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Gordon Campbell, Chair
Members of the Board
NYC Board of Correction
51 Chambers Street, Room 923
New York, NY 10007

Comments on Proposed Rule

To the Board of Correction:

The New York City Jails Action Coalition (JAC) is an alliance of activists that includes formerly incarcerated individuals, family members, and other community members working to promote human rights, dignity, and safety for people incarcerated in NYC jails. We presented a petition for rulemaking regarding solitary confinement[1] to the Board on April 9, 2013. It was clear to us then – as it is now – that people are suffering in 23-to-24-hour isolation in the NYC jails and that the Minimum Standards should regulate whether and how isolation can be used in the jails.

Although the Board did not initiate rulemaking in response to our petition, we were gratified that the Board voted in September 2013 to begin the process of adopting rules regarding solitary confinement. We have supported the Board in its lengthy process of drafting standards believing that the Board was committed to adopting rules that complied with international norms and that would protect people incarcerated in the NYC jails.[2]

We were shocked that the Board voted at its November 18, 2014 meeting to consider rules that will *decrease* the protections afforded to incarcerated people. We are outraged that the comments we submit today – more than a year and three months after the Board finally voted to initiate rulemaking regarding solitary confinement – are not in response to rules that the Board collaboratively drafted as part of its solitary confinement rulemaking process but are instead rules

[1] We use the term solitary confinement to describe the NYC Department of Correction (DOC) practice of placing individuals found guilty of violating DOC rules in 23-to-24-hour lock-down, what DOC calls "punitive segregation."

[2] At the January 14, 2014 meeting, the Chair announced that two committees, one focused on adults and another on adolescents, had been formed; that there would be a fact-finding phase which would include meetings with stakeholders; that the Board would learn about national and international best practices for reducing the use of solitary confinement; and that the draft rules would be completed toward the end of 2014; and that the City Administrative Procedures Act (CAPA) process would begin right after the draft rules were completed.

that were swiftly written by the Chair and NYC Law Department and presented to Board members the night before the November 18 meeting. Most significantly, the proposed rule is not one that comprehensively regulates solitary confinement but one that provides for the creation of a new form of punishment with unprecedented restrictions that will roll back basic protections of incarcerated people.

The fundamental responsibility of the Board is to ensure that individuals detained in NYC jails are treated humanely. Thus, the Board's Minimum Standards must require the NYC Department of Correction (DOC) to operate its jails in a manner that respects the inherent human dignity of the people DOC incarcerates.

Any amendments to the Minimum Standards should be in accordance with international human rights standards. The most essential change needed is the adoption of rules that will prohibit torture in the NYC jails by regulating the use of solitary confinement. The proposed rule (§1-17) is plainly inadequate. We urge the Board to adopt rules that will:

- Limit the length of solitary confinement sentences and the amount of daily cell confinement during a solitary confinement sentence;
- Exclude vulnerable populations from solitary confinement;
- Limit the reasons for placement in solitary confinement;
- Require the creation of an alternative disciplinary system;
- Improve due process requirements; and
- Increase training.

We call on the Board to reject the proposed amendments which will allow DOC to create Enhanced Supervision Housing Units ("ESHU"). These amendments diminish the rights of incarcerated people and are inconsistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Decreasing violence in the jails can be achieved through measures that are less restrictive and more effective. To erode the Minimum Standards by implementing these unnecessary changes would be shameful for our City and detrimental to the well-being of incarcerated individuals. We must work to raise the minimum standards, not lower them.

I. The Board should adopt rules regarding the use of solitary confinement.

The Board should limit the DOC's reliance on the psychological and physical torment of solitary confinement as a response to misbehavior. DOC's current system of solitary confinement harms people in its care and custody without providing any penological benefit. The Board should enact minimum standards that limit the circumstances under which people may be placed in solitary confinement and the amount of time they may be kept there.

Young adults, people with disabilities, and pregnant women are especially vulnerable to the effects of solitary confinement. The Board should exclude these people from solitary confinement entirely and require the DOC to develop alternative safety restrictions to prevent violence and minimize harm.

The DOC must develop new practices to maintain security and ensure compliance with facility rules without resorting to lengthy isolation. Improved training and oversight of staff, including instruction in dispute resolution techniques and improved interpersonal communication skills, must come first.

The DOC should provide positive incentives for good behavior and tools for incarcerated people to manage conflicts without resorting to violence.

A. Solitary confinement harms people in DOC custody.

Solitary confinement, the involuntary confinement of incarcerated people in cells for twenty-three to twenty-four hours a day, causes serious physical, psychological, and developmental harm and cannot be justified. This form of solitary confinement fosters violence in DOC facilities and exacerbates threats to institutional security. The Board must act now to end the harmful effects of solitary confinement and to reduce current endemic violence in DOC facilities.

New York City currently places people in solitary confinement based on a finding of a jail rules infraction at a disciplinary hearing. The DOC does not limit solitary confinement penalties to violent jail infractions. Instead, the DOC sends people to solitary confinement for minor jail misbehavior and violent offenses alike.[3] This system of punishment results in excessive penalties that take no account of the damaging effects of isolation and have no relationship to valid security interests.

1. DOC harms people in solitary confinement through violence, neglect, and isolation.

Violence pervades DOC's solitary confinement units. DOC staff uses the threat of frequent cell searches—sometimes three per day amid a population that rarely leaves its cells—and abusive and taunting language to keep people in a constant state of fear. These interactions are the cause of frequent confrontation and unnecessary cell extractions that result in serious bodily injury to incarcerated people. Incarcerated people consistently report experiencing or witnessing brutal assaults in parts of the solitary confinement housing areas.

People in solitary confinement suffer neglect from correction and medical staff. Part of the reason is logistical. Segregation unit staff must escort incarcerated people wherever they go, which requires intensive manpower and great cost.[4] Escorts are not always available in sufficient numbers, and people in segregation report routine difficulties with obtaining needed medical aid or making family or attorney visits. These deprivations create more tension between staff and the solitary confinement population.

People in solitary confinement endure twenty-three to twenty-four hours of lonely idleness in a small cell that admits little or no natural light in housing areas that smell of body odor and human waste. These cells are often under- or over-heated. Communication between cells requires yelling. Recreation, when provided, is taken alone in a small pen. Frequently, correction officers withhold recreation and other privileges as a means to punish or harass people. Only about 10% of the CPSU

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[3] Offenses run a wide gambit from "destruction of city property with a value of less than $10" to "arson"; from "extra amounts of city-issued property" to "contraband weapons." DOC Directive 6500-R-B.

