



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

April 16, 2021

By electronic mail: [coc@coc.nyc.gov](mailto:boc@coc.nyc.gov)

Members of the Board of Correction
Attn: Margaret Egan
Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

Re: Notice of Rulemaking Concerning Restrictive Housing in Correctional Facilities

Dear Members of the Board of Correction:

I am writing in response to the Board of Correction's ("BOC" or "the Board") newly proposed rules concerning the use of restrictive housing in New York City jails. I appreciate the opportunity to offer comments and the Board's commitment to this rulemaking process, which I know follows years of deliberation and fact-finding by this body and, more recently, by the working group to end punitive segregation. That said, I find it deeply disheartening and, frankly, indefensible that 16 months have passed since the last set of public hearings on this matter—10 months since the announcement of the formation of the working group—and solitary confinement is still in use in this city.

The physiological and psychological harms of solitary confinement are well-established but bear repeating for the record. Individuals subjected to extreme isolation can quickly decompensate and have demonstrated a range of negative health effects, from heart palpitations and insomnia to severe depression and hallucinations to poor impulse control and high rates of self-mutilation and suicide.¹ Researchers have found that solitary confinement actually reduces brain activity.² It is inhumane, and it is torture.

Our top priority must be the safety of people in custody, including individuals currently placed in restrictive housing units, Department of Correction ("DOC" or "the Department") and Correctional Health Services ("CHS") staff, and all others who enter our City jails. Successive reports by my office have shown that rates of violence and use of force continue to rise, even as the jail population has fallen to all-time lows. From Fiscal Year (FY) 2019 to FY 2020, the rate of

¹ Sharon Shalev, *A Sourcebook on Solitary Confinement* (2008), available online at www.solitaryconfinement.org.

² Vera Institute of Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* (May 2015), https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf.

fight and assault infractions rose 27 percent, and assaults on staff increased by 26 percent. Meanwhile, the rate of incidents and allegations of use of force nearly doubled between FY 2018 and FY 2020.³ While the use of solitary confinement is one dynamic in a broader and well-documented culture of violence on Rikers Island, and one with many contributing factors, it is important to emphasize that there is no evidence that solitary confinement—a violent practice in and of itself—increases safety in jails.⁴

These dangerous conditions persist despite higher spending per person in custody. In FY 2020, based on the latest analysis by my office, the full annual cost of incarceration in New York City was \$447,337 per person, up 30 percent over the previous year – an increase driven in part by temporary reductions in the jail population during the first months of the pandemic.⁵ That we are spending nearly half a million dollars to incarcerate a single individual, in the middle of an unprecedented public health crisis no less, is damning. While the steps we must take to significantly reduce the pretrial jail population fall outside the scope of this rulemaking process, suffice to say that there are savings to be found – savings that should be invested in the social supports that we know increase safety, not in the construction of new restrictive housing units.

It is clear that New York City must take a fundamentally different approach, and ending solitary confinement must be part of that transformation. However, I am deeply concerned that the model that is being proposed in its place, the Risk Management and Accountability System (RMAS), appears to retain some of the worst features of the existing system and would, if implemented as drafted, continue to allow for individuals in custody to be subjected to extended periods of isolation, without meaningful human contact and access to congregate programming or due process. No matter what we choose to call it—solitary confinement or punitive segregation or RMAS—we know how this story ends.

The rules must be revised to eliminate *all* forms of solitary confinement and advance an approach that centers safety, health, and rehabilitation. I continue to support the alternative envisioned in the NYC Jails Action Coalition and #HALTsolitary Campaign’s blueprint to end solitary confinement, as I stated in my written testimony to you in December 2019, and I urge you to heed their recommendations.⁶ With respect to the new proposed rules, I would respectfully ask that you consider the following changes, which address several areas of particular concern:

³ New York City Comptroller Scott M. Stringer, *NYC Department of Correction: FYs 2010-20 Operating Expenditures, Jail Population, Cost Per Incarcerated Person, Staffing Ratios, Performance Measure Outcomes, and Overtime* (March 2021), <https://comptroller.nyc.gov/reports/nyc-department-of-correction/>.

⁴ Vera Institute of Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* (May 2015), https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf.

⁵ Comptroller Stringer Analysis: City Spent More Than \$447,000 Per Incarcerated Person in FY 2020 as Rates of Violence Rise (March 2021), <https://comptroller.nyc.gov/newsroom/comptroller-stringer-analysis-city-spent-more-than-447000-per-incarcerated-person-in-fy-2020-as-rates-of-violence-rise/>.

⁶ See NYC Jails Action Coalition and #HALTsolitary Campaign, *A Blueprint for Ending Solitary Confinement in NYC Jails* (October 2019), <http://nycaic.org/wp-content/uploads/2019/10/Blueprint-for-Ending-Solitary-Confinement-in-NYC-Oct-2019.pdf>; New York City Comptroller Scott M. Stringer, Testimony on New Restrictive Housing Rules to the Members of the Board of Correction (December 16, 2019), <https://comptroller.nyc.gov/newsroom/testimonies/testimony-on-new-restrictive-housing-rules-to-the-members-of-the-board-of-correction/>.

