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The New York City Board of Correction

1 Centre Street

Room 2213

New York, N.Y. 10007

Via email

I am Kelly Grace Price, the founder of Close Rosie's. I thank the board for allowing me the chance to present testimony ref the proposed RMAS rule change.

- I. I would like to see an amended version of this rule¹ that incorporates the HALT bill's mandates. It is not appropriate to ask us to blindly trust that the tenants of this newly-signed state legislation will be magically imbued into this rule without prior public review and debate of the new language that we have been promised will bring RMAS into compliance with HALT.

¹ <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail->

- II. When we had the debate over the creation of the ESH units back in 2014-2015 Alex Reinert offered testimony and a reading of recent case law that essentially called-out DOC's use of any type of restrictive housing in a punitive manner as UNCONSTITUTIONAL:

“Applying these factors, there are significant indications that DOC’s ESH policy is intended to punish and hence is unconstitutional under Bell. See, e.g., Peoples v. CCA Detention Centers, 422 F.3d 1090, 1106 (10th Cir. 2005) (“If an act by a prison official, such as placing the detainee in segregation, is done with an intent to punish, the act constitutes unconstitutional pretrial punishment.”). Application of the Mendoza-Martinez factors weighs in favor of finding that this is a punitive regime. First, confinement in the ESH “involves an affirmative disability or restraint” – restrictive movement, limited privileges, and the like. Mendoza–Martinez, 372 U.S. at 168–69. Second, most, if not all, of the criteria for placement in ESH involve the presence of scienter and many are already a crime.”²

This same legal analysis, some six years later, still applies to the creation of this new RMAS unit.

- III. I agree with comments of the Legal Aide Society, The Bronx Defenders, NY County Defenders, Brooklyn Defenders and others offered in earlier oral and written testimony regarding the urgent need for this rule to include the right to legal counsel for administrative placement hearings for this new unit. I feel like we have had this debate before back in 2015 and 2016 over ESH administrative placement hearings. This is almost entirely a new board however, the only three member still seated today were around when ESH was voted on: maybe this very reasonable mandate will be incorporated into this new rule. I hope it is.

² Written Testimony of Alexander A. Reinert; Professor of Law Benjamin N. Cardozo School of Law; Before the New York City Board of Correction Public Hearing on Proposed Rule to Amend the Minimum Standards, Create Enhanced Supervision Housing and Limit the Use of Punitive Segregation; Friday, December 19, 2014 New York, New York; linked April 23, 2021 https://www1.nyc.gov/assets/boc/downloads/pdf/Alexander_A_Reinert_Professor_of_Law.pdf

IV. **The oversight scheme as included in the rule on pages 112-114 of the RMAS rule is only representative of some of the changes the RMAS will bring. Of the ~230 new changes/mandates described in the rule only 26 are listed on the “Implementation Dates” section of the rule!** We saw this same incomplete implementation table/timeline attached to the PREA rule in 2016: what assurances do we have that oversight and accountability are built into this new rule unlike the disaster that PREA implementation has brought? Nary any of the changes outlined for :

A. Proposed Amendments to Chapter 1 Standards: Amendments to § 1-02(c): Commingling of Young Adults with Adults

1. Rules (§ 1-02(c)(1)) & § 1-02(b)(3) through (4): what mechanism(s) do we have for oversight ref guaranteeing young adults 18-21 will be housed separately and apart from adults in the DOC’s custody in these new RMAS units? Co-mingling is an issue I have testified and presented analysis to the Board to in the past.^{3 4}

“The data posted in the monthly housing reports don't include data on YA's placed in Adult units: they only count people in units already labeled as YA units. If a young adult is placed in a unit labeled an Adult Unit that head is not included in the tally for "# YAs in Co-mingled Housing Areas." Only YA's in units labeled as YA units that have some adults in them are included in this reporting. This is nutz. Close Rosie's has identified as many as ten reports with data that conflicts with the July 2019 data and will continue my evaluation.”⁵

³ Testimony of Kelly Grace Price to the NYC Board of Correction December 2, 2019: <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/KGP-Restrictive-Housing-Rulemaking-Testimony-Dec-2-2019.pdf> and;

⁴ Testimony of Kelly Grace Price to the NYC Board of Correction; January 12, 2021: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2021/January/January-12-2021-Close-Rosies-BOC-Testimony.pdf>

⁵ Id.

