

December 15, 2014

Gordon Campbell
Chair
NYC Board of Correction
51 Chambers Street, Room 923
New York, NY 10017

Dear Mr. Campbell and Members of the Board of Correction,

I am writing to urge the Board to vote against the Department of Correction's (DOC) proposed rule for the implementation of Enhanced Supervision Housing (ESH) units at Rikers Island. In its present form, the proposed rule contains serious flaws that will expose individuals detained at Rikers to increased abuse. In particular, the lack of due process afforded to individuals who would be placed in ESH and the DOC's failure to commit to providing individuals in ESH with adequate programming make it clear that ESH will worsen the conditions at Rikers. Moreover, since ESH, as proposed, would not replace solitary confinement but rather lead to the placement of more individuals in extreme isolation, it defies the understanding that deprivation of social contact is unproductive toward both jail security and the rehabilitation of incarcerated people.

Given the pattern of abuse and brutality that has come to light through investigations carried about by the Department of Justice (DOJ), the media, and advocacy organizations such as The Bronx Defenders and the Jails Action Coalition (JAC), the Board's deference to the DOC's plan at the November 18th Board meeting was disappointing. Nevertheless, I am confident that the flaws in the proposed rule are so egregious that the Board will take steps to ensure that any reforms to the use of solitary confinement and other forms of extreme isolation reflect a sincere commitment to improving the conditions at Rikers. To do anything less would be to abdicate the Board's responsibility to provide oversight for the City's jails. Enclosed, please also find a copy of *Voices from the Box*, The Bronx Defenders' report on solitary confinement at Rikers Island.

Criteria and Procedure for Entering ESH

The criteria for placement in ESH that the Department has listed are overbroad. In particular, the criterion describing "inmates who otherwise have either engaged in violence or demonstrated involvement in serious gang activity" threatens to unfairly expose individuals whom correction officers merely suspect are dangerous to the restrictions of ESH. Indeed, the criteria that the Department has listed are so overbroad and the standards for meeting them so low that there is

every reason to expect that in practice this policy would allow the Department to place individuals in ESH simply because they have fallen out of the favor of correction officers.

The hearing process for placements in ESH is also unfairly stacked against incarcerated people. The Department has proposed to replicate the hearing process that it uses for placements in solitary confinement. As we have discovered through interviews with over 60 of our clients, these hearings serve little purpose beyond allowing the DOC to falsely claim that it respects due process. The “independent adjudication officers” who preside over hearings are correction officers who have every reason to side with their peers in disputes against incarcerated people. Although the DOC claims that incarcerated people are permitted to call witnesses and present evidence, correction officers often deny these rights in practice. Furthermore, the standard of evidence for these hearings is unacceptably low. The Board should require that the Department provide clear and convincing evidence for any placement in ESH or solitary confinement and that all hearings be held before an administrative law judge.

Most significantly, the Department does not allow independent attorneys or advocates to represent incarcerated people in these proceedings. These hearings cannot be considered fair until incarcerated people have advocates present to represent them. Finally, the Board of Correction should not permit the DOC to place individuals in ESH before the conclusion of hearings. Otherwise, correction officers will be able to subject any individual on Rikers to ESH restrictions without providing justification.

Programming and Mental Health Treatment

Unless ESH involves increased access to educational and therapeutic programs compared to general population, as we understand is the case in CAPS, the potential of ESH to reduce violence at Rikers is exceedingly minimal. Given the repeated failures of the DOC to provide my organization's clients with adequate access to law library services and the total absence of programming in solitary confinement, I am extremely skeptical of the Department's claims that it will be able to provide these services to individuals in ESH. With the opening of the “Second Chance” unit at Rikers, the DOC has acknowledged the potential for positive programming to reduce violence at Rikers. The Department must drastically expand these types of programs if it hopes to implement restrictive housing units in a manner that will improve the conditions at Rikers.

The Department's request to omit mental health evaluations as a requirement for placements in ESH is shocking considering the abuses of mentally ill individuals at Rikers that have recently come to light. Restrictions of the type and degree that the Department is seeking to implement

for ESH are only acceptable for individuals with mental illnesses if those restrictions are accompanied by comprehensive and therapeutic mental health treatment administered by competent mental health professionals. While the specific details of the CAPS program remain unclear, what little knowledge that Bronx Defenders advocates currently have of CAPS leads me to believe that the DOC should use this program or similar housing units as the only placement for individuals suffering from mental illness whom correction officers accuse of infractions.

Restrictions and Surveillance Related to Visitors, Packages, and Mail

The DOC's proposed restrictions for ESH relating to visitors, packages, and mail are unnecessary and will have broad and devastating consequences for individuals held at Rikers. The proposed "approved list of visitors" would give the Department the ability to prohibit visits from any individual with a criminal record. Given that most of the individuals detained at Rikers come from over-policed communities, this requirement would give the Department unfairly wide discretion to prohibit visits from family members and friends. Far from preventing violence at Rikers, depriving incarcerated people of visits would undoubtedly inflict serious psychological damage upon them and lead to increased tensions at Rikers as a result. As strong relationships with family and friends outside are crucial to successful reentry, this policy will also increase the likelihood of re-arrest upon release from jail. Likewise, there is no reason for the DOC to expand existing restrictions on contact visits, which already prohibit visits for "inmates who have either used or possessed a scalpel or like blade while in custody under the present charge."

The Department's request to have families send packages through approved vendors will expose the families of individuals held at Rikers to exorbitant fees that many family members will likely be unable to afford. I recognize that the Department needs to prevent individuals from smuggling weapons into Rikers via packages, but the Department – not the families of incarcerated people – must bear any costs related to this goal. As the DOC is aware, there is no fail-safe method for keeping contraband out of jail and attempts to do so must be balanced with protecting incarcerated people's fundamental rights. If the recent Investigation Department inquiry is any indication, the DOC might be better served focusing on smuggling carried out by correction officers. Similarly, the DOC's request for increased monitoring of incarcerated people's mail is unnecessary and unfair. The Department has not articulated sufficient reasons to depart from its current policies regarding the surveillance of mail.