[4] Although the DOC does not release specific figures describing the relative cost of solitary confinement, a report from the New York City Office of Management and Budget revealed that the DOC will save $323,000 annually by converting one adolescent solitary confinement unit into a general population housing area. NEW YORK CITY OFFICE OF MGMT. AND BUDGET, AGENCY GAP CLOSING PROGRAMS 3 (2012).

population actually participates in outdoor recreation.[5] The CPSU resembles what is known as a "supermax" facility. The doors are solid with only a small window and a slot with a hatch where food trays are passed in and out. The slot in the door is also used for conversations with medical, security, and other staff.

This isolation from human contact can cause severe physical and psychological harm, which has been well known for over a century. In 1890, the United States Supreme Court assessed the nation's original experiment with solitary confinement and described its harmful effects:

> "[a] considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service."[6]

When New York tried a similar form of solitary confinement, Gustav Beaumont and Alexis de Tocqueville reported that it "devours the victim incessantly and unmercifully; it does not reform, it kills. The unfortunate creatures submitted to this experiment wasted away…."[7]

Modern courts have reiterated these consequences when addressing present-day forms of solitary confinement.[8] In 1988, the Seventh Circuit observed, "the record shows, what anyway seems pretty

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[5] CITY OF NEW YORK BOARD OF CORECTION STAFF REPORT, BARRIERS TO RECREATION AT RIKERS ISLAND'S CENTRAL SOLITARY CONFINEMENT UNIT 3 (2014).

[6] In re Medley, 134 U.S. 160, 168 (1890). The court concluded that solitary confinement "is itself an infamous punishment." *Id.* at 169. *See also* CHARLES DICKENS, AMERICAN NOTES FOR GENERAL CIRCULATION 68 (1842) ("I hold this slow daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body…").

[7] TORSTEN ERIKSSON, THE REFORMERS, AN HISTORICAL SURVEY OF PIONEER EXPERIMENTS IN THE TREATMENT OF CRIMINALS 49 (1976). *See also* W. DAVIS LEWIS, FROM NEWGATE TO DANNEMORA: THE RISE OF THE PENITENTIARY IN NEW YORK, 1796–1848, at 17–21 (1965).

[8] Jones'El v. Berge, 164 F. Supp. 2d 1096, 1101 (W.D. Wisc. 2001) (solitary confinement is "known to cause severe psychiatric morbidity, disability, suffering and mortality [even among those] who have no history of serious mental illness and who are not prone to psychiatric decompensation."); Koch v. Lewis, 216 F. Supp. 2d 994, 1001 (D. Ariz. 2001) (experts agreed that extended isolation causes "heightened psychological stressors and creates a risk for mental deterioration"); Ruiz v. Johnson, 37 F. Supp. 2d 855, 907 (S.D. Tex. 1999), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D. Tex. 2001) (the court described administrative segregation units as "incubators of psychoses-seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities"); Langley v. Coughlin, 715 F. Supp. 522, 540 (S.D.N.Y. 1988) (citing expert's affidavit regarding effects of SHU placement on individuals with mental disorders); Baraldini v. Meese, 691 F. Supp. 432, 446–47 (D.D.C. 1988) (citing expert testimony on sensory disturbance, perceptual distortions, and other psychological effects of segregation), *rev'd on other grounds sub nom.* Baraldini v. Thornburgh, 884 F.2d 615 (D.C. Cir. 1989); Bono v. Saxbe, 450 F. Supp. 934, 946 ("Plaintiffs' uncontroverted evidence showed the debilitating mental effect on those inmates confined to the control unit."), *aff'd in part and remanded in part on other grounds*, 620 F.2d 609 (7th Cir. 1980); Madrid v. Gomez, 889 F. Supp. 1146, 1235 (N.D. Cal. 1995) (concluding, after hearing testimony from experts in corrections and mental health, that "many, if not most, inmates in the SHU experience some

obvious, that isolating a human being from other human beings year after year or even month after month can cause substantial psychological damage, even if the isolation is not total."[9]

Psychiatrists have concluded that isolation causes "hyperresponsivity to external stimuli," "perceptual distortions, illusions, and hallucinations" "panic attacks," "difficulties with thinking, concentration, and memory," "intrusive obsessional thoughts," "overt paranoia," and "problems with impulse control."[10] This psychological damage exacerbates problems within the jailhouse—hyperresponsive people with low impulse control are likely to act out when they return to general population. These symptoms have a profound ripple effect when people are released directly from isolation to the community, where their impaired abilities leave them liable to return to previous patterns of destructive behavior, such as crime and drug abuse.[11]

Solitary confinement damages the ability of some pretrial detainees to participate in preparing their own defense in their criminal court cases. The negative psychological effects of solitary confinement may adversely affect the ability of these individuals to communicate effectively with counsel, understand court proceedings, and participate in their defense. Additionally, people in solitary confinement report missing court dates because of transportation delays.

Solitary confinement causes harm, and the Board should promulgate rules that reduce that harm.

2. People with mental illness must be excluded from solitary confinement.

People with mental illness are particularly prone to the ill-effects of isolation. One court found that confining a person with mental illness to segregation "is the mental equivalent of putting an asthmatic in a place with little air to breathe."[12] Isolating people with mental illness can exacerbate

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degree of psychological trauma in reaction to their extreme social isolation and the severely restricted environmental stimulation in the SHU"), *rev'd in part on other grounds*, 190 F.3d 990 (9th Cir. 1999).

[9] Davenport v. DeRobertis, 844 F.2d 1310, 1313 (7th Cir. 1988). In *Davenport,* the court recognized that "there is plenty of medical and psychological literature concerning the ill effects of solitary confinement (of which segregation is a variant) . . ." *Id.* at 1316 (citing Stuart Grassian, *Psychopathological Effects of Solitary confinement*, 140 AM. J. PSYCHIATRY 1450, 1450–54 (1983)). Other courts have made similar observations. Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995). *See also* McClary v. Kelly, 4 F. Supp. 2d 195, 208 (W.D.N.Y. 1998) (the fact that "prolonged isolation from social and environmental stimulation increases the risk of developing mental illness does not strike this Court as rocket science").

