



Testimony of the Jails Action Coalition & #HALTsolitary Campaign

Presented before the New York City Board of Correction

Regarding Restrictive Housing Rulemaking

April 21, 2021

Thank you to the Board of Correction for considering this testimony. The New York City Jails Action Coalition (JAC) and the #HALTsolitary Campaign present this testimony to urge you to significantly strengthen your proposed rule in a way that will actually end solitary confinement in all its forms in New York City jails as promised, rather than perpetuating indefinite solitary confinement by another name under the current proposed rule.

The New York City Jails Action Coalition (JAC) is a coalition of activists that includes formerly incarcerated and currently incarcerated people, family members and other community members who are working to promote human rights, dignity and safety for people in New York City jails. Since its formation in 2011, JAC has been at the forefront of the struggle to end solitary confinement in New York City jails.

The #HALTsolitary Campaign is a New York statewide coalition led by people who have survived solitary, family members who have or who have lost loved ones to solitary, and other leaders in the human rights, advocacy, health, and faith communities. Comprised of more than 400 organizational supporters, the #HALTsolitary Campaign aims to end the torture of solitary for all people and create more humane and effective alternatives. The #HALTsolitary Campaign also aims to build on these changes – and their pursuit – to dismantle the racial injustices and punishment paradigm that underpin the entire incarceration system.

This testimony will proceed in three parts, followed by two appendices. The first part is an introduction, emphasizing how the Board must truly end solitary confinement in order to stop torture, save lives, promote racial justice, and reduce violence and improve safety in jails and outside communities.

In the second part, this testimony will provide twelve key recommendations to strengthen the currently proposed rules in order to fulfill the Mayor's and the Board's promise to fully end solitary confinement in New York City. Specifically, we are urging the Board to amend its rules to:

1. **Prohibit People from Spending Even One Day** in What is Currently RMAS Level One, the More Restrictive Forms of RMAS Level Two, and Any Other Environment that Amounts to Solitary Confinement by Another Name
2. **Require All People to Have Access to Meaningful Congregate Out-of-Cell Time** at Any and All Levels Rather Than Locking People Alone in a Cage
3. **Require All People to Have Access to Meaningful Congregate Out-of-Cell Programming** Comparable to General Population Programming at Any and All Levels Rather than Allowing People to Have So-Called “Programming” Alone in Their Cell
4. **Require All People in the City Jails to Have Access to at Least 14 Hours Out-of-Cell Per Day** Rather than Carving Out a Second Class of People in City Jails for Whom Inhumane Treatment is Allowed
5. **Have Strict Time Limits on All Levels of All Alternatives** Rather than Locking People In Restrictive Units Indefinitely
6. **Prohibit the Construction of Additional Inhumane Units** and Use Those Resources for What People and Communities Actually Need to Thrive
7. **Provide Access to Representation to People at Hearings and Placement Reviews** that Can Result in People Being Sent to, or Held in, Any RMAS Levels
8. **Prohibit Young Adults, Elderly People, and All People with Mental Health Needs, Physical Disabilities, and Medical Conditions** from Being Locked in Restrictive Housing
9. **Prohibit, or At Least Place Strict Limits on the Time, Criteria, and Scope of Other Forms of Solitary (Including Emergency Lock-Ins and Deescalation)** Rather than Again Allowing Indefinite Solitary Confinement by Another Name
10. **Fully Ban Restraint Desks and Other Forms of Restraints**
11. **Prohibit Restrictive Housing for Non-Violent Conduct Such as Drug Possession**
12. **Prohibit or At Least Strictly Limit the Use of Variance Requests**

The third part will provide a conclusion, urging the Board to follow the science and evidence, the urgings of New York City’s political leaders, the demands of people who survived solitary or lost loved ones to solitary, and your own moral compass to adopt rules that truly, fully, and finally end solitary confinement in New York City.

Following the conclusion, there are two appendices. The first appendix is a [Daily News op-ed by Melania Brown](#), sister of Layleen Polanco, who tragically and preventably died in solitary confinement at Rikers Island. In her op-ed, Melania urges the Board to truly and fully end solitary confinement rather than create a new form of solitary confinement by another name, which Melania relates would not have prevented her sister’s death.