Punitive Segregation

The creation of any new housing units with increased lock-in time must correspond with an equal or greater decrease in solitary confinement units (referred to by the DOC as "punitive segregation"). While ESH has the potential to be a significant improvement upon solitary

confinement, this will only be true if at least one solitary confinement bed is removed from use for every ESH bed created. Similarly, the Department must clarify its plans for “punitive segregation lite” and the CAPS program before the Board can accurately assess the potential impact of ESH. The Board of Correction should push the DOC to invest in rehabilitative housing units such as CAPS and the new “Second Chance” unit as alternatives to solitary confinement instead of ESH. On account of the apparent absence of therapeutic and educational programming in ESH, I urge the Board to prohibit the DOC from placing individuals directly from solitary confinement into ESH. Incarcerated people who have experienced the trauma of solitary confinement should only be transferred to housing units where there is unimpeded access to mental health treatment as well as educational and therapeutic programming.

In conclusion, I urge the Board of Correction not to approve the DOC’s proposed rule. The Board should only allow the DOC to create new housing units with increased lock-in hours if these new units include increased access to educational and therapeutic programming. Moreover, these units should be used in place of solitary confinement; any increase in restrictive housing must accompany a corresponding decrease in solitary confinement cells. The Board of Correction should require the DOC to commit in writing to a comprehensive plan that involves increased programming for incarcerated people, therapeutic alternatives to solitary confinement, and improved care for individuals suffering from mental illness.

If you would like to speak with me regarding this matter, please do not hesitate to reach out to me at RobinS@bronxdefenders.org or at (718) 838-7852.

Sincerely,



Robin Steinberg
Executive Director
The Bronx Defenders

The Bronx Defenders

Redefining public defense.

VOICES FROM THE BOX

SOLITARY CONFINEMENT AT RIKERS ISLAND



SEPTEMBER 2014

VOICES FROM THE BOX

SOLITARY CONFINEMENT AT RIKERS ISLAND

**A REPORT BY THE BRONX DEFENDERS
SOLITARY CONFINEMENT PROJECT**

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The Bronx Defenders

The Bronx Defenders provides innovative and holistic criminal defense, family defense, civil legal services, and social work support to indigent people in the Bronx. Our staff of over 200 represents approximately 35,000 individuals each year and reaches hundreds more through outreach programs and community legal education.

The Bronx Defenders Solitary Confinement Project was launched in the summer of 2013 to document the experiences of Bronx Defenders clients currently or formerly held in solitary confinement and to develop strategies for effective advocacy on their behalf.

For more information visit:
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Cover art by Molly Crabapple

Introduction

On a typical day, Juwan sits in his cell, waiting for his next meal. He rarely is able to go outside. He was just seventeen years old when he first entered solitary confinement. When Juwan's food arrives, a correction officer often taunts him, warning him that the meal has been tainted by urine, feces, or other bodily substances. Unlike many of the individuals held in solitary confinement at Rikers Island, Juwan is able participate in group therapy sessions, but the limited mental health services that he does receive do little to change his assessment of life in solitary confinement: "I feel like I want to kill myself." Already over 400 days into his stay in one of Rikers Island's solitary confinement units, Juwan does his best to get through the time by speaking with his girlfriend on the phone whenever he can, but his despondency is more than understandable; his infraction tickets indicate that he still has about 1,000 days left in solitary.

Between July 2013 and August 2014, the Bronx Defenders Solitary Confinement Project completed 59 interviews with Bronx Defenders clients currently or formerly held in solitary confinement at Rikers. The clients interviewed were not selected for the severity of the abuse they endured or for the duration of their stays in solitary confinement; the experiences included in this report represent the daily horrors of solitary

Together, the interviews expose a systemic practice that is unquestionably inhumane, raises serious Eighth Amendment issues, and deserves the label torture.

confinement at Rikers Island. Each time an attorney or social worker at The Bronx Defenders learned that a client had been placed in solitary confinement, she would refer that client for an interview.¹ Project members also conducted eight interviews with family members of clients about the impact of having their loved ones held in solitary confinement. Together, the interviews expose a systemic practice that is unquestionably inhumane, raises serious Eighth Amendment issues, and deserves the label torture.

The majority of the clients interviewed for the Project had not been convicted of any crime; they were placed in solitary confinement while awaiting trial. Rikers Island holds both individuals who are detained pretrial and people who have been sentenced to less than one year of incarceration, with the former group accounting for the majority of the island's population. These individuals are innocent in the eyes of the law, but are either unable to afford bail or detained without bail.²

¹ Each time a Project member met with a client, he or she would offer to conduct an interview regarding that client's experience in solitary confinement and assist the client in filing *pro se* Article 78 forms, which currently function as the primary method for appealing placements in solitary confinement at Rikers. Both the interviews and Article 78 filings were completely voluntary. We would like to thank the staff of the New York City Board of Correction for assistance with obtaining housing information for our clients incarcerated at Rikers Island.

² Many people detained at Rikers pretrial are unable to afford low amounts of bail. These individuals are exposed to the possibility of solitary confinement in large part due to poverty. According to the most recent New York City Criminal Justice Agency (CJA) annual report, 43% of individuals charged with non-felony offenses for whom bail is set at \$500

Out of the 59 clients interviewed, 54 were male and 5 were female. Over half of the clients interviewed were between the ages of 16 and 20 at the time of their placements in solitary. The median age for the clients interviewed was 20. The median number of days in solitary confinement to which clients were sentenced was 90. At least 72.9% of the clients interviewed suffered from mental health issues.³

Table 1: Overall Statistics

Total Number of Clients Interviewed	59
Male Clients	54
Female Clients	5
Median Age	20
Median Days Sentenced to Solitary Confinement	90
Percent of Clients with Mental Health Issues	72.9%

Although all of the information gleaned from the interviews was self-reported by clients of The Bronx Defenders, investigations conducted by the United States Attorney’s Office for the Southern District of New York and the *New York Times* have confirmed that the interviews paint an accurate picture of our clients’ experiences at Rikers. While the New York City Department of Correction refers to this policy as punitive segregation, the interviews conducted through the Project leave no doubt that this practice is in fact solitary confinement.

As a holistic, client-centered public defender office, The Bronx Defenders is committed first and foremost to direct advocacy on behalf of our clients. We consider it a victory that on 59 occasions and counting, we were able to have our clients produced from their cells to break the soul-crushing monotony of solitary confinement. We also count as victories each time that the filing of *pro se* Article 78 forms resulted in a reduction to a client’s total days in solitary. Looking ahead, our hope is that this report will help bring about long-term reform by pushing policymakers in New York City and beyond to listen to the stories of people who have experienced solitary confinement firsthand and reconsider the use of this unimaginably devastating practice.⁴

and or less and 47% of individuals charged with non-felony offenses for whom bail is set at between \$501 and \$1,000 are unable to post bail. *See* New York City Criminal Justice Agency, *Annual Report 2012*, (January, 2014), <http://www.nycja.org/library.php>.