[10] Stuart Grassian, *Psychiatric Effects of Solitary confinement*, 22 WASH. U. J. L. & POL'Y 325, 335–36 (2006). Grassian based his findings on his own observations of patients who had endured solitary confinement and on the recorded observations of others who had studied people who had endured various other types of limitations on environmental stimulation. *See also* Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124 (2003); Craig Haney & Mona Lync, *Regulating Prisons of the Future: A Psychological Analysis of Supermax & Solitary confinement*, 23 N.Y.U. J. L. & SOC. CHANGE 477 (1997); Kristin G. Cloyes et al., *Assessment of Psychosocial Impairment in a Supermaximum Security Unit Sample*, 33 CRIM. J. & BEHAVIOR 760 (2006).

[11] *See* Terry Kupers, *Prison and the Decimation of Pro-Social Life Skills*, *in* THE TRAUMA OF PSYCHOLOGICAL TORTURE, 127, 131, 135 (Almerindo E. Ojeda ed., 2008).

[12] Madrid, 889 F. Supp. at 1261.

their symptoms or lead to decompensation.[13] It conflicts with sound medical practice and challenges the medical ethics of mental health practitioners in jails and prisons.[14]

Thus, the American Bar Association,[15] the American Psychiatric Association,[16] the United Nations,[17] religious organizations,[18] and non-governmental organizations[19] are nearly unanimous in their recommendation that people with mental illness and other mental disabilities be categorically excluded from isolated confinement. New York and other states have taken steps, because of litigation or independently, to exclude people with serious mental illness from some isolated confinement settings and to increase mental health services in restricted settings. Courts have

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[13] HUMAN RIGHTS WATCH, ILL-EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS 145–68 (2003). In their amicus brief in *Wilkinson v. Austin*, leading mental health experts summarized the clinical and research literature about the effects of prolonged isolated confinement and concluded: "No study of the effects of solitary or supermax-like confinement that lasted longer than 60 days failed to find evidence of negative psychological effects" (Statement of Interest of Amici, p. 4). Brief of *Amici Curiae* Professors and Practitioners of Psychology and Psychiatry, Wilkinson v. Austin, 545 U.S. 209 (2005) (No. 04-4995). See also Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME & JUST. 441 (2006).

[14] *See* Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCH. L. 104, 105 (2010) (concluding that "[m]ental health professionals are often unable to mitigate fully the harm associated with isolation" due to limited access to medicine and limited opportunities for therapeutic interaction).

[15] ABA STANDARDS FOR CRIMINAL JUSTICE: TREATMENT OF PRISONERS No. 23-2.8(a) (2010) ("No prisoner diagnosed with serious mental illness should be placed in long-term segregated housing") [hereinafter ABA STANDARDS].

[16] *See* American Psychiatric Association, *Position Statement on Segregation of Prisoners With Mental Illness* (2012) ("Prolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such inmates. If an inmate with serious mental illness is placed in segregation, out-of-cell structured therapeutic activities (i.e., mental health/psychiatric treatment) in appropriate programming space and adequate unstructured out-of-cell time should be permitted.").

[17] *See, e.g.*, Interim Rep. of the Spec. Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/66/268 at 21 (Aug. 5, 2011) ("given their diminished mental capacity and that solitary confinement often results in severe exacerbation of a previously existing mental condition…its imposition, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment") [hereinafter U.N. Solitary Report].

[18] *See, e.g.*, THE RABBINICAL ASSEMBLY, RESOLUTION ON PRISON CONDITIONS AND ISOLATION (2012) (calling upon prison officials to "analyze this data supporting ending…the use of solitary confinement for mentally ill prisoners"); NEW YORK STATE COUNCIL OF CHURCHES, RESOLUTION OPPOSING THE USE OF PROLONGED SOLITARY CONFINEMENT IN THE CORRECTIONAL FACILITIES OF NEW YORK STATE AND NEW YORK CITY (2012).

[19] *See, e.g.*, SHARON SHALEV, A SOURCEBOOK ON SOLITARY CONFINEMENT 30 (2008) ("those suffering from mental illness must not be placed in solitary confinement and under no circumstances should the use of solitary confinement substitute for appropriate mental health care"); COMM'N ON SAFETY AND ABUSE IN AM.'S PRISONS, CONFRONTING CONFINEMENT 59 (2006) (declaring that "[p]risoners with a mental illness that would make them particularly vulnerable to conditions in segregation must be housed in secure therapeutic units").

approved remedies, many in the form of settlement agreements,[20] for people with mental illness in isolation.[21]

In New York, litigation[22] and a simultaneous effort of a broad coalition of prisoner and mental health advocates, formerly incarcerated people, and family members worked together to successfully alter the use of isolated confinement for imprisoned people with mental illness in New York State prisons. The Special Housing Unit (SHU) Exclusion Law was enacted in 2008.[23]

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[20] *See, e.g.*, Letter Agreement from Joe R. Williams, Secretary of Corrections for the State of New Mexico, Nick D'Angelo, General Counsel, and Robert T. Booms, Counsel for Defendants to Mark Donatelli, Peter Cubra, Sophie Cooper, and Jane Yee, Counsel for Petitioners in *Ayers v. Perry* and other individual habeas actions pending in New Mexico State Court 18-19 (May 20, 2003); Settlement Agreement, State of Connecticut Office of Protection & Advocacy for Persons with Disabilities v. Choinski, No. 3:03 CV 1352 (D. Conn. Mar. 8, 2004); Private Settlement Agreement, Mast v. Donahue, No. 2:05-cv-00037 (S.D. Ind. Jan. 23, 2007); Private Settlement Agreement, Disability Advocates, Inc. v. NYS Office of Mental Health, et al., No. 02 Civ. 4002 (S.D.N.Y. April 27, 2007); Settlement Agreement, Disability Law Center, Inc. v. Massachusetts Dep't of Correction, No. 07-10463 (D. Mass. Apr. 12, 2012), Settlement Agreement, Katka v. State of Montana, Cause No. BDV 2009-1163, at 4 (D. Mont. Apr. 12, 2012). Recently, following litigation, the Michigan legislature proposed a bill to exclude people with mental disabilities from solitary confinement in Michigan's state prisons. *See* Mental Health Association of Michigan, *An Important Message on Solitary Confinement of Michigan Prisoners with Mental Disorders*, MHA-MI.COM (Sept. 6, 2012), http://www.mha-mi.com/2012/09/an-important-message-on-solitary-confinement-of-michigan-prisoners-with-mental-disorders/.