The second appendix is an updated memo on how the [Humane Alternatives to Long Term \(HALT\) Solitary Confinement Act](#), recently enacted by New York State, requires the Board to

strengthen its rules to at the very least end prolonged solitary confinement by any name and provide at least seven hours of meaningful out-of-cell congregate programming and activities to any person separated from the general jail population. It would be absurd, and indeed in violation of HALT's binding legal requirements, for this Board to adopt rules in New York City that do not even comply with both the letter and spirit of the HALT Act, and create conditions for people in New York City jails that are worse than what will be required to happen in prisons and jails across the state. Meanwhile, the memo outlines how the Board must go further than what HALT requires in order to fulfill the Mayor's and the Board's promise to fully end solitary confinement in New York City jails.

INTRODUCTION: THE BOARD MUST TRULY END SOLITARY CONFINEMENT TO STOP TORTURE, SAVE LIVES, PROMOTE RACIAL JUSTICE, AND REDUCE VIOLENCE

Solitary confinement is torture. It causes immense suffering and devastating mental, physical, and emotional harm. It's disproportionately inflicted on Black and Latinx people, and transgender and gender non-conforming people. In New York City, solitary confinement is indeed almost exclusively inflicted on Black and Latinx people, particularly given that [90% of all jail admissions in the City are of Black and Latinx people](#). It is also inflicted on people who are either presumed innocent or incarcerated on relatively minor charges, since approximately [three quarters](#) of people incarcerated in New York City jails are simply awaiting trial and the rest are incarcerated for less than a year on misdemeanor charges. In addition, [over half](#) of incarcerated people on Rikers Island have at least some symptoms of mental illness.

Solitary confinement in New York City is thus a widespread government program of torture of predominantly Black, Latinx, and poor people in New York City that has damaged and destroyed countless minds and bodies, has directly caused the deaths of far too many people, and has increased violence and harm in jails and in our outside communities. Solitary confinement causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. It leads people to deteriorate mentally and physically. It makes jails and outside communities *less* safe.

[Layleen Polanco](#) died in solitary confinement on Rikers Island in 2019. [Kalief Browder](#) died because of solitary confinement in New York City in 2015. [Bradley Ballard](#), [Jason Echeverria](#), and [Carina Montes](#) all died in solitary confinement in New York City jails. These individuals are tragically just a sample of those killed by solitary confinement, and of the scores of thousands of others who have been tortured in solitary. Not one more person in New York City should be tortured or die because of solitary confinement.

Yet, following massive public outcry over these tragic and preventable deaths, after the Mayor of the City of New York and this Board promised to fully end solitary confinement, after months of delay following years of delay, after nearly a decade of the Board purportedly studying methods for actually addressing violence, this Board has put forward proposed rules that simply create a new form of solitary confinement by another name, where people are locked alone in cages 24 hours a day, indefinitely. These proposed rules are not ending solitary confinement.

We do not have to guess what the outcomes will be if these rules go into effect as currently written. An October 2020 internal report of the Board, obtained through a Freedom of Information Law (FOIL) request, shows that over half of all fires in the city jails and 60% of fire-related use of force incidents took place in the very same structurally restrictive housing units that form the basis for the purported alternatives to solitary under these proposed rules. At the time of the report, there were only 36 people in such units, with a capacity of 66, out of a total NYC jails population at the time of roughly 4,500 people. In other words, people representing less than 1% of all people in the city jails lit more than 50% of all fires. The internal Board memo reported that: “Discussions with Board and Department staff as to why fires may happen so frequently in these units suggest people are trying to get moved out of these units and/or feel they have no other way to bring attention to their concerns about conditions in the unit and/or feel they have no way of controlling their own lives.”

Replicating and expanding the cruel and abhorrent environments that resulted in these fires, and countless other forms of harm, will not end solitary confinement and will not improve safety. Ending solitary confinement must mean ending solitary confinement. The Board’s rules must consider and treat people in the city jails as fellow human beings. Out-of-cell time does not and can not mean being alone in another cage. Ending solitary confinement does not and can not mean placing someone alone in another cage, with another person in a nearby cage. Treating people as human beings and ending solitary confinement means the most basic practice of allowing people to interact with other human beings in the same physical space that is conducive to meaningful interactions. These proposed rules do not even comply with the recently enacted Humane Alternatives to Long Term (HALT) Solitary Confinement Act, which of course it must, let alone go further to end fully end solitary confinement as promised.