³ For the purpose of this report, a client is described as suffering from mental health issues if he or she was clinically diagnosed with a mental health issue or if he or she was receiving mental health treatment while in solitary confinement. The actual percentages of clients suffering from mental illness are likely higher than the figures included in this report due to undiagnosed and untreated issues. According to an internal study cited by the *New York Times*, approximately 40% of all inmates at Rikers Island suffer from mental illnesses. *See* Michael Winerip and Michael Schwartz, “Rikers: Where Mental Illness Meets Brutality in Jail,” (July 14, 2014), <http://www.nytimes.com/2014/07/14/nyregion/rikers-study-finds-prisoners-injured-by-employees.html>.

⁴ The Bronx Defenders participates in the Jails Action Coalition (JAC) and collaborates with the New York Civil Liberties Union (NYCLU), the New York Campaign for Alternatives to Isolated Confinement (CAIC), and other groups

Clients' Overall Impressions of Solitary Confinement

“Solitary is torture.”

“They treat you like an animal.”

“It can make you go crazy.”

“The CO’s feel like they can do whatever they want.”

“There are so many other ways to deal with people. It breaks you down.”

“If you don’t want to starve, you don’t want to be in the box.”

“Depressed. Lonely. Away from everything.”

“You’ll think twice about putting your dog in a cage.”

The first half of this report details key areas of concern arising out of our clients’ experiences in solitary. The second half includes recommendations for the Department of Correction and Board of Correction to implement moving forward. Although our ultimate recommendation is that the Department of Correction should end the use of solitary confinement, we have included a number of intermediate steps that the Department of Correction can take in the interim. By reducing the suffering experienced by individuals held in solitary confinement and thus better preparing them for reentry into general population and society, these recommendations will improve the safety and well-being of not only inmates, but also correction officers, civilian staff members, and the general public.

working to end solitary confinement at Rikers Island. The Bronx Defenders fully supports the JAC Petition to the New York City Board of Correction (available at www.nycjac.org/proposedrules/).

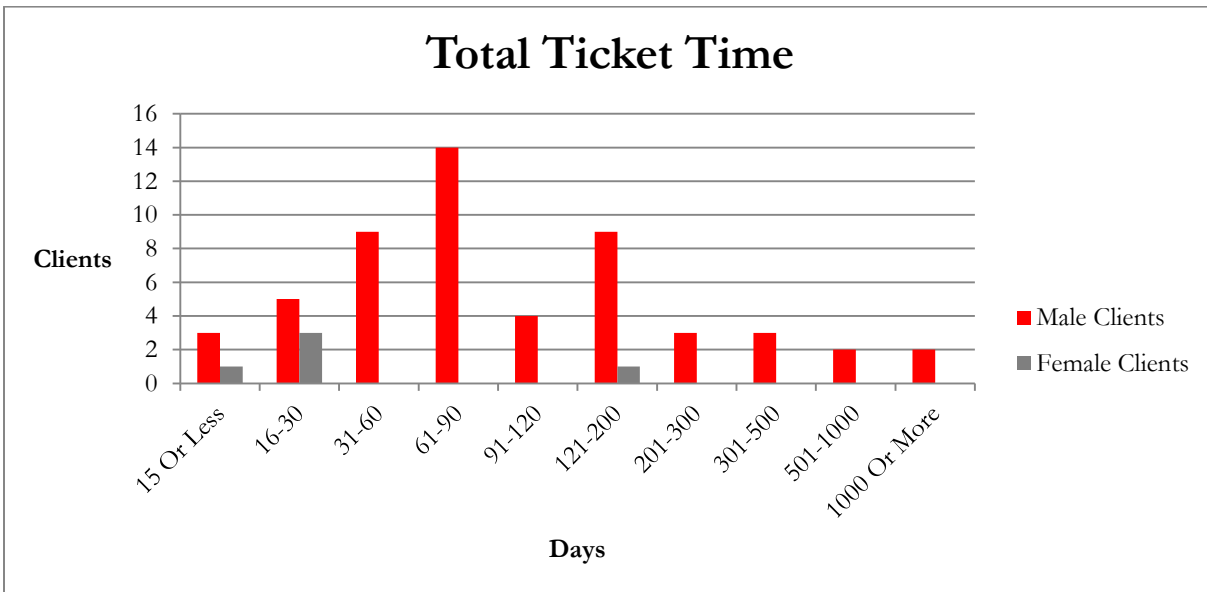
Key Areas of Concern

Duration of Confinement

The lengths of time for which individuals incarcerated at Rikers are sent to solitary confinement are egregiously disproportionate to their alleged infractions. As measured by total days and by hours per day, the duration of solitary confinement at Rikers is inexcusably extreme.

In October of 2011, United Nations Special Rapporteur on Torture Juan Mendez published a study in which he concluded that the use of solitary confinement for more than 15 days should be considered torture.⁵ Out of the 59 clients interviewed through the Project, only four spent 15 days or less in solitary confinement. In other words, over 93% of the clients interviewed were subjected to punishments that a leading expert in the field would consider to be torture.

In fact, most of the clients interviewed spent much more than 15 days in solitary confinement. In a pattern that repeated itself many times over, clients recounted being sent to “the box” for an initial period that generally ranged from 30 to 90 days, only to find that once they were in solitary it became incredibly easy to receive additional tickets for minor offenses and various perceived slights against correction officers. As a result, many clients reported astoundingly high total ticket times that they had accumulated in large part from infractions that they were accused of committing while held in solitary confinement. Michael, an 18-year old client facing over 1,000 days in solitary, recounted how he received additional tickets each week but felt that he needed to act out in order to receive basic services.



⁵ UN News Centre, *Solitary Confinement Should Be Banned in Most Cases, UN Expert Says*, (October 18, 2011), http://www.un.org/apps/news/story.asp?NewsID=40097#.U_YDbrxdXp4.

Some individuals spend fewer days in solitary confinement than their total ticket times indicate because they are released from custody or moved to a correctional facility in a different part of New York before the conclusion of their terms in solitary. However, a majority of the clients interviewed for the Project had served most or all of their ticket times by the time of their interviews. The average and median amounts of time that clients had already spent in solitary confinement prior to their interviews were 82.8 and 62 days, respectively. Out of the 21 clients with total ticket times of more than 100 days each, at least 14 had been in solitary confinement for 90 or more days prior to their interviews. The two clients with over 1,000 days of total ticket time had spent approximately 380 and 450 days in solitary confinement prior to their interviews.

