

Motion to proceed with rule making regarding punitive segregation on Rikers Island

At the June 3, 2013 Board meeting, a resolution was approved by the Board establishing a Committee of the Board to review the use of punitive segregation in the NYC Department of Correction and make a recommendation regarding the initiation of rule making. Upon approval of the resolution, Chair Gerald Harris named Dr. Robert Cohen as the Chair of the Committee and Catherine Abate, Greg Berman and Pamela Silverblatt as members. The Committee has met four times: June 20, July 8, July 22, and August 20.

Committee members reviewed extensive briefing materials prepared by Board staff on punitive segregation demographics, use of force incidents and census data; information on alternatives to punitive segregation for the mentally ill (CAPS and RHU expansion) from the Departments of Correction and Health and Mental Hygiene; infraction/penalty reform and mental health training from DOC; injury and self-harm data from DOHMH; literature on solitary confinement; and Board of Correction minutes referencing punitive segregation since 2009. Members have carefully reviewed the monthly progress of the Department of Correction regarding the status of its initiatives regarding solitary confinement. The Committee has received and reviewed a draft report regarding punitive segregation and mental health services on Rikers Island prepared by Drs. James Gilligan and Bandy Lee.

The Committee met, individually and as a group, with the following stakeholders:

- Deputy Mayor Linda Gibbs
- Commissioner Dora Schriro and Deputy Commissioners Thomas Bergdall and Erik Berliner
- Deputy Commissioner Amanda Parsons, Assistant Commissioner Homer Venters and Executive Director Daniel Selling
- Council Member Daniel Dromm
- Members of the Jails Action Coalition

We offered to meet with the Correction Officers' Benevolent Association. They were not able to meet with us at this time, but said they would participate in further discussions of this issue.

Committee members made multiple visits to Rikers Island, including tours of AMKC and RNDC RHUs, GRVC and RMSC MHAUIs, AMKC and RMSC mental health units, RMSC CAPS unit, and OBCC CPSU.

From 2007 through June 30, 2013, the number of punitive segregation beds in the City jail system has grown from 614 to 998, a 61.5% increase. All of the prisoners in MHAUII and RHU are mentally ill. Eighteen percent of the 403 CPSU inmates on August 1, 2012 have an "M" status. The mentally ill stay in segregation much longer than the non-mentally ill, and those placed in segregation are much more likely to suffer serious injury. The main rationale for the increased use of punitive segregation has been to maintain safety, but the increase in punitive segregation beds has been matched by an increase in violence and injury. During this summer, between 25% and 28% of all adolescent boys on Rikers Island were housed in punitive segregation status. The American Academy for Child and Adolescent Psychiatry and the United Nations Special Rapporteur have strongly advocated that solitary confinement should not be used as a punishment for adolescents.

The Committee commends both DOC and DOHMH for recent steps to reduce the use of punitive segregation for the mentally ill by committing to closing both MHAUIs at GRVC and RMSC and partially replacing them with a non-punitive therapeutic program for serious mentally ill persons who violate jail rules. At the present time, the adult/adolescent MHAUI unit is still operating at GRVC, and the CAPS unit at GRVC has not been opened. The CAPS unit at RMSC is being gradually populated. The Committee also supports DOC's sentencing guideline reforms, the initiation of concurrent rather than consecutive sentencing, and expungement of "owed time" from prior incarcerations to reduce the length of time inmates must serve in solitary confinement. The Board appreciates these efforts. Our recommendation regarding rule making is neither a criticism nor repudiation of the substantial efforts and plans for addressing these issues being undertaken by Commissioners Schriro and Farley and their staff.

If the Board engages in rulemaking, it would be an open process. The Board would discuss proposed language with DOC, DOHMH, OMB, interested parties, and experts. Under the City Administrative Procedure Act (CAPA), the Board would be required to publish and distribute widely its proposed amended standards, solicit written comments and hold a public hearing. The Board would consider all written comments and testimony before promulgating new or revised standards.

Based upon a review of all the above mentioned reports, documents, data, and correspondence from City Council Members and interested parties, the Committee unanimously recommends that the Board initiate rulemaking regarding the use of solitary confinement in the NYC jails.