[21] In New Jersey, people with a history of mental illness *must* be released from administrative segregation if it appears that ongoing confinement there would harm them. D.M. v. Terhune, 67 F. Supp. 2d 401, 403 (D.N.J. 1999). A federal court ordered the Mississippi Department of Correction to provide yearly assessments and better mental health care for people on death row, who were subject to conditions of isolation. Gates v. Cook, 376 F.3d 323, 342 (5th Cir. 2004) (ordering mental health examinations and care for death row prisoners). In California, a federal judge ordered that people with serious mental illness be excluded from the Pelican Bay SHU. Madrid, 889 F. Supp. at 1265. In Connecticut, a settlement called for exclusion of people with serious mental illness from the Northern Correctional Institution, a high-security prison. Connecticut Office of Protection & Advocacy for Persons with Disabilities v. Choinski, Civ. No. 3:03 CV 1352 (RNC) (U.S.D.C. Conn.). A federal judge ordered Ohio to exclude people with serious mental illness from the Ohio State Penitentiary, a supermax. Austin v. Wilkinson, Civ. No. 01 CV 071 (U.S.D.C. N. Ohio). In Wisconsin, a settlement agreement excluded prisoners with serious mental illness from supermax housing. Jones'El v. Berge, 164 F. Supp. 2d 1096, 1125–26 (W.D. Wis. 2001) (granting preliminary injunction requiring removal of those with serious mental illness from "supermax" prison, which isolates prisoners). Litigation has also resulted in state regulations that require that mental illness be taken into consideration during prison disciplinary hearings. Anderson v. Goord, 87-CV-141 (N.D.N.Y. 2003) (private settlement agreement required amendments to state-wide regulations that identified specific circumstances when mental health must be considered during a disciplinary hearing to assist in determining the appropriate penalty, if any, and established case management committees to review the status of SHU prisoners with mental illness and make recommendations for restoration of privileges, time cuts, and housing reassignments); 7 N.Y.C.R.R. §§ 251.2, 254.6, 254.7, and 310; D.M. v. Terhune, 67 F. Supp. 2d 401, 403 (D.N.J. 1999) (requiring that hearing officers are informed whether inmates are receiving treatment, and requiring removal from disciplinary detention if mental health status deteriorates).

[22] Disability Advocates Inc. v. New York State Office of Mental Health, et al, No. 1:02-cv-04002 (S.D.N.Y.) (*DAI v. OMH).*

[23] Provisions of the law are codified as amendments to N.Y. MENTAL HYG. LAW § 45.07(z) (McKinney 2011) and N.Y. CORRECT. LAW §§ 2, 137.6, 401, 401-a (McKinney 2011).

DOC announced in May 2013 that it would adopt a new approach to disciplining incarcerated people with mental illness in the NYC jails. DOC and DOHMH developed two new types of units to replace the Mental Health Assessment Unit for Infracted Inmates (MHAUII) – Clinical Alternatives to Punitive Segregation (CAPS) and Restrictive Housing Units (RHU). CAPS units are a true alternative to solitary confinement, and according to DOHMH, "experience rates of violence and self-harm that are less than half of the rates of units where these patients had been housed previously."[24] RHU is a variation on solitary confinement that is designed to permit progressively more out-of-cell time as an incarcerated person moves through the seven-week program. Unfortunately RHU perpetuates DOC reliance on solitary confinement. Dr. Homer Venters, DOHMH Assistant Commissioner for Correctional Health Services, described the challenge of the RHU: "we are trying to punish and improve behavior at the same time."[25] Even with these alternatives, people with mental illness are still placed in solitary confinement in NYC jails.

Solitary confinement wreaks terrible physical and psychological damage on people with mental disabilities, and the Board should categorically exclude such people from solitary confinement in all DOC facilities.

3. People with physical disabilities and serious injuries must be excluded from solitary confinement.

Solitary confinement also causes substantial harm to people with physical disabilities. When placed in isolated confinement, people with disabilities do not have proper access to necessary medical care, accommodations, or peer assistance. People with physical disabilities are much more reliant on assistance from others when they are incarcerated, and isolating them makes it more difficult to receive that assistance.

As the *U.N. Handbook on Prisoners with Special Needs* explains, "the difficulties people with disabilities face in society are magnified in prisons," and people with physical disabilities need constant assistance to perform daily tasks.[26] Some individuals rely on the support of other incarcerated people on their cellblock for their daily functioning. However, many people with disabilities have persistent health care needs related to their disability that can only be addressed by a competent clinician.

Isolating people with physical disabilities jeopardizes their well-being. In solitary confinement, people with physical disabilities do not have ready access to medical professionals and are completely reliant on correction staff to communicate their need for medical treatment and to escort them to a treatment provider. Correction officers charged with maintaining security in segregation units are unlikely to provide reasonable accommodations and cannot offer disabled people the type of assistance they rely upon in general population.

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[24] Mental Illness in Correction Settings: Hearing before the NYS Assembly (2014) (testimony of Dr. Homer Venters). Retrieved from http://www.nyc.gov/html/doh/downloads/pdf/public/testi/testi20141113.pdf.

[25] N.Y.C. Bd. of Correction, Minutes 8 (July 8, 2014).

[26] UNITED NATIONS OFFICE ON DRUGS AND CRIME, HANDBOOK ON PRISONERS WITH SPECIAL NEEDS 44–45 (2009).

People with physical disabilities are more prone to require sick call and special assistance from security staff and are thus more likely to file grievances or other complaints when security constraints, or, indeed a particular officer's lassitude, keeps them from getting the assistance they need. Reports from incarcerated people with physical disabilities indicate that some correction officers routinely punish people with physical disabilities with solitary confinement time in retaliation for their complaints about poor medical care.

People who suffer temporary disability because of serious injury face the same difficulties with daily functioning and require the same intensive medical attention.[27] They, too, endure dangerous neglect in isolated confinement.

The Board should exclude people with physical disabilities and serious injuries from isolated confinement to protect them from the serious health risks and humiliations that they would otherwise suffer in solitary confinement.