NYC must truly and fully end solitary confinement in all its forms to stop suffering, save lives, promote racial justice, and increase safety for people incarcerated, staff, and outside communities. Over a year and a half ago, the Jails Action Coalition and #HALTsolitary Campaign provided this Board with a [Blueprint to End Solitary](#) and detailed [proposed rules](#) to effectuate the Blueprint. To effectively end solitary, every incarcerated person must have a minimum of 14 hours of out-of-cell time per day, in line with the current minimum standards for people in jails generally. When out-of-cell, every incarcerated person must have meaningful human engagement and congregate programming without restraints, including at least seven of

the 14 out-of-cell hours involving congregate programming. Moreover, for any separation from the general jail population, there must be specific, uniform processes and procedural safeguards, including true and meaningful access to representation.

Addressing the root causes of harmful behaviors requires engagement, not isolation. There are no safety or other benefits to restricting people's out-of-cell time. But such restrictions can cause extreme suffering, devastating harm, and even death. Experts agree that the sensory deprivation, lack of normal interaction, and extreme idleness of solitary can lead to severe [psychological](#), [physical](#), and even [neurological](#) damage, and dramatically increase the rates of self-mutilation and suicide ([NYC jails](#) and [NYS prisons](#)). New [Cornell research](#) found that even a few days in solitary confinement - and even only one or two days of solitary - led to significantly heightened risk of death by accident, suicide, violence, and other causes. [One study](#) published in the Journal of General Internal Medicine found that solitary confinement is associated with a [31% increase in hypertension](#). Approximately one-in-three people in solitary who participated in the study were more likely to experience heart attacks, strokes, and - unsurprisingly - higher degrees of loneliness, which also [contributes](#) to heart disease. This study was followed by another one which found solitary confinement is associated with [increased rates of death after release](#), particularly by suicide as well as overdose.

Evidence shows that what works to reduce violence and improve safety, is in fact the exact opposite of solitary confinement with opportunities for pro-social programming and engagement-based approaches. As discussed further below, and repeatedly shared with the Board, some key examples that demonstrate this more effective approach include: the CAPS program in NYC jails, former Merle Cooper program in NY State prisons, and RSVP program in San Francisco jails.

This is an historic moment: an opportunity to finally and fully end solitary. The Board must rise to this moment and adopt a rule in line with the below recommendations to actually, truly, and fully end solitary confinement in all its forms.

12 Key Recommendations for the Board's Proposed Rules in Order to Truly and Fully End Solitary Confinement in NYC Jails

The Board's proposed rules purportedly aim to end solitary confinement in New York City jails. However, as written, the Board's proposed rules simply create a new system of inhumane and abhorrent treatment that amounts to solitary confinement by another name. The Board must amend its rules to actually end solitary confinement in a real and meaningful way, including by adopting the following necessary changes.

1. The Rules Must Prohibit People from Spending Even One Day in What is Currently RMAS Level One, the More Restrictive Forms of RMAS Level Two, and Any Other Environment that Amounts to Solitary Confinement by Another Name