When clients are released from Rikers before the conclusion of their total ticket times, their remaining days may become “owed time,” meaning that if they return to Rikers at a later point in their lives, they might be placed back in solitary confinement even without the occurrence of a new infraction. Even worse, some clients were arraigned on new criminal charges due to alleged conduct at Rikers, enabling correction officers not only to extend those clients’ time in solitary but also their time at Rikers.

Many clients spent over 23 hours in their cells on a typical day, leaving only to take showers.

The astronomical total ticket times caused extreme feelings of hopelessness in clients. This, in turn, often led clients to feel that it did not matter if they received additional infraction tickets because they knew that they would likely be held in solitary until they left Rikers. Victor, an 18-year-old client with over 900 days of total ticket time, explained his feelings as follows: “I don’t give a damn...I’m never getting out of here.”

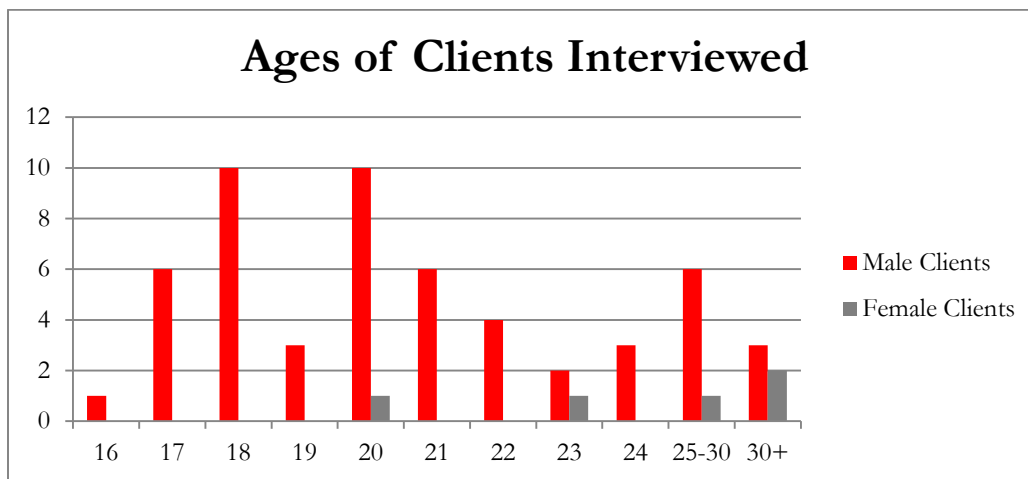
The most common alleged infraction for which clients were placed in solitary confinement was fighting with other inmates (52%). However, clients were also placed in solitary for non-violent behavior such as disobeying orders, failing drug tests, and cursing at correction officers. Moreover, at least one client was placed in solitary for fighting even after a correction officer submitted a written statement indicating that the client had fought in self-defense.

The duration of solitary confinement at Rikers is also extreme on a day-to-day basis. Many clients spent over 23 hours in their cells on a typical day, leaving only to take showers. Phone calls take place inside of individuals’ cells, as do many mental health counseling sessions. For most clients, court appearances and visits provided the only respite from confinement in their cells.

Age

The most disturbing revelation that the Project interviews produced was the young age of most of the clients who spend time in solitary confinement. Twenty of the clients interviewed (37%) are teenagers. The median age for all 59 clients interviewed was 20.

Solitary confinement presents special challenges for young clients. According to a 2012 report by the American Academy of Child & Adolescent Psychiatry, “juvenile offenders are at particular risk” of lasting psychological damage, such as “depression, anxiety, and psychosis.”⁶ This may be due in part to the fact that areas of the brain responsible for planning and for controlling impulses are not fully developed until individuals are in their twenties.⁷



These observations were borne out by the fact that younger clients appeared to be more likely to act out while in solitary confinement, thus leading to additional ticket time. All three of the clients interviewed with over 900 days of total ticket time are teenagers. This suggests that beyond the obvious humanitarian and moral reasons to refrain from placing teenagers and young adults in solitary confinement, there are also compelling psychological or neurological grounds to prohibit this practice.

Mental Health Treatment

Despite the New York City Department of Correction’s pledge to end the use of solitary confinement as a punitive measure for individuals suffering from mental illness, the Project interviews revealed that at least 72% of the 54 male clients interviewed and four out of the five female clients interviewed had been diagnosed with or treated for mental health issues. During their time in solitary confinement, these clients received mental health services that were egregiously inadequate for treating not only preexisting mental illnesses but also the ongoing trauma brought on by extreme isolation.

⁶ American Academy of Child & Adolescent Psychiatry, *Solitary Confinement of Juvenile Offenders*, (April 2012), http://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx.

⁷ American Civil Liberties Union, *Alone & Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*, 3 (June 2014), <https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf>.

Although the amount and type of mental health treatment that clients interviewed for the Project received varied widely, many clients voiced similar concerns regarding the provision of mental health services. A frequent complaint was that many individual counseling sessions would be conducted in the hallways of cellblocks, through clients' cell doors. These counseling sessions were often extremely brief and served primarily to gauge whether individuals were at risk of hurting themselves. For obvious reasons, clients were uncomfortable speaking candidly with mental health professionals in this setting.

Another consistent frustration among clients was that sleeping pills were often prescribed in place of mental health treatment, presumably as an expedient and convenient measure for controlling clients' behavior. When clients did receive psychiatric medications that had been prescribed for specific mental health issues, their medications were rarely supplemented by adequate counseling and talk therapy. To make matters worse, placement in solitary confinement also has the effect of disqualifying many individuals with mental health issues from the few programmed activities that are offered at Rikers.

“When people leave solitary confinement, they are never the same.” – Patrick, 29

Suicidal thoughts were disturbingly common among clients during their time spent in solitary confinement. At least 16 of the clients interviewed experienced suicidal thoughts, and at least five clients attempted to commit suicide. In the words of one client, “Everyone thinks about it.” Shockingly, two clients reported that when they told correction officers that they were considering killing themselves, they were taunted and told to, “hang it up good,” and call the officers, when they were “about to die.” Indeed, many clients suffering from mental illnesses reported that correction officers would taunt them daily.

