

Blaine (Fin) V. Fogg  
*President*

Janet E. Sabel  
*Attorney-in-Chief  
Chief Executive Officer*

Mary Lynne Werlwas  
*Director  
Prisoners' Rights Project*

October 30, 2019

Members of the Board of Correction  
1 Centre Street  
Room 2213  
New York, New York 10007

Re: Solo Housing: A Case Study in DOC Restrictive Housing Practices

Dear Members of the Board of Correction:

The Legal Aid Society Prisoners' Rights Project and advocates have long sought a comprehensive Board of Correction (“BOC” or “the Board”) standard governing due process and conditions of confinement in all restrictive housing in the New York City jails for a simple reason: the Department of Correction (“DOC” or “the Department”) consistently creates new housing areas that are poorly or incompletely addressed by BOC’s prior regulations. The current BOC rulemaking was intended to close such gaps, and give substantive guidance to present and future Commissioners about the minimum standards that must obtain in *all* iterations of restrictive housing. Indeed, the Board recognizes in the Proposed Standards’ Statement of Basis and Purpose “the need for the proposed rules’ definition of restrictive housing to include not only housing publicly identified as restrictive, but also housing which is not publicly identified as restrictive but operates as such.”<sup>1</sup> A functional definition of restrictive housing, and baseline standards that apply regardless of what that housing is named or called, are the cornerstones of this comprehensive approach.

DOC’s troubled experiment with “Solo Housing” – yet another form of isolated confinement for the youngest people at DOC developed over the past two years – illustrates why comprehensive regulation and oversight are essential. Strangely, the proposed standards are wholly silent as to this population. The Legal Aid Society intends to provide extensive written comments during rulemaking—but as a preliminary observation at what we hope will be the beginning of this formal process after tomorrow’s vote, Solo Housing provides a useful lens for evaluating the scope and efficacy of the Proposed Standards:

**If the Proposed Standards do not provide clear restrictions on the process, duration and conditions in “Solo Housing,” they have failed in their comprehensive mission.**

This is, of course, just one illustration of the type of isolated confinement the Proposed Standards must regulate. But we focus on it here because the *Nunez* Monitor’s Reports succinctly provide us

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<sup>1</sup> Notice of Rulemaking Concerning Restrictive Housing in Correctional Facilities, New York City Board of Correction, pages 10-11. Available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2019.10.29%20-%20Rule%20and%20Certifications.pdf>. [Note: this quote was taken from the discussion on “Structurally Restrictive Housing,” but it is relevant here as a summary of the Board’s intention.]

with a glimpse of the abuses and failure of implementation that arise in such “pop-up” isolated confinement.

### **What is Solo Housing?**

In late 2017,<sup>2</sup> the Department promulgated a Solo Housing directive, not available to the public, after pressure from the *Nunez* Monitor. The Monitor defined Solo Housing as “temporarily placing youth involved in multiple incidents (as either the aggressor or the victim) on a dormitory-style housing unit alone with Staff, for some period of time (from a few days to a couple weeks).”<sup>3</sup>

The placement criteria appear to be very broad, with no apparent time limitations on length of stay. The Monitor required that the Solo Housing policy include approval up the chain of command, programming and support plans, and clear behavioral expectations for movement out of isolation<sup>4</sup>—but quickly noted in subsequent reporting periods that “the Department is not following the protocol established in collaboration with the Monitoring Team.”<sup>5</sup>

### **What has the independent *Nunez* Monitor reported about Solo Housing?**

The *Nunez* Monitor has reviewed Solo Housing in its last five reports, and has documented its rapid evolution from a concept of a very short-term, highly programmed and supported environment to the reality of long isolated confinement of youth with no due process or support. These include:

- An 18-year-old young woman spending **72 days** in Solo Housing at RMSC;<sup>6</sup>
- An 18-year-old young man spending **19 consecutive days** in Solo Housing in OBCC this past spring;<sup>7</sup> and
- Several 18-year-olds spending “**weeks**” and “**longer**” in Solo Housing.<sup>8</sup>

The Monitor’s Reports clearly show that DOC’s definition of a “temporary” confinement can extend for weeks or longer of a youth’s life; that it fails to implement with any reasonable fidelity the programs described on paper, such as in its directive; and that these end-runs around BOC standards will continue if left unabated.

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<sup>2</sup> Fifth Report of the *Nunez* Independent Monitor (“Fifth Report”), p. 176. Available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Fifth\\_Monitor\\_Report.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Fifth_Monitor_Report.pdf).

<sup>3</sup> Third Report of the *Nunez* Independent Monitor (“Third Report”), p. 232. Available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Third\\_Report\\_Nunez\\_Independent\\_Monitor\\_4.03.17.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Third_Report_Nunez_Independent_Monitor_4.03.17.pdf).