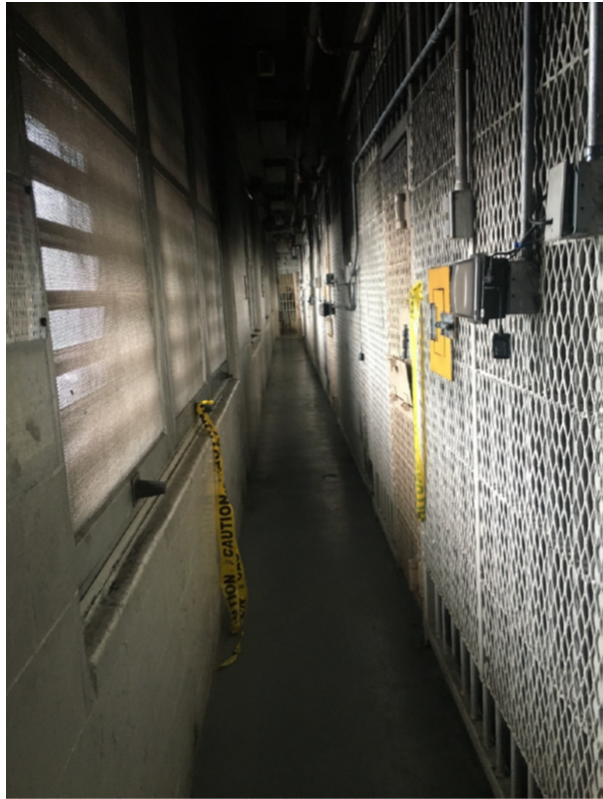
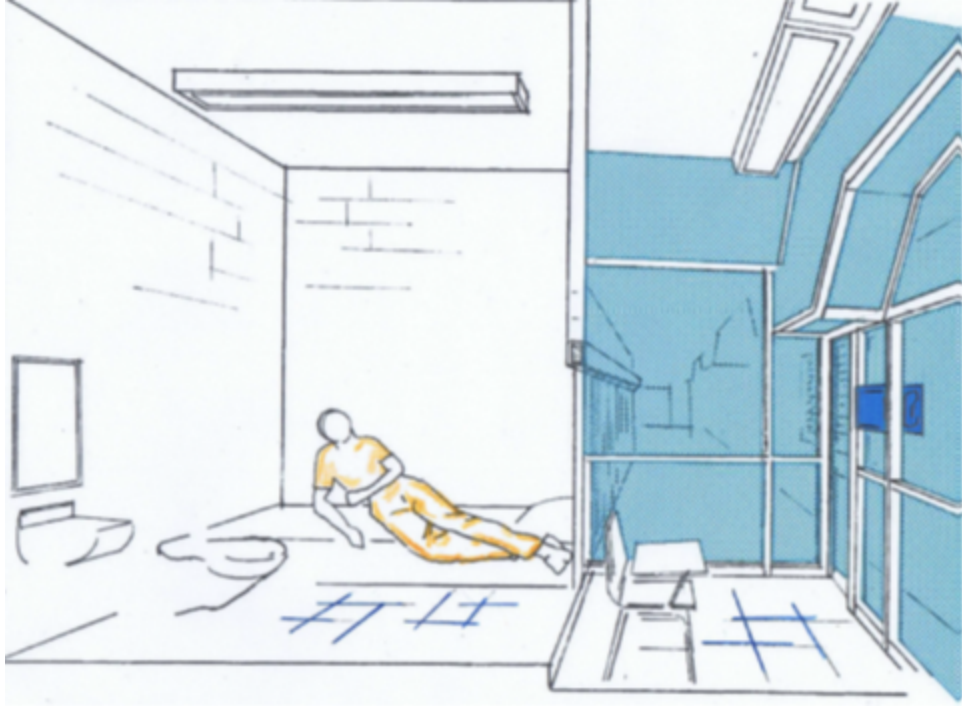
As was promised by the Mayor and this Board, the rules must truly and fully end solitary confinement in all its forms rather than create a new form of solitary by another name. Under the currently proposed rules, the so-called Risk Management and Accountability System (“RMAS”) allows people to be held in conditions that are extremely restrictive, isolating, and nothing more than solitary confinement by another name. As the Board considers what RMAS levels one and two will mean, it again must remember that it will be predominantly Black and Latinx people who the City will lock in this new form of solitary confinement.

According to the proposed rules, when people in level one in RMAS have “out-of-cell” time, they are placed *alone* in another cage. For purported engagement, the rules only allow for there to be one other person, also alone, in a separate somewhat nearby cage. Similarly, when people in level two in RMAS have “out-of-cell” time, they are in another cage potentially alone, with three other people each in a separate nearby cage, or potentially with three other people in the same cage.

For both level one and level two, the rules only require that people be able to engage “both visually and aurally” and “in a setting where people can converse without needing to raise their voices to be heard.” These rules clearly allow, and indeed envision, that people will be in separate cages from one another during their “out-of-cell” time and will be at a distance from each other.

For level one, and for level two to the degree people are in separate cages apart from each other, this type of so-called “out-of-cell” time is not out-of-cell time by any legitimate definition of the term. It still involves being placed in a small cage without normal and meaningful human engagement. Even if in the same cell with just one other person - which the rules do not even currently provide for - psychological experts have found that [isolation in a double-occupancy cell](#) does not allow for regular social interaction, can be as devastating psychologically as other forms of solitary, and can lead to paranoia, hostility, and potential violence.

People who have been incarcerated in the structurally restrictive housing units at North Infirmery Command (NIC) and the Secure Unit at George R. Vierno Center (GRVC), which are the models for the RMAS units, have faced serious harm and raised significant complaints about the conditions in which they are held.





The photographs above, obtained via FOIL, are pictures of the NIC structurally restrictive units, where people in RMAS level one under the proposed rules will be held. The photographs, as well as [the rendering](#) above the Board publicly released, show the tiny cage where people will be locked alone for their so-called “out-of-cell” time. Being locked in this cage, which is even smaller than the cell the person will otherwise be in, is not and can not be considered out-of-cell time. In conjunction with the photograph of the individual cage, the photograph of the tier of these cells, with people individually locked in each cage, shows that these cages do not allow for meaningful programming or meaningful human engagement. These cages appear to be equivalent to the existing balcony recreation pens in New York State prisons that are connected to the back of people’s cells in the state’s SHU 200s. These have long been known to *not* provide opportunities for meaningful human engagement, people in these units are in 24-hour lockdown, and when people have so-called “recreation” in these cages connected to their cell and they are locked in the two cells combined for a total of 24 hours, being in these units is certainly solitary confinement that has all of the known devastating impacts of solitary confinement.