4. Adolescents and young adults must be excluded from solitary confinement.

Adolescents and young adults, like people with disabilities, are particularly vulnerable to the harms of solitary confinement. A growing number of authorities oppose placing young people in isolated confinement. At least two jurisdictions have introduced legislation to exclude adolescents from isolated confinement and one federal court settlement has imposed strict limitations.[28] The United Nations unequivocally opposed the practice as early as 1990.[29] A Joint Committee of the American Academy of Child and Adolescent Psychiatry distinguished between what it calls "seclusion," or extremely brief periods of isolation, and longer-term isolated confinement, and called for a categorical ban on the latter in juvenile facilities.[30]

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[27] Consider the case of Billy Davis, a California prisoner who was sent to solitary confinement after three brain surgeries. According to his mother's testimony to the U.S. Senate, the time Mr. Davis spent in solitary disrupted his recovery from his surgeries and caused him to endure longer suffering and lifelong irreversible injury. *See* Reassessing Solitary Confinement the Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Judiciary Comm., 112th Cong. (2012) (statement of Janet Davis).

[28] In February 2013, Florida introduced a bill to exclude youth from segregation except in emergencies. S.B. 812, 2013 Leg. (Fla. 2013), *available at* http://www.flsenate.gov/Session/Bill/2013/0812. The bill limits limit youth segregation to seventy-two hours. In 2012, California introduced similar legislation. S.B. 1363, 2012 Leg. (Cal. 2012). In 2012, Montana entered into a federal court settlement that excluded adolescents from segregated confinement for periods longer than seventy-two hours except under certain circumstances. Settlement Agreement, Raistlen Katka v. State of Montana, Cause No. BDV 2009-1163, at 4 (D. Mont. Apr. 12, 2012).

[29] United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, General Assembly Resolution 45/113 at IV(L)(66) (Dec. 14, 1990) ("All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.")

[30] JUVENILE JUSTICE REFORM COMMITTEE, AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY, SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (April 2012), http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders [hereinafter

Isolation alone compromises mental health. As one adolescent recounted, "When you're isolated from everybody else, you start to get some bad thoughts. I was bugging out."[31] These mental health effects can have fatal consequences. As with adults, the majority of suicides in juvenile correctional settings occur in isolation.[32] Cutting and other acts of self-harm are also prevalent among adolescents and young people in isolated confinement.[33]

Moreover, forty-eight percent of adolescents admitted to New York jails suffer from mental health issues at the time of admission, and that number does not include adolescents whose mental illness has not yet become manifest.[34] Like adults with mental illness, adolescents with mental illness, especially undiagnosed mental illness, are at a higher risk of debilitation by isolated confinement.

An additional vulnerability of adolescents and young adults is that their brains are still developing.[35] According to a leading expert in adolescent brain biology, "there is considerable evidence that the second decade of life is a period of great activity with respect to changes in brain structure and function."[36] Subjecting young people to the harmful conditions of isolated confinement while such development is underway places them at great risk for psychological damage.

Adolescents and young people also suffer serious physical harm from segregation. Because their bodies are still growing, the forced idleness and poor nutrition available in solitary confinement can lead to permanent developmental damage.[37] The mandated hour of outdoor recreation is inadequate to meet the need for aerobic and muscle-strengthening activity that youth require for healthy development, especially as recreation in solitary confinement occurs in a cell alone without exercise equipment. One adolescent explained that commissary food, which he needed to supplement the meager meals offered in isolated confinement, was completely banned in segregation.[38] He abided a nearly constant feeling of hunger during his time in segregation.[39]

AACAP STATEMENT]. The Committee specified, "seclusion should only be used for the least amount of time possible for the immediate physical protection of an individual, in situations where less restrictive interventions have proven ineffective." *Id.*

[31] Interview with M.W., Robert N. Davoren Center, Rikers Island.

[32] AACAP STATEMENT, *supra* note 30.

[33] HUMAN RIGHTS WATCH, GROWING UP LOCKED DOWN 29 (2012).

[34] *Id.* at 32–33. One study established that the mean age for the onset of symptoms of schizophrenia was nineteen. *See id.*; Nitgin Gogtay et al., *Age of Onset of Schizophrenia: Perspectives from Neuroimaging Studies,* 37 SCHIZOPHRENIA BULL. 504 (2011).

[35] Laurence Steinberg, *Cognitive and affective development in adolescence*, 2 TRENDS IN COGNITIVE SCIENCES 69 (2005), http://www.temple.edu/psychology/lds/documents/cognitiveandaffectivedevelopmenttics.pdf.

[36] *Id.* at 69.

[37] HUMAN RIGHTS WATCH, *supra* note 59, at 37–40.

[38] Interview with M.W., Robert N. Davoren Center, Rikers Island.

[39] *Id.*

Adolescents in solitary confinement in DOC facilities consistently report disruptions to their education. Although most young people are required to receive educational services while incarcerated in DOC custody,[40] those services effectively end when adolescents enter solitary confinement. In their place is what the DOC calls "cell study," in which adolescents receive a packet of school materials to complete on their own and are given the option to speak on the phone with a teacher.[41]

We support the adoption of § 1-17(c) but assert that it should include all vulnerable young people. The Board should exclude adolescents and young adults under 25 years old from solitary confinement to preserve their mental and physical health and to avoid irreversible damage to their development.

B. The Board should adopt rules that mitigate the harm to people in DOC custody by limiting the use of solitary confinement, excluding vulnerable populations, and improving due process.

Solitary confinement causes serious physical and psychological harm and should be used sparingly, if at all, as a tool of jail management. Limiting the use of solitary confinement to situations when it is a tool to temporarily restrain people from impending violence will accord with the recommendations of the American Bar Association, which recommends that "[s]egregated housing should be used for the briefest term and under the least restrictive conditions practicable."[42] It will also accord with the New York Constitution, which requires the DOC to balance "the harm to the individual resulting from the condition imposed against the benefit sought by the Government through its enforcement."[43]

1. There must be limits on the amount of time a person may be isolated.

The Board should adopt a minimum standard that limits the permissible length of an assignment to solitary confinement to fifteen days. Fifteen days is the recommended maximum isolation assignment under the U.N.'s current standards.[44]

The Board should also limit the aspects of solitary confinement that provoke violent behavior, including forced idleness and deprivation of human contact, by requiring that individuals placed in solitary confinement be allowed a minimum of four hours out of cell each day. The time out of cell

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[40] *See* DOC Directive #3503R (requiring educational services for all people eighteen and younger who have not received a high school diploma or equivalent held in DOC custody longer than ten days).

