



December 15, 2015

Stanley Brezenoff, Chair
Members, New York City Board of Correction
1 Centre Street
New York, NY
10007

Dear Chair Brezenoff and Board Members;

I write with regard to the proposed rules related to solitary confinement and family visiting, as well as the variance related to solitary confinement requested by the Department. Thank you for removing from proposed rules the changes to Enhanced Supervision Housing and restrictions on packages. We appreciate that our concerns were taken into consideration and resulted in changes to your rule now under consideration.

We encourage the Board to consider each of the proposed rule changes independently, rather than as a rule package. The proposed changes affect several independent areas of jail operation and should each be evaluated on their merits. Additionally, we believe the significant changes to the proposal warrant a renewed effort to facilitate public comment – written comments on the eve of the vote are simply inadequate.

Variance Request to Override 7-Day Reprieve from Solitary Confinement

We urge the Board to reject the Variance requested by the Department to override the 7-Day Reprieve from solitary confinement after a stay of 30 days. On November 5, 2015, the Third Committee of the United Nations adopted a revision to the UN Minimum Standard Rules for the Treatment of Prisoners (Mandela Rules), to which the US is a party. Rule 43, expressly prohibits the use of prolonged solitary confinement (longer than 15 days). The Board's present Minimum Standards already exceed this limit by an order of 100%. The Board must reject any further violation of internationally accepted human rights standards.

The Department states in their request for the variance that they have not utilized the overrides since they were initially granted a variance in September. There is not a need to grant a wide-reaching variance that is contrary to human dignity at this time. The option to override the 7 day reprieve, along with the existing overrides to the 60 day limit, is essentially the option to return to a regime of long term warehousing in solitary confinement. The Board's own report on 60 day overrides suggests that the people who would likely be subjected to this kind of treatment are almost certain to suffer from mental illness, and are likely to be kept in because they "advanced toward staff" or engaged in small exercises of agency like splashing, spitting or flooding their cell – desperate protests which are often the direct result of isolation.

Instead of granting the Department permission to warehouse people it perceives as being difficult to manage for the next two years while researching possible alternatives, the Board should demand courage, creativity and respect for human rights from the Department of Correction and HHC. The Department concedes that there are very few cases where an override may be indicated – they have not utilized any since September. In the rare cases that a person is believed to pose a safety risk, the Department should be required to immediately engage the Board, HHC and counsel in an effort to evaluate interventions and housing options which will protect the human dignity of the individual, as well as the safety of others. In addition to better individual outcomes, such a process will likely yield models which may be replicated as the Department explores larger scale alternatives to isolation.

Proposed Rule Changes

Punitive Segregation

We remain opposed to any expansion in the use of solitary confinement in city jails, including expanding sentences to 60 days for assault on staff. The nature of the alleged infraction does not have bearing on the well-established harm caused by the practice, nor the human rights of the individual subjected thereto. The lengthening of solitary sentences should be rejected for these reasons and those offered above and in previous testimony.

We request that the Board **review and reject the proposed rule change at §7 - Minimum Standard §1-17 (3)(i)**. This change would permit the Department to deny the seven day reprieve anyone who is subjected to a 60-day override. This rule change achieves essentially the same purpose as the requested variance for the group of people already subjected to lengthy stays in solitary. This proposed rule change is extremely concerning because it could be adopted in perpetuity into the Minimum Standards and again, would provide latitude to the Department to warehouse people in solitary for long periods without respite. We urge you to strike this language from any rules and ensure that the protections included in §1-17(1) and §1-17(2) are preserved. The comments above describe our serious concerns and suggestions regarding this matter.

Visits

Thank you for rejecting the unnecessary and harsh restrictions to visiting which were initially proposed. The proposal now under consideration by the Board still raises important concerns. The proposal permits a uniform limitation on the type of contact people may have with loved ones during visits, which would apparently be implemented Department-wide. This restriction will only yield an unwarranted and harmful chasm in the bonds people feel with their loved ones and their communities. The evidence has shown time and again that, save for an incredibly small number, visitors are a helpful support and not a source of contraband.

The proposed rules refer to state law as a benchmark. However, state law should be viewed as a floor rather than the norm. In fact, in most state prisons, full contact throughout the visit is permitted as a matter of course. If the Board feels that a partition may be warranted in

some cases, it should be viewed as one tool on a spectrum of tools to control contraband, rather than a limit that must be applied to everyone. Other tools on the spectrum prior to limiting contact might include being seated near the officer, or in sight of cameras, or use of furniture that prevents passing items under tables. Any limitations on contact should be based on individualized responses to specific incidents.

Mental Health

We support any increase in access to meaningful, confidential mental health treatment and clinical intervention for people who are housed in isolation. Rounding and cell-front contact do not establish clinical contact, and in fact, many of our clients describe these check-ins as a distinct part of the brutality they endure in isolation. “They come by sometimes asking if I wanna hurt myself. You can’t possibly care about anyone if that’s all you’ve ever asked them. They’re just checking boxes,” said one client. We note that people who suffer from mental illness (both prior to and because of isolation) should be removed from solitary confinement immediately because of the uniquely immense harm this setting may cause them. We remain troubled that the broad definition of serious mental illness is apparently not being applied to exclude people from isolation as we were advised was the intent earlier this year.

Reporting

We support the Board’s efforts to require the Department to report various data related to solitary confinement. These reports should be made public. The reporting should also include demographic data, and information related to mental health status including “M designation,” previous housing in mental health units including Mental Observation Housing, RHU, CAPS, PACE, Bellevue, or 730 Commitment. The Board should also require reporting delineating when infractions occurred and any delay in impositions of the sentence in isolation. Based on the recent experiences of our clients, we know that delayed punishment is still being practiced, and we believe the Board and Department should be monitoring (and ending) this practice as alternatives to solitary are rolled out.

Conclusion

Thank you for considering our additional remarks prior to voting on the proposed rule changes. We urge the Board to dedicate significant energy in this time to monitor and enforce the existing Minimum Standards. We continue to receive reports about persistent, lengthy lockdowns among young adults at GMDC and elsewhere in the system. We also report an uptick in the use of excessive force and group punishment throughout the system. People continue to report to 180.80 appearances and be discharged to the community in jail uniforms. Women continue to endure a terrifying regime of sexual violence at Rosies. We request that you pay these concerns the urgent attention they warrant.

Sincerely,

Riley Doyle Evans
Jail Services Coordinator