

Testimony of Madeline deLone, Executive Director of the Innocence Project and Former Deputy Director
of the NY City Board of Correction

Members and Staff of the Board of Correction:

My name is Madeline deLone. I am currently the Executive Director of the Innocence Project, a non-profit legal services and public policy organization that has had the honor of assisting in the representation of close to 200 men and women in this country who have been exonerated by DNA. Many others at the hearing today spoke from personal and professional experience about the risks, problems, and concerns raised by the Enhanced Supervision Housing Unit proposal and advocated for the expansion beyond 16 and 17 year olds for the reduction of reliance on solitary confinement as a form of punishment. I have much to say on both of these topics, as do the many innocent people who have been confined in our nations prisons and jails, but I believe you likely have more than enough information to consider as you move forward to adopt whatever rules you ultimately craft. I trust that you will do it carefully and in a way that protects the men and women who will be housed in the City's jails for the years to come.

From 1988 to 2001, I was the Deputy Director of the NY City Board of Correction. In that role, I oversaw the drafting, consultation and negotiation process that resulted in the Health Care Minimum Standards.

I would like to suggest a different sort of modification of the Standards than those discussed by many others that might be of use to you in this situation and others that will follow. Right now there are three sorts of variances described in section 1-15(b) of the rules – emergency, continuing, and limited. As the City and Board realized at the last minute before putting the EHSU proposal forward as a variance request last month, the request from the variances that the City wanted did not meet the requirements of any of these sorts of variances. The City then redrafted the variance request and asked for a rule change.

Having been involved in prior rule change processes at the Board, I would observe that in the past these changes have always been done with much more data, deliberation, and negotiation. That seems appropriate, since the rules become the permanent standards for the treatment of people in our City's jails.

In lieu of changes the Standards to allow the department to try a new form of restricted housing, I suggest the Board adopt a rule that allows for an additional or fourth sort of variance. This would be a variance that could be sought when the Department wanted to test a program that requires deviation from the minimum standards. This "experimentation" variance could be sought in order to test a new program or practice that the Board and Department believed would be helpful to maintaining the safety of the jails and/or improving the lives of the people living in the facilities. In order to obtain this sort of variance, the Department would have to propose a program or intervention, describe the variances needed and the rationale for the variances, state the desired outcome, propose a means for assessing efficacy, and then be given a period of time to try it out. The variance should have a maximum duration. Perhaps no more than 1 year. The Board could require interim reports, so that bad programs could be stopped. Good and successful efforts might suggest the need for a permanent rule change. The CAPA process you are following now could then be initiated.

Today the Commissioner stated that if the ESHU does not work, of course it should be ended. If this is even a possible outcome, then it is clear that a rule change is not the right process. I suggest that a new kind of "experimentation" variance would make the process of trying new programs, running demonstration projects, and similar efforts possible, without initiating a rule making process that could have to be reversed if the new program did not prove useful. Ultimately, only programs that prove effective (to the Board's satisfaction) would prompt a full rule making process.

Before changing the Standards to allow the Department to test a program, I believe you, the City, and the people that live and work in the jails would be well served by a new sort of variance that would allow testing ideas with clear criteria for assessing efficacy.

Thank you and best of luck to you in your process.

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