<sup>4</sup> Fourth Report of the *Nunez* Independent Monitor (“Fourth Report”), p. 245. Available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Fourth\\_Report\\_Nunez\\_Independent\\_Monitor\\_10.10.17.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Fourth_Report_Nunez_Independent_Monitor_10.10.17.pdf).

<sup>5</sup> Sixth Report of the *Nunez* Independent Monitor (“Sixth Report”), p. 192. Available at [https://www1.nyc.gov/assets/doc/downloads/pdf/6th\\_Monitor\\_%20Report-10-17-18%20.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/6th_Monitor_%20Report-10-17-18%20.pdf).

<sup>6</sup> Seventh Report of the *Nunez* Independent Monitor (“Seventh Report”), p. 235. Available at [https://www1.nyc.gov/assets/doc/downloads/pdf/7th\\_Monitor\\_Report.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/7th_Monitor_Report.pdf).

<sup>7</sup> Eighth Report of the *Nunez* Independent Monitor (“Eighth Report”), p. 282. Available at [https://www1.nyc.gov/assets/doc/downloads/pdf/8th\\_Monitor\\_Report.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/8th_Monitor_Report.pdf).

<sup>8</sup> E.g. Sixth Report at p. 192.

We reprint the monitor's findings about Solo Housing in their entirety below, with most recent information first and emphasis added.

**Eighth Report**

*Filed October 28, 2019, pp. 282-283*

During the current Monitoring Period, Solo Housing of 18-year-old youth was used infrequently. RNDC and EMTC did not use it at all; **RMSC used Solo Housing as a response to behavior 3 times**, for less than 1 week each time; **and 4 youth were in Solo Housing at OBCC (ESH) due to attrition**. Most of these episodes were just a few days, though **one lasted 19 days**.

As noted in several previous Monitor's Reports, **the historically poor implementation of the Solo Housing policy for placements in response to a youth's violent behavior are a serious concern**. Despite a workshop designed to clarify expectations and close review by both the Monitoring Team and NCU, **placements in Solo Housing at the beginning of the current Monitoring Period suffered from the same problems noted previously**. NCU committed to auditing the Solo Housing records more closely and conferring with Facility leadership whenever deficiencies were noted. The effectiveness of this oversight in improving practice cannot be ascertained because Solo Housing was not used as a response to behavior during the last half of the Monitoring Period (all uses were due to attrition, and all were very short). To the Department's credit, the documentation submitted for other purposes revealed RNDC's effort to avoid Solo Housing by transferring youth who would otherwise be housed alone in TRU because of attrition to another TRU unit where they would be able to interact with peers. The Monitoring Team encourages the Department to avoid housing youth alone whenever possible. Should a Facility decide to place a youth in Solo Housing in response to his/her behavior, the Monitoring Team expects both proper implementation of the policy and robust oversight from NCU.

**Seventh Report**

*Filed April 18, 2019, pp. 235-236*

During the current monitoring period, Solo Housing was not used at all at RNDC, and was used relatively infrequently at RMSC. Of the 6 youth who were placed in Solo Housing for behavioral reasons during the current monitoring period, **3 had only single episodes spanning 1 to 13 days; 2 youth had a couple episodes each lasting between one and two weeks; and 1 youth had 9 episodes resulting in her spending 72 days in Solo Housing**.

Occasionally, youth were housed alone for short periods when other youth of the same status (*e.g.*, Protective Custody, sentenced, etc.) were discharged to the community. These were not considered "behavior-based" incidents of Solo Housing.

For those placements in Solo Housing that are in response to a youth's violent behavior, the Monitoring Team remains very concerned. **Given the Department's failure to implement**

**the required procedures** (discussed in the previous Monitor's Report at pg. 192), the Monitoring Team held a workshop with Staff at RNDC and RMSC to review expectations in September 2018. NCU also began to review the practice more closely. Unfortunately, the workshop and close monitoring of the process **has yet to produce the desired results.** Referral documentation remains incomplete, a Support Team is not being engaged to develop Behavior Plans, and log books do not document that mandated services are being provided. While recent efforts have been made to document the services of a Program Counselor and programming by community partners, these services are provided without the direction of a behavior plan that would ensure they are appropriately targeted to the youth's needs. **The Monitoring Team remains very concerned about the poor implementation of this policy.** The **Department is not following the protocol** established in collaboration with the Monitoring Team and has been unable to provide documentation showing that the youth placed in Solo Housing receive the various protections designed to assuage concerns about the length of stay, need for services and deleterious effects of social isolation. The Monitoring Team has communicated with NCU to re-establish requirements for internal oversight and corrective action when facilities do not follow policy requirements. Performance in this area must improve.

