Lisa Schreibersdorf
Executive Director

Comments of Brooklyn Defender Service Regarding Rule-Making of Board of Correction to Lower the Minimum Standards of Care in City Jails

Brooklyn Defender Services (BDS) is a public defense office that represents more than 40,000 clients in adult criminal proceedings each year. This representation begins at arraignment and extends throughout the pendency of the case. By definition, our clients have yet to be convicted or sentenced and are thus presumed innocent of what they have been accused – no different from anyone in the hearing room today. Nevertheless, thousands of them are incarcerated, due solely to the fact that they cannot post bail. As the Board is well aware, poverty and race are the two factors most indicative of the likelihood of ending up in a pre-trial detention facility like Rikers Island. It is important to note that many of the people we represent are in jail for misdemeanors and low level felonies, including hundreds whose bail is under $2,000 and even as low as $500. As we consider the plans for this new facility, we must keep in mind that we are not dealing with long term prisoners, or even prisoners accused of serious felonies—the City is responsible for housing people who have yet to resolve their case which may end in dismissal or a non-incarcerative sentence and who (aside from about 1% who are remanded) are in jail entirely because they are poor. We applaud the Mayor's acknowledgement on Wednesday that most people confined at Rikers Island do not, in his words, "need to be there." But we do not support the current DOC proposal to begin treating those that are in fact "there" in even more punitive and harsher ways than they have been before.

BDS sincerely welcomes the attention that the Mayor has paid to reducing violence in city jails, as this has been a brutal year on Rikers Island. Assaults by uniformed staff against our clients have reached the highest and most brutal levels since BDS opened its doors in 1996. Our clients, subjected to solitary confinement to a shocking degree – in both frequency and length of sentence, and facing violence by guards and their peers – are not able to survive the experience of being in jail without devastating permanent scars to their physical and mental condition. Guards routinely watch violence play out in the dorms, doing nothing to stop incidents as serious as burnings with boiling water and oil. They do not allow our clients to get medical attention. They "punish" people left in their care arbitrarily or in retribution; they subject our clients to conditions that are so extremely cold that clients have needed medical attention, or so hot that

people have died. The level of abuse in this jail has reached a point where our office spends more time trying to help clients cope with their jail experience than ever before—our attorneys are not able to get clients to focus on their cases, plea offers and other important legal matters because they cannot focus off needing to get out of jail.

There is no doubt in our mind that the proposal before this Board is a hasty, politicized move by Corrections to allow them not to have to meet the most minimal standards set by this Board—standards that seem to allow them to do whatever they want whenever they want already.

The abuse of discretion by DOC in managing incarcerated people has been well-documented, and both the Mayor and DOC Commissioner Joseph Ponte have acknowledged that it will take some time to change what federal investigators have described as "a cultural of brutality" within New York City jails. Despite these on-going concerns, the primary thrust of the DOC's current proposal is to increase discretion; decrease oversight, transparency and accountability; and radically erode the due process rights of countless New Yorkers who may be subjected to an unprecedented level of restrictions as part of "Enhanced Supervision Housing" (ESH). At the very same time that federal, city and non-governmental agencies have all agreed that the DOC is in need of enhanced oversight and independent monitoring, the Department is seeking less. Rather than work within the framework of the current Minimum Standards to effect the segregation of particular people within DOC custody, the DOC is proposing permanent reductions to them that will have lasting implications for our city.

Indeed, the Department of Correction has acknowledged that its own internal review of the agency is not yet complete. This Board should refuse to rule on this issue until an evidence-based presentation can be made that rather than RAISING the minimum standards of care, somehow New York City should LOWER them--especially in the face of yesterday's announcement that the US DOJ is going to step into litigation against the City. It is especially troubling to us that the proposed limitations on the current standards are being couched in terms of reforms when in fact, this unit will have more restrictions and less due process than ever before in these facilities.

The Department of Correction has indicated that its current proposal will provide the Department with "the tools it needs to reasonably control" the activities of individuals within its care that it has designated as dangerous. However it has no basis for this assumption. The ESH proposal is seemingly modeled after units in facilities for **sentenced** individuals in **state** prisons, all of who have already been convicted of a felony and are serving long sentences. Such harsh regulations have never been proposed for transient, often low-level non-violent, non-convicted people in local jails. Even in maximum-security prisons where this procedure has been used, there is no

evidence whatsoever that it has reduced violence. There is some research that suggests the overuse of solitary confinement actually increases violence—that people forced into isolation for long periods of time are more likely to snap and this can result in loss of control and violent acting out.