This seems like a glaring omission to have been left off from the Implementation/Oversight table added to the proposed rule on pages 112-114.⁶ Also omitted from the Implementation Timeline appended to the new rule on pages 112-114:

2. § 1-02(c)(2)). Age-Appropriate Programming: what oversight mechanisms are included in this rule to ensure young adults are not given coloring books in lieu of real educational programming in these units? We heard testimony from the DOC last week during a City Council hearing on educational services for youth in our city jails and detention centers that the DOC has been unable to provide tablets for learning to all youth on Rikers because of issues with Internet connectivity. *What oversight do we have to assure age-appropriate programming is being offered in these new units?*
3. Section 1-06 (Recreation) & Section 1-07 (Religion): while both of the changes in these sections are linguistic only there is nary even a glance in of a reporting/oversight mechanism guaranteeing people held in the new RMAS units will be guaranteed access to REC or to religious services.
4. Section 1-08 (Access to Courts and Legal Services)Section 1-08(f)(6) is amended to permit the Department to reduce or eliminate law library hours in RMAS Levels 1 and 2 provided that an alternative method of access to legal materials is instituted to permit effective legal research. *What will this alternative method be and when will it be instituted?*
5. Section 1-08(j)(1) is amended to eliminate language allowing a person to be excluded from law library following a disciplinary infraction, in keeping with the SCOC guidance provided in the recreation context specifying that essential services cannot be restricted as part of a disciplinary sanction: *but what oversight do we have to ensure that*

⁶ See attached Exhibit A.

law library access is provided to all persons housed in the new RMAS units?

6. Section 1-09 (Visiting) The new rule allows in-person visits to be suspended for people in the RMAS unit but mentions nothing about virtual visiting. *When will people in these units be able to visit their loved ones via video and how will this be monitored for continued compliance if it is not added to the implementation table?*
7. Section 1-11 (Correspondence) the new rule mandates that the warden inform people in RMAS when their non-privileged correspondence(s) will be read: *this is a big sea-change from the old policy that allowed the warden to deny people in ESH their mail and should be included on the Implementation Calendar.*

B. Proposes Chapter 6 [sic] Rules: Implementation Timetable Omissions:

1. § 6-03(a)(1) and (2): this section defines exceptions to the term “restrictive housing” and makes allowances for congregant setting out of cell time exceptions for certain types of units defined by purpose and/or by architecture. We haven’t a mechanism for knowing how many of these new RMAS units fall into these exceptional categories/how many may fall into these categories because of operational changes. It would be optimal if the board included language here for an addition to the Monthly Housing Report that would be reflective of the status of each of the RMAS units that falls into these exceptional categories.
2. Pre-Hearing Detention (§ 6-04(f)):

“To monitor compliance with § 6-04, subdivisions (e) and (f) require: (i) the Department to produce semi-annual reports on DOC’s use of pre-hearing detention; and (ii) the Board and the Department jointly develop the reporting template, which shall be approved by the Board.”

The way this is written I am assuming that (e) = (i) and (f) = (ii). If this is the case where is the Implementation Timeline entry for the development of the reporting template that the Board and the Department will develop jointly (f)? Also please add into the language of the rule that advocates will participate in developing this reporting template.