[41] HUMAN RIGHTS WATCH, *supra* note 33, at 43.

[42] ABA STANDARDS, *supra* note 15, at No. 23-2.6(a).

[43] Cooper v. Morin, 49 N.Y.2d 69, 79 (1979).

[44] U.N. Solitary Report, *supra* note 17. Other jurisdictions have also begun to discuss serious limitations on the time that a person can be held in isolated confinement. In January 2013, Massachusetts introduced legislation that would limit disciplinary segregation sentences to two weeks in all cases and require the sentence be no longer than required to prevent threats to security. H.B. 1486, 188th Gen. Court (Mass. 2013), *available at* http://www.malegislature.gov/Bills/188/House/H1486.

will alleviate isolation and permit people to interact with others to the extent practicable.[45] DOC should offer out-of-cell activities designed to reduce idleness and teach the skills necessary to resolve conflicts without resorting to violence.

2. Vulnerable groups should be excluded from isolation.

Vulnerable groups should be excluded from solitary confinement. The Board should require DOC to create alternative safety restrictions that do not require people to be isolated. CAPS should be used as a model for the creation of other forms of housing units for vulnerable groups that engage in acts that would otherwise result in a sentence to solitary confinement. The Board should establish standards that limit harm to young people and people with disabilities while still allowing the DOC to maintain security and safety in its housing areas. The alternative safety restrictions must be: (1) no more restrictive than necessary to prevent violence; (2) not punitive in nature; and (3) based on the positive reinforcement of behaviors. Restrictions should be limited to those necessary to restrain violence. Restrictions for people with disabilities must also be consistent with a long-term therapeutic plan designed to address the underlying disability.

Punishing symptoms of mental illness or adolescence will do nothing to stop future violence. Alternative safety restrictions must be designed to prevent incarcerated people from acting out violently by addressing the root cause of violent conduct through therapy and education. The DOC should collaborate with the DOHMH and the Department of Education to learn best practices for preventing violence.

A well-designed alternative safety restriction will preserve continuity of care, advance therapeutic goals, and provide people with new tools to shape their behavior that will, in turn, aid them in remaining free from incarceration.

3. Isolation should be based on security objectives instead of punishment.

The Board should specify in its standards the circumstances under which an individual can be placed in solitary confinement. A person should only be placed in solitary confinement when he or she represents an ongoing threat to the physical safety of others. No one should be placed in solitary confinement as punishment for a nonviolent rule violation.

The Board must adopt standards that end the DOC practice of using solitary confinement as a punishment for minor jail misbehavior and tailor isolation to safety and security objectives.

4. DOC should be directed to create an alternative disciplinary system.

DOC should develop a disciplinary system that provides incentives for positive behavior, offers out-of-cell programming tailored to the individual's needs, and establishes alternative sanctions for behavior that violates nonviolent disciplinary rules.

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[45] *See* ABA STANDARDS, *supra* note 15, at No. 23-3.8(c).

5. The Board should adopt rules that improve the due process required to place a person in solitary confinement.

Currently, DOC provides a skeletal hearing process that results in numerous successful court challenges for procedural violations. This hearing process should be improved in the following ways:

First, the disciplinary hearing should be overseen by an independent and impartial hearing officer who is not employed by the DOC. Allowing correction officers to serve as hearing officers raises unnecessary questions about the partiality of the disciplinary process. By employing a neutral decision-maker to oversee the disciplinary hearings, the minimum standards will help ensure that assignments to solitary confinement are based on the permitted criteria.

Second, incarcerated people should be allowed to have the assistance of a trained and competent advocate who is familiar with DOC disciplinary procedures. Current regulations do not allow incarcerated people to benefit from such assistance. The addition of a competent advocate would help focus the hearing on the nature and severity of the ongoing threat of violence. The accused person should have an opportunity to present evidence and to call and cross-examine witnesses.

Finally, DOC should produce a record of the hearing, which it provides to the person facing a disciplinary sanction for appeal and to the Board for oversight. A person should have the right to appeal an assignment to solitary confinement. The Board should receive detailed information describing the use of solitary confinement so that it can determine whether the DOC has properly limited its reliance on isolated confinement.

6. Increased training for staff is necessary.

Correction staff who work in solitary confinement should receive anti-violence, dispute resolution, and communication skills training as well as training in recognizing signs of psychiatric distress. The Board should adopt a standard which requires such training.

II. The Board should reject amendments to the Minimum Standards that place additional restrictions on broad groups of incarcerated people where the restrictions are not narrowly tailored to specific security concerns but are instead based on ease of correction staff.

The bulk of the proposed rule consists of reductions in the Minimum Standards for a broad category of people to be placed in the highly restrictive and punishing environment of ESHU. The Board has an obligation to consider the human dignity and rights of the individuals who could be subjected to the deprivations of the ESHU. Before stripping away protections that have been adopted as *minimum* requirements governing the treatment of people incarcerated in the City jails, the Board must be convinced of the absolute necessity of such restrictions. The restrictions on lock-out time, religious services, law library, visits, packages, publications, and correspondence beyond what is permitted by the current standards are not necessary, and the Board must reject them.

Incarcerated people, especially young people, have been scapegoated as the reason for the violence in the jails for years. But the Department of Justice's (DOJ) careful investigation revealed that DOC

staff engaged in the "rampant use of unnecessary and excessive force."[46] The DOJ identified systemic deficiencies that are not only "largely responsible for the excessive and unnecessary use of force by DOC staff" but also "lead to the high levels of inmate violence."[47] Identified systemic inadequacies included: failing to report and false reporting about the use of force, inadequate investigations and discipline of staff, an inadequate classification system, problems with the grievance system, and multiple supervision, training, and management failures. If one needed confirmation of one role that staff play in Rikers' culture of violence – introduction of contraband, including deadly weapons – it was provided by the disclosure that a Department of Investigation employee posing as a correction officer was easily able to smuggle drugs, alcohol, and a razor blade through multiple layers of security. Just as significantly, the DOJ identified punitive housing areas as part of the problem and called the DOC use of prolonged solitary confinement of adolescents "excessive and inappropriate."[48] With its ESHU proposal, the DOC continues to blame increased violence on incarcerated people, and instead of employing interventions that could reduce violence, DOC seeks to develop additional ways to subject detainees to harmful isolation.