Given that people in RMAS level one will always be locked alone in a cage up to 24 hours a day, and people in RMAS level two can also be locked alone in a cage up to 24 hours a day, people locked in these conditions will be held in solitary confinement. The harm of solitary confinement stems from the lack of meaningful human interaction and programming. That is what causes people to cut themselves and bang their heads against the wall, to start fires in their

cells to do anything they can to get out of this torture, and to deteriorate and decompensate and in turn make the jails and outside communities less safe, not more.

As such, in order to end solitary confinement in New York City jails as promised, the rules must fully prohibit any such confinement and thus remove the current RMAS level one, and RMAS level two to the degree that people can be held alone during out-of-cell time.

With people locked alone in these individual cages as out-of-cell time, **even the recently enacted Humane Alternatives to Long Term (HALT) Solitary Act would prohibit people from spending even one day in RMAS level one and the more restrictive form of RMAS level two.** HALT defines segregated confinement as confining a person in *any form* of cell confinement for more than 17 hours a day, and prohibits segregated confinement beyond 15 consecutive days. In addition, HALT requires that people *in segregated confinement up to the 15 days* have access to at least four hours of daily out-of-cell programming, and as discussed below requires anyone held beyond the 15 days in an alternative to generally have access to at least seven hours of out-of-cell congregate programming and activities. Under the current proposed rules, as described above, people in RMAS level one are confined to a cell alone 24 hours a day, with purported out-of-cell time meaning only that people are in another cell alone, potentially with a person in a separate nearby cell. Similarly, RMAS level two allows at least in some circumstances that people only have out-of-cell time where they are alone in a cell with other people in a separate nearby cell.

As such RMAS level one, and at least in some circumstances RMAS level two, not only fit the definition of segregated confinement under HALT, but also violate the requirement that people in segregated confinement have at least four hours of out-of-cell programming per day. In turn HALT prohibits people being in RMAS level one and the more restrictive form of RMAS level two for even one day. Even if the proposed rules expanded the amount of out-of-cell programming in those RMAS levels, unless people have access to at least seven hours of out-of-cell congregate programming and activities per day, HALT would prohibit people being in RMAS levels one and two in its more restrictive form for more than a total of 15 consecutive days for the two levels combined, and generally more than 20 days total in any 60 day period. Currently, the proposed BOC rule allows people to be in these units indefinitely (see below), in contravention of HALT's requirements. Moreover, because RMAS level one and the more restrictive form of RMAS level two fit the definition of segregated confinement (and worse) under HALT, all of the other protections of HALT should apply to RMAS level one and in at least some circumstances level two, including the criteria for being sent to those units and the banning of certain groups of people from ever being in those units (see more below). Certainly, HALT envisioned that people in the SHU 200s, with the connected cages to their cells for recreation that appear equivalent to the photographs and rendering of units for RMAS level one,

were in segregated confinement for purposes of the Act and the limitations and prohibitions on segregated confinement.

Recommendation 1: In order to end solitary confinement as promised, the rules must fully prohibit RMAS level one, the more restrictive form of RMAS level two, and any other environments where people are locked alone in a cell or cage all day.

2. The Rules Must Require All People to Have Access to Meaningful Congregate Out-of-Cell Time at Any and All Levels Rather Than Locking People Alone in a Cage

The Board's rules must require that all people, in any and all alternatives and levels of alternatives, have access to meaningful and congregate out-of-cell time, and people should be able to participate in out-of-cell time without having to be strip searched. As described above, being locked alone in a cage, with another person in a nearby cage in RMAS level one or multiple other people in nearby cages in RMAS level two, is not out-of-cell time at all and certainly is neither meaningful out-of-cell time nor congregate out-of-cell time.

As we have long put forward, all people in New York City's jails should have access to at least 14 hours out-of-cell per day (see more below), and that out-of-cell time must actually be out-of-cell time. Any reasonable definition of out-of-cell time means being in a space that is not a cage, with other people in the same space, and in a space that is conducive to regular and meaningful interactions with other people. The devastating harm of solitary confinement comes not from being in one particular space or another but instead from being alone, without meaningful human engagement. Out-of-cell time, to be considered out-of-cell time, must involve congregate interaction with other people in the same space and in a space that is conducive to meaningful human engagement.