Multiple clients also recounted being placed in heavy anti-suicide smocks after revealing suicidal thoughts or actions to correction officers. In one case, a 20-year-old client was kept in an anti-suicide smock for multiple days before meeting with a mental health professional. Although the Department of Correction employs suicide prevention assistants (SPA's) who are responsible for monitoring individuals at risk of hurting themselves, one client reported that the SPA's only take action if they witness a suicide attempt in progress.

Clients placed in the Restricted Housing Unit (RHU), which was purportedly designed to integrate intensive mental health treatment into solitary confinement, fared little better than their peers in other solitary confinement cellblocks. In RHU, inmates are able to participate in a limited amount of group therapy as well as weekly one-on-one counseling sessions. Extended periods of improved behavior in RHU are rewarded with privileges such as watching television for a limited amount of time and leaving solitary confinement before the full amount of ticket time has elapsed. However, clients who failed to attain these rewards – usually on account of severe mental illness – were left in

virtually the same situation as they would have been in were they placed in other solitary confinement units. Moreover, even clients in RHU who believed that the group therapy and individual counseling sessions were helpful felt that the treatment still fell far short of their needs and did little to counterbalance the crushing isolation of solitary confinement.

The futility of RHU belies how misguided it is to expect any individual's mental health to improve or stabilize while in solitary confinement. No amount of mental health treatment can make up for the trauma that individuals experience while in solitary. Indeed, not a single client interviewed reported that his or her mental health had improved during his time in solitary. This is because solitary confinement causes and exacerbates mental health issues.⁸ Kimorney, a 20-year-old client who had no history of mental health problems prior to entering solitary confinement, discussed the experience of feeling his mind begin to unravel. During his time in solitary, Kimorney became depressed, experienced suicidal thoughts, and was prescribed medication. Soon after returning to general population, Kimorney found himself back in solitary confinement for acting out. In the words of Patrick, a 29-year-old client who received a verdict of not guilty on all counts in his criminal case after spending 130 days in solitary confinement, "when people leave solitary confinement, they are never the same."

Basic Services

Individuals held in solitary confinement at Rikers struggle to receive even the most basic services, such as food, showers, and access to phones. In many cases, clients interviewed reported that they resorted to "sticking up the slot," meaning that they would refuse to move their hands or arms from the slots in their cell doors, in order to gain access to one of these services. Clients would then receive additional ticket time as punishment for "sticking up the slot," even though it was often used only as a last resort to receive basic services that they should have received in a timely manner.⁹ Indeed, "sticking up the slot" was responsible for drastic increases in many clients' total ticket times.

The most common complaint voiced by clients regarding their experiences in solitary confinement at Rikers concerned food. Forty-four clients (74.6%) stated that they did not receive enough food or that the food made them sick. Particularly among younger

One client described his time experience in solitary as the hungriest that he had ever been in his life.

⁸ American Civil Liberties Union, *Alone & Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*, 3-5 (June 2014),

<https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf>. See also Jails Action Coalition, *Petition to the New York City Board of Correction*, (2014), www.nycjac.org/proposedrules/, 18-20.

⁹ Similarly, a recent decision released by the New York City Office of Administrative and Trials Hearings (OATH) describes a situation in which a man held in solitary confinement at Rikers Island was beaten by multiple for correction officers after he stuck up the slot in response to being denied access to a phone. See *Dep't of Correction v. Reid*, OATH Index Nos. 1898/14 & 1901/14 (June 18, 2014), http://archive.citylaw.org/wp-content/uploads/sites/17/oath/12_Cases/14-1898.pdf.

clients, the meager amount of food provided in solitary confinement was a very serious concern. Although clients rarely missed meals, they reported that portions were often smaller than what they would expect to receive in general population. Multiple clients reported skipping meals after correction officers spat in their food or intimated that they had tainted the food with various bodily fluids.

Unlike in general population, clients were not allowed to obtain extra food from commissary. As a result, many clients lost significant amounts of weight while in solitary. One client described his experience in solitary as the hungriest that he had ever been in his life. Of particular concern to many clients was the schedule of meals in solitary confinement, which denies them access to any food between dinner, which is typically served around 5:00 or 6:00 pm, and breakfast, which is served early in the morning around 5:00 or 6:00 am. Jhaleel, a 22-year-old client, observed that solitary at Rikers is designed “for you to lose weight and be in a struggle.”

Although individuals held in solitary confinement at Rikers are supposed to receive access to at least one phone call per day, clients reported that phone calls were sometimes withheld as a punitive measure and at other times for no apparent reason. One client recounted how he flooded the floor of his cell in order to demand a phone call after he had been denied access to a phone for three days.

Moreover, some clients suspected that correction officers had reprogrammed the phone numbers that clients had submitted before entering solitary (individuals in solitary are allowed to choose two phone numbers for phone calls, which are then programmed into a phone system). Lacquan, a 20-year-old client with a history of mental illness, discovered on multiple occasions that correction officers had reprogrammed his mother’s phone number to fast-food restaurants. When Lacquan protested, they would taunt him and then tell him that his phone call was over.

When clients are able to place phone calls, their conversations are capped at six minutes each, a shockingly low amount of time compared to the duration of solitary confinement. If a call goes directly to voice mail or is not picked up on the first attempt, the client will have to wait until the next day for his next phone call, making relationships with family members and significant others incredibly difficult to maintain. One client interviewed whose family lives outside of New York City in a different part of New York State was unable to call his family once during his stay in solitary confinement due to his inability to afford long-distance rates.

“You’ve got to be basically dead to go see a doctor.” – Jhaleel, 22

The Minimum Standards published by the Board of Correction allow correction officers to withhold showers as a punitive measure. Predictably, correction officers have abused this power, contributing further to the dehumanization of individuals held in solitary at Rikers. An 18-year-old client named Michael reported that he had not showered for five days prior to being interviewed. Michael

explained that he had recently received an additional ticket for refusing to return to his cell, which he had done only after his demands for a shower and medical attention due to an abscess on his back were ignored.

Medical Services

Clients consistently reported that medical attention is only prompt when there is a significant amount of blood visible. In the words of one client, “You’ve got to be basically dead to go see the doctor.” Shyla, a 17-year-old client, recounted how a correction officer watched her suffer through a severe asthma attack, but did nothing because the officer suspected that Shyla was faking the episode in order to leave her cell. “I had to find my pump before I died in my cell. I had to look for it,” Shyla explained. “I didn’t know where it was. I could have died.” Multiple clients also stated that when they were able to receive medical treatment, it often consisted solely of pain pills.