1. **Provide at least 14 hours of out-of-cell time with access to meaningful congregate programming and human interaction.** The proposed rules require people in RMAS Level 1, the most restrictive setting, to “progress” to Level 2 within 60 days, unless they have committed a Grade I violent infraction or “there is specific documented intelligence that the person will engage in violence” if moved. While the minimum out-of-cell time of 10 hours in RMAS Level 1 is an improvement on the 2019 proposed rules, it still falls short of the 14 hours provided to the general population. Additionally, there is no requirement that time out of cell be spent engaged in meaningful congregate interactions or programming. Taken together, this means that under RMAS people could be held in extreme isolation for the majority of each day *indefinitely*. To ensure that these rules do not reproduce the physiological and psychological harms of solitary confinement, people in RMAS, including Level 1, should have 14 hours of out-of-cell time that is spent out of cells and includes congregate programming and opportunities for social interaction.
2. **Provide individuals facing possible placement in RMAS with access to legal representation.** While the proposed rules require DOC to provide written notice to defense counsel of a Grade 1 violent offense charge within one business day, the rules do not require timely written notice of possible placement in RMAS in all cases or give any person charged of any offense the right to have their counsel or a legal advocate present at disciplinary hearings. This places the incarcerated individual at an enormous disadvantage, and a “hearing facilitator,” which would only be provided in limited cases, is not a sufficient substitute. The Humane Alternatives to Long-Term (HALT) Solitary Confinement Act recently passed by the New York State Legislature allows access to counsel, and there is no justification for excluding this critical due process provision from the Board’s own rules.
3. **Expand the categories of people exempt from placement in RMAS.** Under the proposed rules, people are excluded from RMAS for only three reasons: serious mental illness, intellectual disability, or pregnancy. Although CHS has the authority to determine if the proposed housing is “medically contraindicated,” this still means, in effect, that young adults, older adults, people with disabilities, and people with serious medical conditions could be placed in RMAS. This appears to directly contradict the mayor’s June 2020 announcement that individuals with certain medical conditions, including physical disabilities, diabetes, heart disease, and seizures, would never be placed in restrictive housing.⁷ The rules must be amended to codify and require these exclusions.
4. **Limit placement in RMAS to conduct that presents an imminent safety risk.** At the same time that New York is taking steps outside of correctional facilities to finally end the War on Drugs, it makes no sense that we would enact harsher enforcement of drug-related offenses within City jails. People should not be placed in isolation and deprived of needed

⁷ NYC Health + Hospitals, “CONDITIONS THAT SHOULD ALWAYS PRECLUDE RESTRICTIVE HOUSING” (June 29, 2020), https://www1.nyc.gov/assets/boc/downloads/pdf/News/2020.06_Solitary/2020.06.29%20-%20RH_Conditions.pdf.

social interaction and programming for drug possession. Yet, under the proposed placement criteria, a person could be placed in RMAS Level 2, and provided only 12 hours of out-of-cell time, for possession of a controlled substance. I urge you to revise the rules to ensure isolation is not deployed as punishment for such nonviolent behavior.

5. **Immediately abolish the use of restraint desks.** While I commend the Board for proposing a faster timeline for ending the use of restraint desks, this November is still far too long to wait. No one in DOC custody should be physically shackled to a desk, and the practice should be abolished immediately. Additionally, while the rules state that CHS “shall notify the Department in writing of people in custody who have functional needs or impairments that contraindicate the imposition of one or more permitted restraints” and that DOC must consider such information, there should at a minimum be a strong presumption in favor of CHS’s recommendations. Ideally, CHS should have the authority to exempt vulnerable individuals from the use of restraints.
6. **Cap the number of variances the Department may be allowed.** The Department’s repeated requests for variances of existing restrictive housing rules undermines any optimism one might have about the promulgation of new rules. As the Board itself seems to acknowledge, when a variance is requested and granted, year after year, it becomes unwritten policy rather than a temporary exception. The Tenth Report of the Nunez Independent Monitor confirms DOC’s pattern of noncompliance.⁸ If we want to truly put an end to solitary confinement, DOC cannot be permitted to deviate from the rules outside of exceptional cases where there is a documented and imminent safety risk. For that reason, I urge the Board to consider, at a minimum, placing a cap on the number of variances that DOC may apply for pertaining to the same subdivision of the rules.

In closing, I would like to once again offer my appreciation to the Board for the opportunity to participate in this process. It is my hope that we can implement a new model, one that is grounded in a therapeutic approach and prioritizes safety over punishment, well ahead of the proposed implementation timeline. Every day that goes by that people are held in isolation inflicts additional harms and lasting trauma. Those who have endured solitary confinement and their loved ones have waited too long already.

Sincerely,



Scott M. Stringer
New York City Comptroller

⁸ Tenth Report of the *Nunez* Independent Monitor (October 2020), <https://www1.nyc.gov/assets/doc/downloads/pdf/10thMonitorsReport102320AsFiled.pdf>.