Again even the HALT Solitary Confinement Act, binding on New York City, requires access to congregate out-of-cell time in alternatives to solitary.¹ In alternatives to solitary under HALT, people are guaranteed access to at least seven hours of daily out-of-cell *congregate* programs and activities. Under the Board's current proposed rules, there is no requirement that there be congregate out-of-cell time in RMAS level one or in RMAS level two, and indeed again it is

¹ The definition of the alternative Residential Rehabilitation Units (RRUs) under HALT say that the RRUs are units for people determined to require more than 15 days of segregated confinement. Because the Board's current rules and proposed rules do not change the Department of Correction's practice of issuing disciplinary tickets and sentencing people to what would be lengths of segregated confinement time - albeit now served in RMAS - the definition applies to people in RMAS. In other words, everyone in RMAS is someone who was determined to require more than 15 days of segregated confinement, which is why they are in the RMAS. As such, the RMAS have to comply with all of the requirements for RRUs under HALT, including the criteria for getting in, the mechanisms for getting out, and the required out-of-cell congregate programming comparable to general population plus additional programming.

envisioned that out-of-cell time will consist of being alone in a cage, potentially with another person or persons in a nearby cage(s).

Recommendation 2: “Out-of-cell” time must require access to meaningful congregate interactions with at least several people at a time in the same open space that is conducive for healthy human interaction and engagement. People must be treated as human beings, have opportunities for regular activities with other human beings, in spaces that are conducive for human beings to interact meaningfully.

3. The Rules Must Require All People to Have Access to Meaningful Congregate Out-of-Cell Programming Comparable to General Population Programming at Any and All Levels Rather than Allowing People to Have So-Called “Programming” Alone in Their Cell

The rules must also require that people have access to congregate out-of-cell *programming*, and specifically at least seven hours of daily out-of-cell congregate programming comparable to programming in the the general jail population, without restraints, in the same space with other people, and in a space conducive for meaningful and healthy human interaction.

The proposed rules do not require meaningful out-of-cell congregate programming at all. While the proposed rules require access to five hours of programming a day in RMAS, such programming can take place in-cell or out-of-cell, without any specified amount of out-of-cell programs. Under the rules, then, a person could have a few minutes of out-of-cell programming and the remaining five hours of programming in their cell. Also, there is no requirement for the programming to be congregate in nature, and the rule fails to describe how much and the nature of contact with other incarcerated people or program staff. Based on past experience, programming could simply involve program staff briefly speaking with a person at their cell door, or not at all, and then the participant being given a workbook (or less) and told to do programming while in their cell.

By contrast to these deeply flawed proposals and practices, what evidence shows actually works at reducing violence and improving safety are approaches that first of all do *not* limit out-of-cell time and second of all instead provide the opposite of isolation, with full days out-of-cell filled with meaningful engagement and pro-growth and pro-social programming. The CAPS program in NYC, the former Merle Cooper program in a NY prison, the RSVP program in San Francisco jails are a few examples of how engagement and real programming - rather than isolation, restrictions on out-of-cell time, or meaningless programs - work to reduce violence and create more positive outcomes.

The [CAPS program](#) in NYC jails has shown vast improvements in safety by providing a therapeutic and rehabilitative approach rather than a punitive approach or isolation. The now closed [Merle Cooper program](#) in New York State - where people could earn even the ability to *not* be locked in even at night - was about the opposite of solitary based on empowerment and programming, including peer-led programming. The intensive engagement- and program-based RSVP program in San Francisco jails also showed dramatic reductions in [violence in jails](#) and dramatic reductions in [violence in outside communities](#) after people return home from jail.

Again, even the HALT Solitary Confinement Act requires congregate programming and activities in alternatives to solitary. Under HALT, people generally are required to have access to at least seven hours of out-of-cell congregate programs, treatment, services, recreation, activities, and/or meals per day. In all RMAS levels, again the proposed BOC rule requires five hours of programming per day, but this programming can be in-cell, there is no specified length of time that there has to be out-of-cell programming, and there is no requirement that programming be congregate. To be in compliance with HALT, at a minimum all people in each of the RMAS levels must generally have at least seven hours of out-of-cell congregate programs, recreation, and activities, with exceptions in specifically and narrowly defined situations.