The DOC seeks to place severe restrictions on people assigned to these new housing units, including significantly reduced ability to move about the jail, attend programming, religious services, schools and medical clinics. Inmates in this unit will be shackled and be subject to endless searches every time they move off the unit. There will be strict restrictions on visits, including no contact with children or loved ones. Any time there is a "disturbance" the unit can be shut down for 23 hours per day. In our experience, there is always a reason to keep our clients locked down. Anyone on the unit will have his or her mail read and screened. These are not people accused of terrorism or organized crime. If they were, DOC already has the authority to monitor correspondence by obtaining a warrant. This is just another example of the wanton and unnecessary removal of basic due process, judicial oversight, transparency and accountability for DOC and the addition of degrading and punitive options that they can impose in their sole discretion.

The current DOC proposal does not provide adequate protections for people with mental illness, or those who might develop mental illnesses as a result of the isolation inherent in administrative segregation. The extremely toxic mental health effects of administrative segregation are widely documented. In our experience, even mentally healthy people facing long-term isolation and segregation deteriorate rapidly, often resulting in the need for hospitalization, solely due to the environment of isolation. Those who have a preexisting mental illness may deteriorate even more rapidly. There is no allowance for continued mental health monitoring by the Department of Health and Mental Hygiene once a person is committed to the ESH. If past experience is any guide, people confined in the ESH will not receive adequate mental health treatment, as is currently the case in punitive segregation. The status quo for many people incarcerated at Rikers Island has been defined by the United Nations, and other Human Rights observers, as torture. (Please see BDS testimony to the New York State Assembly regarding deficiencies in treatment of mental illness at Rikers Island, attached).

The criteria for inclusion in these new housing units is overly broad, a point acknowledged by Commissioner Ponte Wednesday when he allowed that "most" of the population of the ESH will be dangerous people, but not all. Rather than limiting the designation of "dangerous" to those who have committed acts of violence, the DOC is seeking to place people in this severely restricted unit based solely on speculation and assumptions. Corrections officers are saying, through this proposal, and by way of their show of force here today that they want unfettered

authority to target people based on unsubstantiated claims and accusations from confidential informants seeking special treatment and privileges. Loose associations that may have no bearing on the person's propensity for violence would be sufficient evidence to place that person in the housing unit—such as previous contact with someone else who was in the unit.

More likely, this unit will be used in a petty and vengeful manner to punish inmates that officers do not care for or who stand up for themselves or others. With no definition as to who belongs in the unit, no real hearing or due process, no oversight or transparency, this will be easy for DOC officers. This level of discretion is easily abused and, we have no doubt, will in fact be subject to great arbitrariness.

The proposal suggests that it will provide "procedural safeguards to protect the rights" of people assigned to the ESH, but it **eliminates** any outside review of decisions to place people in this unit. There is no way for someone to contest their placement in the unit or earn their way out of it. Even if there were due process protections, the loose and overbroad definition of those eligible for placement in this unit makes it impossible to contest this punitive placement. There is no right to an advocate or attorney to help someone fight the designation and every decision is made by a DOC employee—not through a process that is fair or likely to result in overturning placements.

The DOC proposal does not provide adequate avenues for people to escape the ESH restrictions once they have been assigned. According to the DOC proposal a person will remain subject to the ESH restrictions for perpetuity – for the duration of their current stay in city custody, and should they be arrested, 10, 15, 20 years later, they would likely be immediately subjected to these housing restrictions again. There is no procedure in this proposal for someone to show his designation is incorrect or for him to earn his way out of the unit through good behavior.

Brooklyn Defender Services acknowledges the need to reduce violence at City jails and wishes to support the Department of Corrections in achieving this goal. After all, most of the violence occurs against our clients, especially the youngest among them. However, the current proposal is neither sufficient for this goal nor acceptable. Rikers Island has become a devastatingly harsh and violent place. More severe restrictions with less due process is the opposite of a solution—it is a formula for more violence, arbitrariness, indifference and will result in irreversible harm to people who do not deserve it. We wholeheartedly oppose this proposal and call upon the Board of Corrections to stand with the Department of Justice and all who want to see our fellow New Yorkers treated with most basic human decency.

Sincerely,

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