3. Confinement for De-Escalation Purposes (§ 6-05):

- a. the proposed rule § 6-05 (a) “permits the Department to confine people in custody for de-escalation purposes only when (1) a person’s behavior poses an immediate threat to the safety of the persons or others or significantly disrupts DOC activities in progress⁷; (2) temporarily house a person in custody for the person’s own safety after the person has been assaulted or otherwise victimized by another person in custody⁸; or (3) facilitate the decontamination of people in custody following exposure to chemical spray.”⁹ But we don’t have a reporting tool that allows the board or the public to view how many people are placed in the new RMAS unit(s) because of what reason. Also: I don’t ever remember any DOC rule or variance request that allowed restrictive housing placement “following exposure to chemical spray.”¹⁰ Shouldn’t people be placed in medical units and not in the RMAS units and shouldn’t this be written into the language of the new rule? It feels like you are giving bad-intentioned corrections staff a free pass to throw people into this unit: all they have to do is spray someone to send them to this new sugar-free, calorie-free (and taste-free) solitary “lite” unit. To add insult to injury the new rule doesn’t allot for any reporting to

⁷ Proposed rule § 6-05(a)(1).

⁸ Proposed rule § 6-05(a)(2).

⁹ Proposed rule § 6-05(a)(3).

¹⁰ Id.

control this malignant potential practice. Please add a reporting requirement here.

- b. Proposed rule § 6-05(b) ensures immediate notification of the movements of persons caged in the RMAS units to CHS to guarantee continuity of care but the rule doesn't specify when these notifications must commence. It may be prudent to specify that these immediate notifications are to begin on the effective date of this rule and to require reporting on movements between units.
- c. Proposed rule § 6-05(c): It's outrageous that observation of people in de-escalation confinement every 15 minutes isn't mandated right off the bat for this unit. The proposal allows DOC three months to bake this life-saving oversight into the recipe for this new unit. It feels like the DOC would be appreciative of the chance to form good habits early in the nascent days of this unit instead of waiting three months and for routines to formant without this practice ingrained synoptically into the daily work schedules of staff on these new units. What is the barrier to performing these 15-minute check-ins as soon as these new units are opened? Has anyone asked?
- d. Proposed rules § 6-05(d) (e) (f): I don't see reporting requirements in Proposed rule § 6-21 or Proposed rule § 6-25 or in Proposed rule § 6-05(k) that outline any kind of reporting on the architectural features of cells used for RMAS confinement or in compliance with 40 RCNY Proposed rule § 1-03 and Proposed rule § 1-04 or that meals and snack quality and availability is on a equilibrium as meals served in general pop.
- e. Proposed rule § 6-05(h),(i): It is not clear what exactly the proposed reporting requirements are for Proposed rule § 6-21(h) and Proposed rule § 6-05(i) are. I don't see the language provisions for these subdivisions of this section anywhere in the

new rule. Can someone provide a complete rule please for review???

- f. Proposed rule § 6-05(j)(k): again these subsections of this part of the rule require the BOC and DOC to produce quarterly reports¹¹ on the use of de-escalation confinement and for the BOC and DOC to collaborate on creating the reporting templates¹² but there is not an implementation timeline denotation for WHEN these templates will be completed by. It is also not clear if the quarterly reports that are only required to be posted eight months after the creation of the unit(s) will retroactively include data from the first eight months of the RMAS units' creation. If you don't specify that the first report includes this retroactive data we will never see it and neither will you (the BOC members and staff.)
- g. Proposed rule § 6-21(f)(1) through (7). It is not clear what exactly the proposed reporting requirements are for Proposed rule § 6-21(f)(1) through (7) are. I don't see the language provisions for these subdivisions of this section anywhere in the new rule. Can someone provide a complete rule please for review???
- h. I will turn in a more comprehensive analysis of the rest of the new rule [chapter six of the DOC's Charter's "Implementation Timeline"] omissions included in this rule with a revised timeline table as soon as I have completed it: I'm aiming for within two weeks.

II. During the January 12, 2021 BOC meeting Board Member Cohen asked for an explanation ref why the number of people on Rikers on psychotropic medications has skyrocket to ~1800. Please may we make sure we get answers about this? I still haven't heard anything about this.