In addition, HALT requires that people in the alternatives have access to programs and types of work assignments *comparable to those in general population*, as well as *additional out-of-cell, trauma-informed therapeutic programming*. Again in all of the RMAS levels, the proposed rules do not require any amount of out-of-cell programming nor that programming even be congregate, let alone comparable to general population programming. Under HALT, the rules must change to ensure programming is out-of-cell, congregate, and comparable to general population programs.

Recommendation 3: All people in City jails, including those separated from the general jail population, should have access to at least 14 hours out-of-cell per day, with access to at least 7 hours of congregate out-of-cell programming and activities comparable to the general jail population without restraints. The Board and the City should require that people have access to programming like CAPS in NYC jails, Merle Cooper in a New York prison (now closed), and the RSVP program in San Francisco jails, which do not restrict out-of-cell time, focus on meaningful pro-social programming and engagement, and actually work to reduce violence and improve safety.

4. The Rules Should Require All People in the City Jails to Have Access to at Least 14 Hours Out-of-Cell Per Day Rather than Carving Out a Second Class of People in City Jails, for Whom Inhumane Treatment is Allowed

In addition to ensuring that out-of-cell time is actually out-of-cell time and involves meaningful congregate programming opportunities, the Board's rules should require that all people in the city jails - regardless of what unit or status they are in - have access to at least fourteen hours out-of-cell per day.

The proposed rules continue to perpetuate the idea that treating some people as less than other people in the jails (and indeed in this case less than any human being should be treated) is somehow acceptable and is somehow going to miraculously improve safety when all evidence indicates otherwise. Even if all of the other failings of the RMAS above were remedied, the proposed rule still limits people's out-of-cell time in the RMAS to 10 hours out-of-cell per day in level one and 12 hours out-of-cell per day in level two.

The City should not create classes of people who are subject to more limits on out-of-cell time. Limiting people's out-of-cell time does not address safety or violence concerns, but it can cause devastating harm. New York City needs an approach that is actually about addressing safety and protecting the health and well-being of people who are incarcerated. Even if the Department actually gave 10 hours of out-of-cell time, that means at least 14 hours, potentially straight, locked in one's cell per day, and potentially even more consecutive time locked in depending on how and when the hours are counted on back-to-back days. Fourteen or more hours straight of being entombed in a box without the ability to get out or get help can cause harm and have dire consequences. We also know that past practice shows that a 10-hour requirement does not actually mean 10 hours and people will be locked down even more. DOC currently often counts hours as out-of-cell hours for things like showers or the possibility of a medical appointment even if someone does not have one, or starts the clock for out-of-cell time when people are still sleeping or otherwise unaware of the opportunity to be out-of-cell.

At the time she died, Layleen Polanco was in a unit that was supposed to be an alternative to solitary with at least seven hours out-of-cell per day, but she was locked in most of the day. She was only in her solitary-by-another-name unit for nine days before she died. At the time she died, she had been locked in her cell for [only two to three hours](#) before she died. Bradley Ballard, was [reportedly](#) in a unit where he was even supposed to have up to 14 hours out-of-cell per day, but instead was locked in his cell all day, deteriorating and decompensating more and more during the seven days he remained in those torturous conditions before he died.

When thinking about whether or not to have exceptions to the basic minimum standards in the City jails of fourteen hours out-of-cell per day, it is important to remember that for all people

incarcerated in New York City jails, we are speaking about human beings - again predominantly Black and Latinx and poor people - being forcibly removed from their families, their jobs, their neighborhoods, their communities, and their loved ones. We are speaking about human beings - even apart from solitary confinement - being put in cages and boxes, subject to brutality and strip searches, and a system that attempts to strip them of their agency and their humanity.

Given these realities, it is imperative that at the very least, to effectively end solitary confinement, the basic minimum standards that already apply to people generally in the city jails - who already are being denigrated and dehumanized by being placed in jail - must apply to everyone in the city jails. Those minimum standards that already exist say that people should have access to at least 14 hours out-of-cell per day, and so long as people are held in New York City's jails that standard should apply to all people in city jails. Indeed, to fully and effectively end solitary confinement means that this minimum standard of 14 hours, with meaningful human engagement and programs, should apply to all people. There must be no carveouts to this basic minimum standard.

Recommendation 4: All people in the City jails, regardless of what unit or status they are in or if they are separated from the general jail population, should have access to at least 14 hours out-of-cell per day, again with at least seven hours of out-of-cell congregate programming and activities.