#### **Sixth Report**

*Filed October 17, 2018, p. 195*

During the Current Monitoring period, Solo Housing was used relatively infrequently as a behavior management strategy: only **13 times (6 at RNDC, 2 at GMDC and 5 at RMSC).**[FN] **Most of these youth were housed alone for a couple weeks, though a couple youth were housed alone for longer periods of time.**

The Solo Housing policy was signed into effect at the end of the previous Monitoring Period and the Monitoring Team began to assess the extent to which the Department's practice mirrored the policy requirements. The Monitoring Team is very concerned about **the poor implementation of this policy. The Department is not following the protocol established in collaboration with the Monitoring Team and has been unable to provide documentation showing that the youth placed in Solo Housing receive the various protections designed to assuage concerns about the length of stay, need for services and deleterious effects of social isolation.** Given the closure of GMDC and consequent shortage of bed space at RNDC, it is possible that Solo Housing will be used even less frequently in the future. However, if it is used, the Department must provide all of the services and supports required by policy in order for the Monitoring Team to continue to support this practice.

#### **Fifth Report,**

*Filed April 18, 2018, p. 176*

During the Current Monitoring Period, Solo Housing was used relatively infrequently as a behavior management strategy, only **nine times (four at RNDC, four at GMDC and one at**

**RMSC**). The Monitoring Team verified with H+H that none of the youth had a serious mental illness (SMI). The median length of stay was six days, meaning that half exited after less than one week and **half stayed longer than one week (11, 15, 18 and 31 days)**. Four of the youth were transferred to some type of special housing (e.g., TRU or PC), three were joined on the unit by another youth, and two were transferred back to the general population. In all but one case, the arrangements appeared to resolve the safety issue as the youth did not return to Solo Housing.

The Solo Housing policy was signed into effect at the end of the current Monitoring Period. Going forward, the Monitoring Team will assess the implementation of the policy to ensure that youth who are placed in solo housing do not languish and receive intensive interventions to speed their return to the general population.

#### **Fourth Report**

*Filed October 10, 2017, pp. 245-246*

As discussed in previous Monitor's Reports, at times, the Department has chosen to temporarily place youth involved in multiple incidents (as either the aggressor or the victim) on a housing unit alone with a Staff, for some period of time. Occasionally, natural attrition causes Young Inmates with special statuses (e.g., Protective Custody, sentenced) to be housed alone (e.g., the only other Young Inmate with that status is discharged to the community). This type of solo housing tends to be very short in duration.

Early in the monitoring effort, the Monitoring Team was concerned about the length of stay for inmates placed in this **setting for reasons related to their behavior, the lack of written guidance for Staff** on the criteria for placement, and lack of programming to support reintegration with peers. Since December 2016, the Department and the team exchanged multiple revisions of the policy and it is expected to be finalized during the next Monitoring Period. The new policy places limits on the length of stay and requires approval up the chain of command for extensions; sets referral criteria and written procedures for the day-to-day operation; requires written, individualized support plans and intensive programming; requires clear behavioral expectations and daily assessments of performance; requires a weekly progress review by a support team; and requires a variety of documentation to support the practice.

During the current Monitoring Period, solo housing was used only **five times** for reasons related to an inmate's behavior (three at RNDC; once at RMSC; and once for an 18-year-old placed at West).

**Three other inmates were housed alone for a period of time because** they were the only adolescents with a special status (e.g., General Population Escort, PC). Among those placed in solo housing for behavioral reasons, one was joined by a peer after four days and the other two were joined by a peer after 13 days. **As of June 30, 2017, the inmate housed in West had been solo housed for 91 days.**

This inmate had exhibited a pattern of violent behavior toward both inmates and Staff while housed in the most restrictive units (both Secure and YA-ESH). The Monitoring Team received a copy of his support plan and visited him on numerous occasions to confirm that he was receiving the services specified in the plan.

Overall, the solo housing option is used infrequently and usually not for long periods of time. The new policy provides structure to the decision-making, unit procedures and documentation requirements. The Monitoring Team is therefore less concerned about the use of solo housing. Moving forward, compliance with the policy will continue to be monitored anytime a Young Inmate is placed in solo housing.

### **Third Report**

*Filed April 3, 2017, pp. 232-233*

As discussed in the previous Monitor's Report, at times, **the Department over-relies on strategies to separate youth and suppress their behavior, rather than mediating conflicts or focusing on behavior change** to facilitate long-term safety. One such practice, referred to as "Solo Housing" by the Monitoring Team, involves temporarily placing youth involved in multiple incidents (as either the aggressor or the victim) on a dormitory-style housing unit alone with a Staff, for some period of time (from a few days to a couple weeks). **The Monitoring Team's concerns center around the social isolation from peers and the difficulty for the youth to access the full range of mandated programming and other services to address their treatment needs.** While separation from peers for a very short period of time (i.e., a few days) may be appropriate, **the use of solo housing should be very limited and must be governed by a written protocol.** The Department submitted a list of the Inmates at RNDC who were solo housed and the duration of said housing. A total of six (6) Inmates were solo housed during the current Monitoring Period. In three cases, the solo housing was caused by the Inmates' special status (e.g., City Sentenced, General Population Escort, or awaiting age verification) and the fact that no other Inmates of the same status were currently in custody. The duration of solo housing for these Inmates was quite short (six days, two days and one day, respectively). **In the other three cases, Inmates were deliberately placed on a unit alone for security reasons (e.g., gang related issues; threats of violence; threats to safety). The duration of solo housing for these Inmates was also relatively short (eight days, four days and one day). That said, their placement, experience while on the unit, and removal from the unit was not guided by policy.**