The DOC proposal reflects a totally punitive approach toward the people incarcerated in the ESHU with no concern for their well-being or respect for their humanity. The reduction in lockout time is based on staffing convenience. No programming directed toward violence reduction is proposed for such units. Despite the DOJ findings, the DOC fails to acknowledge that some individuals who are convicted at disciplinary hearings for assaulting staff are actually victims of assault by correction staff, and it does not provide any procedure through which individuals can meaningfully challenge their placement in ESHU. The Board must not accept the DOC assertion that there are at least 250 people who are such extreme security threats that they must be deprived of all of their heretofore minimal protections, throughout the entirety of their jail stay, no matter the length of stay or their good or improved behavior. This is especially the case given that the DOC proposal does not require any showing that people held in the ESHU actually pose an ongoing threat to any facility's safety and security.

The JAC rulemaking petition specifically provided for a disciplinary system that provided incentives for positive behavior and segregated housing in which programming was offered and was tailored to the individual's needs, designed to reduce violent behavior, and non-punitive in nature. JAC recommends a system that promotes behavioral change by reinforcing positive behavior rather than relying entirely on punishment. Implementation of progressive, positive reinforcement options should be part of the Board's deliberation. The Board's own experts endorse this view:

> One of the commonest mistakes made about punishment is that it prevents or deters violence. On the contrary, more than a century of research on the psychology of punishment has made it clear that punishment, far from preventing violence, is the

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[46] CRIPA Investigation of the NYC DOC Jails on Rikers Island, U.S. Department of Justice, August 4, 2014, p. 3.

[47] CRIPA Report, p. 4.

[48] Although the DOJ focused on the adolescent population, it noted that its investigation "suggests that systemic deficiencies identified in this report may exist in equal measure at the other jails on Rikers." CRIPA Report, p.3. Indeed, an 11-month study completed by Department of Health and Mental Hygiene (DOHMH) found that 129 incarcerated people experienced serious injuries in altercations with DOC staff. In 80% of the cases in which incarcerated people were interviewed by DOHMH staff, the beatings reportedly occurred after the incarcerated person was handcuffed.

> most powerful tool we have yet created for stimulating violence. Repeated studies of child development, for example, have shown that the more severely children are punished, the more violent they become, both as children and as adults.[49]

Restrictive units are unlikely to actually reduce violence. These punitive units, in which everyone housed there is viewed as the worst of the worst, have the potential to breed more violence and increase conflict between staff and incarcerated individuals. People placed in these units have little incentive to comply with jail rules given that there is no mechanism for release from the ESHU back into general population or any possibility of having even some of the restrictions lifted.

A. The categories for placement in ESHU are overly broad.

The overly broad categories of who may be confined in ESHU invite abuse of discretion from a City agency that, according to the DOJ CRIPA report, has a recent history of doing exactly that – specifically with regard to segregation. As noted above, the DOJ found that the DOC use of segregation and isolation to manage its adolescent population was "excessive and inappropriate." The criteria for being placed in ESHU are so broad as to include any person that DOC believes "otherwise presents a significant threat to the safety and security of the facility if housed in general population housing." If adopted, correction staff will be free to punish people based solely on associations or information gleaned from "confidential informants" which people will not have the opportunity to dispute. We routinely see entire cellblocks assaulted by correction officers and written up for disturbances following a fight between only small groups.

The criteria for placement in ESHU do not require a person to have actually engaged in violent behavior during his or her current incarceration. The procedure for confinement in ESHU does not require a hearing, unless requested, and does not provide for counsel or any other advocate. We are not confident that the individuals whom DOC claims pose a significant security threat in fact do, and further submit that no actions, even violent ones, merit the life-long restrictions to civil rights and freedoms without more robust due process that includes oversight from independent agencies.

B. The procedure for ESHU placement is inadequate.

The procedural protections in the proposed rule are plainly inadequate. The procedure for placement in ESHU falls below even what DOC currently requires for placement in solitary confinement, despite the fact that a person may be held in ESHU throughout his or her incarceration. The Board should require a hearing before a trained and impartial hearing officer who is not a DOC employee before a person can be placed in ESHU. The Board should also permit the person facing a possible ESHU placement to have the services of an attorney or a trained and competent advocate familiar with the disciplinary hearing process and not employed by the DOC. The person should also be allowed to present evidence, and call and cross-examine witnesses. The Board should also provide for a periodic review of whether the individual remains a security threat or whether the person could be transferred out of ESHU and back to general population.

Before extensive indefinite restrictions are imposed on an individual, a fair process through which an individual can challenge the assertion that she or he is a security threat must be afforded.

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[49] Report to the New York City Board of Correction by Drs. James Gilligan and Bandy Lee, September 5, 2013, p. 5.

C. The restrictions are substantial and unnecessary.

The proposed restrictions are substantial, seeking significant departures from standards of care that for decades have been considered the bare minimum of what is legally permitted. The Board must weigh the purported advantages of the restrictions for reducing violence against the costs of these deprivations to the individuals subjected to them. Such consideration should include an examination of exactly how the proposed restriction would achieve the purported goal. The Board must include, in weighing such cost, the concerns of the individuals who would possibly be subjected to them – incarcerated people, formerly incarcerated people, and their family members.

1. Recreation

The proposed amendment to the Recreation Standard may be the one that could result in significantly more isolation than the proposed seven-hour reduction in lockout time suggests. The amendment limits recreation rights in ESHU to the required one hour daily in the yard, or in inclement weather, in the gym.

If adopted, individuals in ESHU will not be entitled to an outdoor recreation area that allows for direct access to sunlight and air, or to a yard and gym areas sufficiently large for exercise (as required by § 1-06(b)), or to recreation equipment or appropriate outerwear during cold or wet weather (as required by § 1-06(d)). All cited Standards' exclusions will be disincentives for ESHU individuals to go to the yard even during their lock-in periods, in addition to the fact that they must undergo a strip search anytime they leave the housing area.

During lock-out, individuals in ESHU will not have access to recreation/exercise within the housing unit in the form of access to cell corridors (and adjacent service and supply areas), or to exercise programs and recreational items in the dayroom (as required by § 1-06(e)). In fact, without the right to "engage in recreation activities within cell corridors and tiers, dayrooms and individual housing units," as provided by § 1-06(e), people in ESHU will have no Standards' right to be in a dayroom and therefore will be subject to exclusion if future DOC Commissioners alter the ESHU plan to offer dayroom access during lock-out periods.

