



DISTRICT OFFICE
244 UNION AVENUE
BROOKLYN, NY 11211
TEL: (718) 963-3141
FAX: (347) 223-4347

CITY HALL OFFICE
250 BROADWAY, SUITE 1740
NEW YORK, NY 10007
TEL: (212) 788-7095
E-MAIL: jgutierrez@council.nyc.gov

THE COUNCIL
OF
THE CITY OF NEW YORK
JENNIFER GUTIÉRREZ
COUNCIL MEMBER, 34th DISTRICT, BROOKLYN

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June 4, 2024

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

In the interest of safety, dignity, and human rights, I urge the Board of Correction to adopt its proposed rules, with the slight modifications outlined below.

These proposed rules and these modifications are both urgent and necessary to ensure compliance with Local Law 42, which was enacted by an overwhelming supermajority of the City Council. Fully implementing Local Law 42 and adopting these rules will ensure the use of real alternatives scientifically proven to reduce violence and improve health. This approach will stop torture, save lives, and enhance safety for everyone. We must not allow the rule of law to be bent; adherence to the original intent of the law is paramount.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latino people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Lives are in your hands, and the time to act is now. The Board must adopt its rules in strict accordance with Local Law 42, and the Department of Correction must fully implement this law. By doing so, we can finally end solitary confinement and replace it with alternative forms of separation that are scientifically proven to reduce violence and better protect health and well-being - not just for some, but for entire communities.

Thank you for your consideration.

Sincerely,



Jennifer Gutiérrez
Council Member, District 34