The Department submitted a draft policy for Solo Housing to the Monitoring Team in December 2016. The Monitoring Team provided recommendations related to the following issues:

- Articulating the referral process;
- Articulating procedures for how waking hours will be occupied and documented (e.g., meals, education, recreation, other mandated services);

- Articulating a maximum allowable length of stay;
- Creating a service plan for youth that describes the services the youth will receive while solo housed and the specific steps to be taken to return to a unit where the Inmate can interact with peers;
- Articulating how the release/transfer decision from the unit is made.

To the extent that the Department wants to continue to use Solo Housing, the Monitoring Team will continue to work with the Department to refine the policy. Furthermore, the number of Inmates placed in solo housing, the reasons for it, and the duration will continue to be tracked.

### **Second Report**

*Filed October 31, 2016, p. 147*

Finally, while the Department takes its responsibility to ensure the safety of youth from other youth seriously, at times, this has resulted in an **over-reliance on strategies to separate youth and suppress their behavior**, rather than a focus on changing behavior to facilitate long-term safety. Toward the end of the First Monitoring Period and throughout the Second Monitoring Period, **the Department temporarily placed several youth who had been involved in incidents (either as the aggressor or the victim) on a housing unit, alone, for several weeks at a time**. While this strategy limited these youth's access to potential victims and thus suppressed violence, it **interfered with the ability to deliver mandated services consistently and is inconsistent with the youth's treatment needs** (a congruence that is required by this provision of the Consent Judgment). Although RNDC has housing unit resources that exceed those normally available in other jurisdictions, **separating youth who do not get along with each other is not a sustainable long-term strategy for responding to infractions**. The "keep separates" will increase exponentially and the staffing and space resources will be stretched too thin to sustain.

Instead, focusing resources and programming on strategies to mediate conflict and to teach youth skills for managing interpersonal conflict will create the ability to manage safe facilities without having to rely on isolation or continued separation from peers. The Monitoring Team discussed this issue with the Department several times, and, during a meeting with Department Staff on this issue in June 2016, made it clear that while separation on a housing unit alone may be appropriate for a very short period of time (i.e., a few days), the use of this strategy must be strictly governed by a written protocol. This protocol should include the situations in which this housing strategy is permissible, time limitations, assurances that all mandated services will be provided, and a requirement to articulate in writing the timeline and conditions for gradually returning the youth to the general population. The Monitoring Team has offered to assist the Department in developing these protocols and has made multiple requests for this written protocol or a plan for developing such a protocol, but the Department has not responded to the Monitoring Team's requests.

October 30, 2019

These reports chart a familiar course: the Department uses isolation as a default response to a security or behavioral challenge, the practice lacks process or written guidance, and, often after pressure from an independent actor like the Monitor or the Board, the Department eventually gives it a new name and writes a Directive or Command Level Order. The practice is not called “punitive segregation,” but an objective assessment reveals that it is punitive in nature. When the New Name isolating practice is regulated, a Newer Name isolating practice emerges, *ad infinitum*.

**Solo Housing demonstrates the gaps in proposed rules that are intended to address every housing assignment that is restrictive in nature.** Solo Housing clearly meets the general definition of Restrictive Housing in proposed § 6-03(a), but does not appear to fit within any category listed in the rules and therefore is not subject to any proposed process or protections. People in custody subject to Solo Housing can be and are often held alone in large housing units intended for many people, meaning that they can potentially be allowed more out-of-cell time than contemplated by the Transitional/Administrative Housing definition in § 6-03(b)(23) and also evade the “physical design” requirement of the Structurally Restrictive Housing definition in § 6-03(b)(21). Solo Housing serves as an example that under these proposed rules, DOC still has the ability to create unregulated solitary by another name.

We look forward to engaging with the Board during the rulemaking process, and we hope that comprehensive standards emerge that put an end to barbaric practices like restraint desks and exceptions to the 15-day cap on punitive segregation that violate international standards—two abuses that the proposed rules currently permit. We welcome further discussion on this and the extensive comments we will submit during the CAPA process.

Very best regards,

Mary Lynne Werlwas  
*Director*  
Kayla Simpson  
*Staff Attorney*