Amending § 1-06, combined with the current ESHU plan, will mean that DOC will offer individuals a choice either to go to the dayroom during lock-out periods or to remain in their cells. Some individuals may consider being confined in the dayroom dangerous or threatening, so by default, may spend most of their time locked in their cell because they will not be permitted to move freely on the unit during lock-out periods. This change to the Standard will result in ESHU individuals having to gain a touring officer's attention to ask permission to come out of their cell during lock-out to use sites such as the shower, phone area, or wash room. Without the right to dayroom access, all ESHU individuals may be mandated to eat in their cells, even during their lock-out period. The amount of actual or potential lock-out time will be significantly reduced, as well as access to essential exercise, fresh air, and sunlight, if the proposed amendment is adopted.

2. Religious Services

The proposed amendment extends to individuals in ESHU the same restriction which is imposed on people in solitary confinement. Limiting congregate religious activities, as proposed, will likely result

in some individuals in ESHU not being permitted to participate in them at all. DOC is currently out of compliance with Minimum Standard requirements for religious services as it does not have enough chaplain staff to provide the required services. Without adequate staffing, there is no reason to believe that people in the ESHU will be able to participate in religious activities.

The Board should consider that adequate access to religious services can be extremely therapeutic for those who choose to partake in them. Providing individuals incarcerated in ESHU with the means to self-reflect and uphold their personal faith and beliefs could be quite rehabilitative and reduce any perceived threat of harm. If the purpose of the ESHU is to reduce violence, access to religious services should not be restricted.

3. Law Library

The proposed amendment to restrict access to the law library in the same manner in which it is restricted for individuals in solitary confinement should be rejected. DOC claims that "adequate services can be provided to inmates within their cells."[50] Yet, that is not the reported experience of many individuals who have been in segregation.[51] The Board is certainly aware that services that are required to be provided in segregation – such as recreation – are not.[52]

Access to law library is essential for incarcerated individuals, as it is often the only means they have to educate themselves on the nature of their cases before and after their court dates. To deny a person access to that knowledge is to deny them a necessary part of a fair trial.

4. Visit Restrictions

Visiting incarcerated loved ones helps families stay together, promotes better reintegration into the community upon release, and reduces recidivism. DOC claims that the across-the-board ban on contact visits is justified by the need to keep out contraband but provides no data about the number of weapons that actually enter the facility through visitors. The DOC already subjects visitors to onerous search procedures. The DOC completely ignores the fact that contraband is more likely to enter the jails through the staff who are not routinely screened.[53] The DOC has the authority under the current standards to deny contact visits when there is evidence that it is warranted.

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[50] Ponte, J., Commissioner of New York City Department of Correction. "Request for Variance: Enhanced Supervision Housing." Letter to the New York City Board of Correction. 22 October, 2014.

[51] For example, in Michael Ellison's statement to the Board of Correction which was provided at the March 11, 2014 Board meeting, he described the inadequacy of law library in solitary confinement at Rikers Island as follows: "there is almost no access to the law library. We get copied papers out of the books but this is distributed at random. A guy comes around and distributes copies of pages of books. I think that the law library access should be taken a lot more seriously."

[52] *Barriers to Recreation at Rikers Island's Central Solitary confinement Unit*, City of New York Board of Correction Staff Report, July 2014.

[53] The *New York Times* reported on November 4, 2014, that a newly released Department of Investigation report indicates that visitors to City jails may be the source of some contraband, but that a large proportion of the illegal trafficking is carried out by uniformed guards and civilian employees: "Given the extent of smuggling that we know goes on and given what we know about what's coming in from visitors, a lot of stuff has to be coming in from guards and employees because this stuff doesn't magically appear," said Mark

For DOC to create units in which no one can ever have contact visits, no matter the reason for their placement, their length of stay, or how well they follow rules is inhumane.

Placing restrictions on who may visit an incarcerated person will significantly delay the ability of individuals to receive visits and has the potential to deny some individuals of all family contact. Given the realities of mass incarceration, many people in this City have a criminal record.

5. Packages and publications

Performing thorough contraband searches in a specialized unit is not that onerous. The DOC ignores the hardship that its proposed packages and publications restrictions will have on poor families. Instead of being able to provide items that the family already owns, they will be required to purchase them (paying the price of the vendor) and pay for the shipping as well.

6. Correspondence

Unfettered monitoring of all written correspondence of everyone placed in the ESHU without some individualized suspicion that the correspondence is a threat to the safety or security of the facility entirely deprives individuals of any privacy in their communications and provides for the possibility of information obtained to be improperly used by correction staff. The standards include procedures for monitoring correspondence where there is individualized suspicion that monitoring is justified.

D. Vulnerable populations are not excluded from ESHU, and there are no requirements for access to treatment and education in ESHU.

The Board has not provided specific protections for vulnerable populations, such as young people and people with mental illness, developmental and intellectual disabilities, and physical disabilities.

We are deeply concerned that there are no specific provisions regarding mental health treatment in these units. Inadequate mental health treatment in segregation units has plagued the City jails, and the systemic neglect of people with mental illness in the jails has led to tragic deaths. In addition, we are concerned that DOC has not made any commitment to provide services and supports to people with disabilities who may be placed in ESHU.

Young people are entitled to receive a free public school education until age 21, or receipt of a high school diploma, whichever comes first. This education must be offered in a *safe and secure learning environment.* Currently DOC does not provide adequate educational services in solitary confinement. The proposed rule does not specify how DOC will comply with its obligation to provide education in ESHU.

Peters, the Department of Investigation commissioner. The article is available at: http://www.nytimes.com/2014/11/07/nyregion/rikers-island-undercover-investigator-contraband-inquiry.html?hp&action=click&pgtype=Homepage&module=second-column-region&region=top-news&WT.nav=top-news.

Many incarcerated young people and adults have expressed concern and outrage over the terrible quality of the educational services that they have received. A common theme is that worksheets are provided without any sort of instruction and that opportunities to get feedback or answers to questions on those worksheets are few and far between. The rulemaking process should assure that the DOC would comply with its obligation to provide education in ESHU and raise the quality of the typical educational experience.

We urge the Board to reject any decrease in the human rights protections provided by the Minimum Standards.

Sincerely,

NYC Jails Action Coalition