for individuals who are designated class members at the time they are determined to need psychotropic medication. The definition of "'M' Designation" should be amended to remove the inaccurate requirement of engagement with mental health three times. A more accurate definition of this term is "a designation assigned pursuant to the settlement in *Brad H. v. City of New York* to a person who receives mental health treatment while incarcerated and who is entitled to discharge planning services."

Conclusion

Through this rulemaking process, the Board can move the City toward a more humane, fairer, and safer jail system. Fully eliminating the use of solitary confinement, creating alternative units focused on rehabilitation, and developing a disciplinary system grounded in procedural and restorative justice are essential to improving the operation of the City jails.

Sincerely,

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