¹¹ Proposed rule § 6-05(j).

¹² Proposed rule § 6-05(k).

III. Sexual Assault numbers keep going up on Rikers and Rosie’s specifically even though the number of women/girls/trans/intersex and gender non-conforming people held at Rikers’ non-male jail has plummeted. We need to shift focus back to PREA implementation PLEASE we can’t have this half-baked work. I will turn in a more extensive analysis of where we stand with PREA next week.

IV. It saddens me to hear of another death reported on Rikers on April 19, 2021. We demand answers for the death of this still un-named person and this deaths of Christopher Cruz, Layleen Polanco, Javier Velesco, Thomas Carlo, and for Eugene Castelle et al.

- Its time to call a special hearing to examine the recent uptick in deaths in City jails. The last time fourteen deaths were recorded in a two-year timespan in the late 70’s activists forced a change in the BOC Charter and called for special Federal judicial hearings into the matter.
- ***Please can you include in the BOC Death Report (mandated to be announced at BOC meetings right after people have died in custody) those who were compassionately released into hospice or hospital care just mere hours/minutes before their deaths?***
- I will repeat my demand: if you don’t call a special hearing and examine these deaths and the cover-ups by the DOC I will make sure the Commission on Human Rights and/or a Federal Court committee does.

V. I was pleased to see: “Non-Substantive Language Amendments (§§ 1-05 through 1-09 and § 1-11)”¹³ tucked into this rule but it seems odd to insinuate this

¹³ “Non-Substantive Language Amendments (§§ 1-05 through 1-09 and § 1-11) “People in DOC custody are people first and the circumstance of their incarceration is not their defining feature. Therefore, the

progressive language change into only the new rule and not the entire DOC/BOC charter/Minimum Standards.

Thank you for your consideration of my analysis. I look forward to an ongoing process.

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April 23, 2021

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Board has made a commitment to employ person-first language in its Standards and general communications going forward. To this end, the Board is deleting all references to “Inmates” in favor of person-first terms such as “people/persons/individuals in custody” in Minimum Standards §§ 1-05 through 1-09 and § 1-11. The Board is also making a concerted effort towards gender inclusivity in its use of language and will avoid the use of terminology that suggests a gender binary.”

ATTACHMENT A: RMAS Rule Implementation Dates

§ 6-29 Variances.

The Department or CHA may apply for a variance from a specific subdivision or section of these Chapter 6 rules in accordance with the procedures and criteria set forth in 40 RCNY § 1-15.

Effective Date.

The standards in section 1 of this Rule shall take effect 6/15/2021.

Implementation Dates.

The policies, procedures, criteria, programs, plans, reports and forms required by the various sections of these rules shall be developed, approved and implemented by the dates specified therein. These time periods are specified below. Unless otherwise stated therein and below, all time periods are computed from the effective date of these rules.

| <u>SECTION</u> | <u>IMPLEMENTATION</u> |
|--|--|
| <u>§ 6-04: Pre-Hearing Detention</u> <u>(e) (Semiannual report on Prehearing Detention)</u> | <u>Within 8 months of Effective Date</u> |
| <u>§ 6-05: De-escalation Confinement</u> <u>(g) (time in de-escalation (6 hours), re-authorization (3 hours), notice to the Board if confinement exceeds 6 hours)</u> <u>(c) (visual and aural observation of people in de-escalation confinement every 15 minutes)</u> <u>(k) (Quarterly report on De-escalation)</u> | <u>Within 6 months of Effective Date</u> <u>Within 3 months of Effective Date</u> <u>Within 8 months of Effective Date</u> |
| <u>§ 6-06: Emergency Lock-Ins</u> <u>(e) (documentation of reasons for and objectives to be accomplished during emergency lock-ins)</u> <u>(g) (CHS medical and mental health rounding in housing areas where emergency lock-ins have been in effect for more than 6 hours)</u> <u>(i) and (j) (tracking of services impacted by emergency lock-ins)</u> | <u>Within 3 months of Effective Date</u> |