Clients’ accounts of the severe lack of access to medical services are consistent with the recent deaths of Andy Henriquez and Jerome Murdough, who both died from medical emergencies that did not involve visible wounds.¹⁰¹¹

Due Process & Other Legal Issues

The hearing process that the Department of Correction follows for ruling on placements in solitary confinement is indisputably and unfairly stacked against inmates. Despite the fact that solitary confinement is a much more severe punishment than regular incarceration and may cause lasting psychological damage, individuals accused of infractions at Rikers must face hearings without an advocate to argue on their behalf. Even worse, the “adjudication officers” who serve as the sole arbiters for these hearings are correction officers employed by the Department of Correction, colleagues of the same officers whose accusations lead to hearings.

The hearing process that the Department of Correction follows for ruling on placements in solitary confinement is indisputably and unfairly stacked against inmates.

Each infraction hearing involves only an adjudication officer and the accused. The adjudication officer begins by asking the inmate to state his name and book and case number, and then reads the incident report for the alleged infraction. The adjudication officer continues by asking the inmate if he would like to speak, and offers the following options for pleading: guilty, not guilty, and guilty with an explanation. Although the hearings are recorded, multiple clients recounted that the adjudication officers for their hearings stated before turning on

¹⁰ Dareh Gregorian, “Mother files wrongful death lawsuit over 19-year-old son who died on Rikers Island in solitary confinement,” *New York Daily News*, (August 20, 2014), <http://www.nydailynews.com/new-york/rikers-island-death-19-year-old-leads-lawsuit-article-1.1909832>.

¹¹ Jake Pearson, “NYC Inmate ‘Baked to Death’ in Cell,” *Associated Press*, (March 19, 2014), <http://bigstory.ap.org/article/apnewsbreak-nyc-inmate-baked-death-cell>.

the recording device that a guilty plea would lead to a reduction in the amount of time listed on the infraction ticket.

Beyond the obvious conflict of interest in having correction officers serve as judges for hearings and the attempts to intimidate individuals into pleading guilty, the hearings also serve as improper interrogations for potential criminal cases. Indeed, one client summed up the entire hearing process as follows: “It’s a chance to testify against yourself.” Multiple clients were arraigned on new charges in Bronx Criminal Court on account of allegations related to incidents at Rikers.

After a decision is reached in a hearing, individuals are given a piece of paper explaining the result of the hearing, as well as an internal appeals process. Most clients interviewed did not understand the internal appeals process. The few clients that did attempt internal appeals were unsuccessful. The Department of Correction provided neither Bronx Defenders attorneys and social workers nor clients’ families with any sort of notification when individuals were placed in solitary confinement, making timely Article 78 filings impossible for many clients.¹²

Placement in solitary confinement also presents serious challenges to attorney-client relationships. Once individuals enter solitary confinement, they understandably become fixated on leaving solitary and can become distracted from important discussions and decisions related to their criminal cases. The deterioration in mental health that many clients experience while in solitary confinement also presents substantial difficulties for communication between clients and their attorneys.

Outdoor Recreation

Individuals held in solitary confinement at Rikers Island rarely venture outdoors, despite the requirement in the Minimum Standards that all individuals in solitary be able to enjoy one hour of outdoor recreation per day. This is due in large part to the great lengths that correction officers go to in order to avoid taking people outside.

Individuals held in solitary confinement at Rikers Island rarely venture outdoors.

Each morning, correction officers compile a list of people in solitary confinement who would like to go outside. When compiling this list, officers usually walk past cells as early as 4:00 am in the morning and without warning.¹³ To compound matters, officers often change the time at which they create the list so that it is difficult for individuals in solitary confinement to anticipate when they need to be at the doors of their cells. As a 20-year-old client named Kerry recounted, “They like to

¹² Clients are often unaware of the option to file Article 78 forms. While clients are able to meet with an attorney from the Legal Aid Society once they have filed Article 78 forms, they often learn of this option much too late; the Article 78 process is lengthy and becomes moot if a client leaves solitary confinement before the process concludes.

¹³ Nikita Stewart, “Injury Claims Against New York’s Correction Dept. Doubled in Five Years, Report Says,” *New York Times*, (August 19, 2014), http://www.nytimes.com/2014/08/20/nyregion/injury-claims-against-new-yorks-correction-dept-doubled-in-5-years-report-says.html?_r=0.

creep, hold their keys to not make noise – quiet as a mouse! They don't say 'yard,' they turn off their radios. I've never seen nothing like it." Marlon, another 20-year-old client who experienced difficulties getting outside, said that the "yard CO" would retaliate against people who made noise to alert their neighbors to his presence by refusing to let those people go outside. If an individual asked to go outside after the "list" had been compiled, his request would be denied. Some clients interviewed for the Project reported that they had never gone outside while they were held in solitary confinement.¹⁴

Clients who were able to go outside discovered that "outdoor recreation" consists of standing in a small cage. Upon making this discovery, many clients declined to go outside in the future, explaining that the experience of standing outside in what looks like an animal cage was so degrading that it outweighed any desire on their part to leave their cells for an hour.

Organized Activities

Although individuals held in solitary confinement likely have the most to gain from positive, structured interactions with their peers, they have no access to organized activities or group programs, aside from a limited amount of group therapy for individuals in the Restricted Housing Unit (RHU).

Despite the fact that many of the clients interviewed for the Project were young enough to be in high school, not one of them was able to participate in group educational programs. Some clients' requests to participate in school programs were flat-out denied. Others found that "school" in solitary confinement consists of having educational materials dropped off through a slot in their doors, with no access to a teacher or to fellow students. Clients with learning disabilities or who otherwise struggled with reading were given absolutely no support, despite expressing their desire to learn.

Despite the fact that many of the clients interviewed for the project were young enough to be in high school, not one of them was able to participate in a group educational program.

Similarly, clients were unable to access any type of work, recreation, and self-help group programs. The absence of these types of organized activities is emblematic of the cruel indifference expressed by the Department of Correction toward individuals held in solitary confinement.

¹⁴ Similarly, the Board of Correction found that fewer than 1 in 10 people held in the Central Punitive Segregation Unit (CPSU) at Rikers are able to go outside while held in solitary. See New York City Board of Correction, *Barriers to Recreation at Rikers Island's Central Punitive Segregation Unit*, (July 2014), http://www.nyc.gov/html/boc/downloads/pdf/reports/CPSU_Rec_Report.pdf.

