

**Comments of Ruthie Lazenby,
Legal Fellow of New York Lawyers for the Public Interest
to the New York City Board of Correction
on December 2, 2019
regarding the Proposed Rule on Solitary Confinement**

My name is Ruthie Lazenby. I am a Legal Fellow with New York Lawyers for the Public Interest. New York Lawyers for the Public Interest is a civil rights organization that advocates for people with disabilities, for equal access to healthcare, and for environmental justice for low-income communities of color.

We call on the New York City Board of Correction (“BOC”) to end solitary confinement in all its forms, and to adopt humane, effective, and safe alternatives. Solitary confinement is counterproductive to the aims of the justice system, always harmful to the people subjected to it, and often violates international law.

In 2011, the United Nations Special Rapporteur on Torture remarked that solitary confinement is “contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society,” urging the abolition of all punitive use of solitary confinement.¹ Just this year, a new study published in the *Journal of the American Medical Association* confirmed his statements, finding that, of hundreds of thousands of people released from prison over a 15-year period, people who had spent time in solitary confinement were significantly more likely both to die (including by suicide, homicide, and overdose) and to be reincarcerated after release, with the risks increasing as the time in solitary increased.²

The impact of solitary confinement on psychological well-being has been well-documented — psychological effects of solitary confinement include anxiety, depression, anger, cognitive disturbances, perceptual distortions, obsessive thoughts, paranoia, and psychosis.³ The use of solitary can spark a vicious cycle in which an incarcerated person’s mental health deteriorates and they engage in acts of desperation, resulting in further punitive measures.⁴

To the extent that New York City continues the practice of isolating people in solitary confinement at all, the proposed rule presents a number of major shortcomings. Critically, the rule:

¹ Juan Méndez (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 79 and 84, U.N. Doc. A/66/268 (July 28, 2008) (“Interim Report”).

² Lauren Brinkley-Rubinstein, Josie Sivaraman, David L. Rosen, et al., *Association of Restrictive Housing During Incarceration With Mortality After Release*, J. AM. MED. ASSOC., October 4, 2019 (“JAMA Report”).

³ Jeffrey L. Metzner and Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, J. AM. ACAD. PSYCHIATRY LAW 38:104, 104 (2010).

⁴ *Id.* at 105.

- provides for exceptions that would allow solitary confinement for torturous lengths of time in violation of international law; and
- fails to provide adequate due process for individuals in disciplinary hearings that could result in solitary confinement.

First, not only does the proposed rule allow for solitary confinement, it does so for torturous lengths of time, in violation of international law. In 2011, the then-current U.N. Special Rapporteur on Torture, Juan Méndez, released a report concluding that the application of solitary confinement for more than 15 days in and of itself constitutes prolonged solitary confinement and cruel, inhuman, and degrading treatment, or even torture, in violation of Article 7 of the International Covenant on Civil and Political Rights and Article 1 of the Convention Against Torture or Cruel, Inhuman or Degrading Punishment, which the United States has notably both signed and ratified.⁵ The proposed rule is out of step with this imperative.

The proposed rule allows people to be sentenced to 60 days in solitary for alleged assaults on staff—four times the 15-day limitation.⁶ Additionally, the proposed rule would still allow for *unlimited* time in solitary, because it would create exceptions to both the requirement of seven days out of solitary after serving 15 days, and to the limit of 60 total days in solitary in a six-month period.⁷ The international “Mandela Rules” unequivocally prohibit indefinite solitary confinement.⁸

These loopholes must be closed to ensure that people are not tortured while in BOC custody.

Second, the rule fails to provide adequate due process for people charged with violating the BOC’s disciplinary rules. The potential harm associated with solitary confinement is enormous -- compared with individuals who had been incarcerated but were not placed in a restrictive setting, people who had spent time in restrictive settings were 78% more like to die by suicide⁹ and 127% more likely to die of an opioid overdose in the first two weeks after their release.¹⁰

Despite these severe consequences, the BOC’s proposed rule provides no mechanism for individuals to be represented by a lawyer or any other advocate at a disciplinary hearing.¹¹ The rule’s requirement that an individual’s criminal defense attorney be notified when the individual is charged with an infraction that could result in solitary confinement is important, but far from sufficient, given the severity of the potential consequences.¹² The rule should be changed to mandate that individuals be represented during these crucial hearings.

We look forward to continuing to work with the BOC to ensure that its rules are in line with international standards and that people with disabilities receive the care they need and the due process justice requires.

Thank you,

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⁵ *Interim report*, ¶ 70, 76, 88.

⁶ Proposed rule (6-07(a)(3)(viii)).

⁷ Proposed rule (6-07(a)(3)(iii) and (vii)).

⁸ *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, Rule 43, U.N. Doc. A/RES/70/175 (January 8, 2016).

⁹ *JAMA Report* at 1.

¹⁰ *Id.*

¹¹ Proposed rule (6-30).

¹² Proposed rule (6-30(b)(7)).

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Our work encompasses comprehensive organizing, policy campaigns, impact litigation, and individual legal services, and we are guided by the priorities of the community as we advocate for the rights of people with disabilities, equal access to health care, immigrant opportunity, invigorated local non-profits, and environmental justice for low-income communities of color.

NYLPI's Disability Justice Program has represented thousands of individuals and triumphed in numerous campaigns improving the lives of New Yorkers with disabilities. The Program has decades of experience working closely with people with disabilities, including people with mental disabilities and their interaction with the criminal justice system.