| <u>SECTION</u> | <u>IMPLEMENTATION</u> |
|---|---|
| <p>(l) (DOC and CHS Directives regarding compliance with the requirements of this section)</p> <p>(m) (CHS Quarterly report re: emergency lock-ins)</p> <p>(o) (DOC data reporting on Emergency lock-ins)</p> | <p><u>Within 6 months of Effective Date</u></p> |
| <p><u>§ 6-07: Prohibition on the Use of Punitive Segregation</u></p> <p>(a) <u>The use of all forms of punitive segregation as defined in 40 RCNY § 6-03(b)(10) shall be prohibited in all existing and future DOC facilities.</u></p> <p>(b) <u>Upon the Department's elimination of punitive segregation, the only form of restrictive housing permitted in DOC facilities will be RMAS housing pursuant to 40 RCNY § 6-08 through § 6-26.</u></p> | <p><u>November 1, 2021</u></p> <p><u>November 1, 2021</u></p> |
| <p><u>§ 6-10: Placement Criteria</u></p> <p>(e) <u>Written penalty grid.</u></p> | <p><u>Within 3 months of Effective Date</u></p> |
| <p><u>§ 6-12: Case Management</u></p> | <p><u>Within 3 months of Effective Date</u></p> |
| <p><u>§ 6-18: Staffing</u></p> <p>(a) <u>(Semiannual report on staffing in restrictive housing)</u></p> <p>(b) <u>(Staffing plans)</u></p> | <p><u>Within 6 months of RMAS implementation</u></p> <p><u>November 1, 2021</u></p> |
| <p><u>§ 6-19: Training</u></p> <p>(a) <u>(training for hearing adjudicators and staff involved in sentencing and placement decisions)</u></p> <p>(c) <u>(information to the Board re: Training)</u></p> | <p><u>November 1, 2021</u></p> |
| <p><u>§ 6-20: Programming</u></p> <p>(f) <u>(Quarterly public reports)</u></p> | <p><u>Within 3 months of RMAS implementation</u></p> |
| <p><u>§ 6-21 Access to Health Services</u></p> <p>(e) <u>CHS monthly public reports</u></p> | <p><u>Within 1 month of RMAS Implementation</u></p> |
| <p><u>§ 6-23: Disciplinary System Plans</u></p> | |

| <u>SECTION</u> | <u>IMPLEMENTATION</u> |
|--|---|
| | <u>Within 3 months of the Effective Date</u> |
| <p><u>§ 6-24 Due Process and Procedural Justice</u> <u>(c)(6) (videotaping of refusals to sign notice of infraction)</u></p> <p><u>(d)(5) (recording of refusal to attend hearing)</u></p> <p><u>(i)(1) system to track due process requirements and documentation</u></p> <p><u>(i)(2) Semiannual public report</u></p> | <p><u>November 1, 2021</u></p> <p><u>Within 1 year of Effective Date</u></p> |
| <p><u>§ 6-25: RMAS Data Collection and Review</u> <u>(b) (system to track RMAS placements and RMAS documentation)</u></p> <p><u>(c) (monthly public data reports)</u></p> <p><u>(d) (monthly public reports)</u></p> | <p><u>Within 1 year of Effective Date</u></p> <p><u>Within 1 month of RMAS implementation</u></p> <p><u>Within 1 month of RMAS implementation</u></p> |
| <p><u>§ 6-26: Transition</u> <u>(b) (comprehensive transition plan)</u></p> <p><u>(c) (monthly public progress reports)</u></p> | <p><u>Within 1 month of Effective Date</u></p> <p><u>First business day of July 2021</u></p> |
| <p><u>§ 6-27: Restraints</u> <u>(m) (Semiannual public report)</u></p> | <p><u>Within 1 year of Effective Date</u></p> |