Impact on Clients' Families

The damage inflicted upon clients as a result of solitary confinement extended to their families and friends. Family members of clients recounted how they not only suffered from anxiety and depression as a result of clients' placements in solitary confinement but also endured frustrating and humiliating experiences during visits to Rikers.

The primary impact of placements in solitary confinement on clients' family members was to make communication extremely difficult. Family members reported that they were often unaware of a client's placement in solitary until they heard directly from a client during a visit or phone call, sometimes after multiple days of being unable to contact the client. In one case, the sister of a client traveled to the Vernon C. Bain Center near Hunts Point only to find out that her brother had been moved to solitary confinement on Rikers Island. Family members of several different clients stated that clients did not receive their letters and that they were highly suspicious that correction officers had tampered with the mail. When family members were able to speak on the phone regularly with clients held in solitary, they found that the six-minute restriction severely limited their ability to have meaningful conversations.

**“They treat us like prisoners too.”
– Mother of 20-Year-Old Held in
Solitary Confinement**

Family members also reported experiencing high levels of stress as a result of clients' placements in solitary confinement. The wife of one client stated that she had lost weight and frequently cried while her husband was in solitary. The mother of a 20-year-old client who attempted suicide while in solitary recounted how fearful she was that her son would die at Rikers. “I started getting deeply depressed after he tried to commit suicide,” she explained. “I didn't want to go nowhere, I wasn't motivated to do nothing but visit him – but I got help for myself, to be an example to my son.” The girlfriend of a teenage client expressed anxiety over not knowing how much her boyfriend's mind and personality would change as a result of solitary confinement. “It's been brutal on his body, and mentally; he's depressed,” she told an interviewer. “It's going to be really hard, as far as his transition...[because] I don't know who I'm dealing with.”

When family members traveled to Rikers, they were met with additional obstacles and, in some cases, harassment. On numerous occasions, family members arrived at Rikers only to be told that the visit had been canceled, that the client's visit privileges had been revoked, or – falsely – that the client had refused to leave his cell for the visit. Female family members and significant others also stated that correction officers would attempt to flirt with them. On at least one occasion, correction officers conducted a security pat down that a client's family member felt was inappropriately intrusive. Discussing the treatment that she received during visits to Rikers, the mother of one client said, “They treat us like prisoners too.”

Recommendations

Eliminate or Drastically Reduce the Use and Duration of Solitary Confinement

The Department of Correction should eliminate the use of solitary confinement. Short of that, the Department should exclude all individuals under the age of 25 as well as all individuals suffering from mental health issues from solitary. The Department should also cease to use solitary confinement as a punitive measure for non-violent incidents and minor scuffles. When solitary confinement is used, it should be restricted to fifteen days per ticket, and 60 days in total duration per 180-day period.¹⁵ Incarcerated individuals should enjoy at least four hours per day outside of their cells.¹⁶ The Department of Correction should also end the practice of “owed time,” whereby individuals are held in solitary confinement for infractions committed during previous stays at Rikers.

The Department of Correction should eliminate the use of solitary confinement.

Reform the Hearing, Appeals, and Notification Processes

Individuals accused of infractions that could potentially result in solitary confinement should have attorneys or advocates present for their hearings. These attorneys or advocates should not be employees of the Department of Correction; neither should the deciders of facts for the hearings. A court part with an in-person administrative law judge should be established in the Bronx to adjudicate these hearings.

Pre-hearing detention, the practice by which individuals are placed in solitary confinement prior to a hearing, should require written justification and the approval of the Commissioner of the Department of Correction. Pre-hearing detention should be capped at 24 hours.

Individuals’ attorneys should be notified when infraction tickets are issued, when hearing dates are set, and when hearing outcomes are determined. Additionally, incarcerated individuals should be allowed to enlist the help of attorneys when filing appeals.¹⁷ The Bronx Defenders also supports the full list of hearing and documentation reforms proposed in the JAC petition to the Board of Correction.¹⁸

¹⁵ Jails Action Coalition, *Petition to the New York City Board of Correction*, (2014), www.nycjac.org/proposedrules/, 4-5.

¹⁶ *Id.*, 2.

¹⁷ Individuals held in solitary confinement at Rikers are currently able to consult with an attorney from the Legal Aid Society once they file Article 78 forms. However, they are not able to consult with an attorney for the internal appeals process, and are often unaware of the option to file Article 78 forms.

¹⁸ Jails Action Coalition, *Petition to the New York City Board of Correction*, (2014), www.nycjac.org/proposedrules/, 4-6.

Improve Access to Mental Health Therapy for All Individuals in Solitary Confinement

It is imperative that the Department of Correction improve access to meaningful mental health therapy, even if individuals with preexisting mental illnesses are excluded from solitary confinement. Both group therapy and individual counseling sessions should occur multiple times per week, in confidential spaces outside of individuals' cells.

Given the potential for solitary confinement to cause mental health issues in individuals with no history of mental illness, special care should be taken to remove individuals from solitary confinement as soon as mental health professionals suspect that they might be developing mental health issues. Similarly, suicidal ideation and suicide attempts should be taken seriously and treated with intensive mental health therapy and removal from solitary confinement. Whenever possible, efforts should be made, with the consent of incarcerated individuals, to cooperate with any psychiatrists, psychologists, social workers, or other mental health professionals from whom they have received treatment in the past.

Provide Group Programs, Access to Commissary, and True Outdoor Recreation

The inability of individuals held in solitary confinement at Rikers to participate in group programming, access additional food through commissary, or spend time outdoors without being confined to cages is not only unjustifiable but also needlessly contributes to the torturous conditions of extreme isolation.

Participation in group programming would alleviate at least some of the psychological torment of solitary confinement and better prepare inmates for reentry into general population and society. A similar result could be expected from allowing individuals held in solitary to spend time outdoors without going through the dehumanizing experience of being trapped in a cage.

Allowing individuals to access additional food from commissary is perhaps the easiest policy recommendation listed in this report. Given the consistency of clients' remarks in interviews regarding the lack of adequate food in solitary confinement, it is imperative that the Department of

Intermediate Recommendations

- Restrict the duration of solitary confinement
- Prohibit the use of solitary confinement for individuals under 25 years old
- Prohibit the use of solitary for individuals with mental illnesses
- Reform hearing and appeals processes
- End the practice of "owed time"
- Notify attorneys of placements in solitary
- Improve medical and mental health care
- Develop alternatives to solitary confinement
- Increase duration of phone calls
- Allow for outdoor recreation outside of cages
- Grant access to group programming
- Increase meal sizes and allow for access to commissary
- Improve mechanisms for reporting abuse
- Develop training and incentives for correction officers
- Facilitate increased contact with families

Correction immediately increase portion sizes and provide access to commissary for individuals held in solitary. Allegations of tampering with inmates' food should be taken very seriously.

Explore Alternatives to Solitary Confinement That Do Not Involve Isolation

In late 2013, the Department of Correction announced the launch of its Clinical Alternative to Punitive Segregation (CAPS) program. According to the Department, the program is “modeled on in-patient forensic wards.” Project members were able to conduct two interviews with Bronx Defenders clients who participated in CAPS in early 2014. These clients' reports on CAPS are encouraging. However, the Department's previous attempts at providing care for individuals with mental health issues give plenty of reason for caution and skepticism. Moreover, the interviews indicate that very few individuals are participating in CAPS at this time.

The two Bronx Defenders clients who have participated in CAPS gave the program mixed reviews. One of the two clients had previously spent extended amounts of time in solitary confinement at Rikers and at a correctional facility in upstate New York. He reported that CAPS was a drastic improvement upon solitary confinement. Both clients had received clinical diagnoses of serious mental illnesses, and reported that they had access to adequate treatment in CAPS. Their primary complaints were that correction officers and civilian staff members played favorites with CAPS participants and that individuals could still be ejected from the program for poor behavior despite their mental health issues. While it is clear that CAPS is not a perfect program, it is equally clear that the pilot is a considerable improvement upon solitary confinement.

The Department of Correction can create safe, controlled environments for individuals who might pose security issues without the use of solitary confinement.

According to the interviews, there are currently three CAPS units at Rikers, with approximately 12 participants in each unit. Individuals in CAPS are only locked in their cells during nighttime hours. Each weekday, there are 2-3 group therapy sessions, which are part of a larger CAPS curriculum. Both clients felt that the group sessions were helpful. In their spare time, CAPS participants are allowed to watch television and play board games. Daily outdoor recreation occurs in an open yard, and participants are able to access additional food through commissary. Each CAPS participant is required to have a weekly one-on-one session with an assigned mental health professional, but additional appointments are also available. One of the two clients also reported that at least some CAPS participants were given special visiting privileges for an organized family day.

In order to graduate out of CAPS, participants must sustain good behavior through all four “levels” of the program. However, participants are also given the option of staying on in CAPS. One of the two clients interviewed about his experiences in the program stated that he would consider staying in CAPS because the large crowds in general population make him feel anxious.

While it is much too early to label CAPS a success, the pilot program demonstrates that the Department of Correction can create safe, controlled environments for individuals who might pose security issues without the use of solitary confinement or other practices that involve extreme isolation. One of the two clients interviewed had spent hundreds of days in solitary confinement on account of many infraction tickets; he is precisely the type of person whom the current system at Rikers treats as unredeemable or unmanageable and subjects to solitary confinement as a result. Yet this client’s mental health appeared to have stabilized at least somewhat during his time in CAPS, and he spoke about the program in mostly positive terms. Moving forward, the Department of Correction should recognize that when situations arise where it may be necessary to temporarily separate individuals from general population, solitary confinement is not necessary for establishing a controlled setting.

Improve Training, Incentives, and Oversight for Correction Officers

The behavior and demeanor of the correction officers responsible for the safety and security of individuals held in solitary confinement often belied a lack of understanding regarding mental health issues, and in many cases led to increases in clients’ total ticket time due to clients’ need to “stick up the slot” to gain access to services. Correction officers should receive improved training not only on how to interact with individuals with mental illness, but also on how to deescalate potential confrontations with individuals held in extreme isolation.¹⁹

Most clients reported that many correction officers seemed indifferent to clients’ needs, and that officers were content to do as little as possible during their shifts. Incentives should be put in place to encourage correction officers to provide individuals in solitary confinement with services expediently. Furthermore, correction officers should have an interest in seeing individuals conclude their time in solitary without receiving additional infraction tickets.

Correction officers should have an interest in seeing individuals conclude their time in solitary without receiving additional infraction tickets.

Finally, inmates, correction officers, and civilian staff members must all be able to report misconduct in solitary confinement units without the threat of retaliation. The City should consider contracting with a private, non-profit advocacy group to investigate allegations of abuse and misconduct.

Facilitate Increased Communication with Families

The Department of Correction should facilitate increased communication between individuals held in solitary confinement and their families, both through phone calls and visits to Rikers. Phone calls should be extended to at least 15 minutes per day, and inmates should be given

¹⁹ Jails Action Coalition, *Petition to the New York City Board of Correction*, (2014), www.nycjac.org/proposedrules/, 13-14.

multiple attempts to complete calls that go directly to voice mail, especially if correction officers are responsible for delays in providing access to phones.

Given the trauma of solitary confinement, it should be easier for family members to visit individuals held in solitary, not harder. The Department of Correction should take steps to ensure that the family members of individuals held in solitary are not turned away from Rikers.

Conclusion

Solitary confinement is a driving force in the cycle of violence at Rikers that has placed inmates, correction officers, and civilian staff in harm's way for much too long. This brutal practice inflicts severe harm on inmates and exposes correction officers to an increased risk of violence by forcing them to interact with individuals who have experienced serious psychological trauma. Solitary confinement also hurts the general public by greatly impairing incarcerated individuals' reentry into society. While it is clear that the Department of Correction must be able to address immediate threats to safety and security at Rikers Island, it is equally clear that extreme isolation is unnecessary and unproductive for this goal.²⁰ The Department of Correction must end or drastically reduce the use of solitary confinement.

We are proud to bring the voices of individuals who have experienced solitary confinement firsthand into the conversation concerning the urgent need for reforms to this practice. Their experiences offer a glimpse into the terrifying reality of solitary at Rikers. Moving forward, we are eager to work together with allied groups, the Board of Correction, and the Department of Correction to end the use of solitary confinement at Rikers.

²⁰ Atul Gawande, "Hell Hole," *The New Yorker*, (March 30, 2009), <http://www.newyorker.com/magazine/2009/03/30/hellhole>, citing Chad S. Briggs, Jody L. Sundt, and Thomas C. Castellano, *Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, *Criminology* Vol. 41, Issue 4, 1341-1376.

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