5. The Rules Must Have Strict Time Limits on All Levels of All Alternatives Rather than Locking People In Restrictive Units Indefinitely

There must be strict absolute limits on any and all levels of any and all alternative units to ensure that people are not languishing in restrictive environments. Under the proposed rules, people may be held in RMAS *indefinitely*. While the rules provide that people may be able to progress from level one to level two in the RMAS at 30 days, 45 days, or 60 days, the rules allow people to be held indefinitely in level one based on a broad and vague "documented intelligence" that the person would engage in violence in level two. Under these rules, it would appear that any staff person could document that a person would engage in violence and use that as a basis for continuing to hold a person in these solitary-by-another-name conditions. Similarly, while a person may move from level two to level three in the RMAS after 15 days, the Department of Correction ("DOC") can hold a person at level two based on the same type of vague "documented intelligence" that a person would engage in violence or that a person refused to participate in programming.

This provision is a step backward from the existing Board rules. Under current rules, there is a general limit of 30 days on people being held in punitive segregation and a 60-day limit for assault on staff charges. Under the proposed rule, the shortest time that a person could spend in

the RMAS is between 60 days and 120 days, and a person could be held indefinitely at any or all of the three levels, potentially spending months or even years in these extremely restrictive environments, based solely on a vague claim that there is documented intelligence that a person would act violently.

As outlined above, if there are no changes to the conditions in RMAS levels one or two, the HALT Solitary Confinement Act would prohibit anyone from spending even one day in RMAS level one and the more restrictive form of level two. Even if there were some changes made to allow for people in RMAS levels one and two to have several hours of meaningful out of cell programming each day, unless people have access to at least seven hours of congregate out of cell programming and activities each day, HALT would also prohibit people from spending any more than 15 consecutive days in those units or generally 20 days total in any 60 day period in these units.

Recommendation 5: There must be absolute limits on the length of time that people spend in RMAS. The length of any time limit is dependent upon the provision of meaningful programs and activities. If in fact there is access to 14 hours out-of-cell per day with access to at least seven hours of meaningful and congregate out-of-cell programming, the time limits should be actual hard limits, and people should move through each level after 15 days, or at the very least the limits listed in the proposed rule should be hard limits such that people move through level one in 30, 45, or at most 60 days, and move through levels two and three after 15 days. People should not be prevented from moving through the levels based on vague criteria nor based on program participation or lack thereof. In addition, if there is *not* access to at least seven hours of meaningful and congregate out-of-cell programs and activities with people in the same space, in a space conducive to healthy interaction, then any such level should be fully prohibited.

Even to be in compliance with HALT, RMAS level one and the more restrictive form of level two should be fully prohibited. If the rules were changed to require access to several hours of meaningful out-of-cell programs and activities but less than seven hours of daily meaningful out-of-cell congregate programming, even to be in compliance with HALT (without fully ending solitary confinement as promised), there would need to be a maximum time limit of 15 consecutive days total in any RMAS levels with such conditions.

6. The Rules Should Prohibit the Construction of Additional Inhumane Units and Use Those Resources for What People and Communities Actually Need to Thrive

New York City should not be building, and spending resources on building, more of the cages envisioned in the current proposed rules. The rules anticipate the construction and expansion of the use of inhumane and counterproductive units. No human being should be locked in the types of units envisioned under the rule. The rules take some of the most punitive and isolative units in

the system, NIC structurally restrictive housing and GRVC Secure Unit, makes them the basis and model of this new regime, and envision that the City is going to spend precious resources to construct more of these units that are abhorrent to humanity. Putting people in small cages with potentially one other person in a separate nearby cage, and holding people in those conditions for months and even indefinitely, is not how any human being should be treated.

Recommendation 6: There is no need to construct any new units, and certainly the City should not construct more punitive and isolative units. People should have out-of-cell time in large spaces that are conducive to human beings interacting in a meaningful way. There is more than enough existing space in which to provide people with access to meaningful and congregate out-of-cell engagement and programming. Rather than using City resources to build more cages that will inflict torture on people and make jails and outside communities less safe, those resources should be used for the services and supports that actually help people and communities thrive, including education, health care, and housing.

7. The Rules Must Provide Access to Representation to People at Hearings and Placement Reviews that Can Result in People being Sent to or Held in Any RMAS Levels

All people should have access to representation in any hearings or placement reviews that can result in someone being placed in, or continuing to be held in, any levels of any alternatives to the general jail population. The proposed rules do not provide people in custody with access to representation at hearings that can result in placement in RMAS or at placement review hearings. As current practice indicates, the hearings, which do not have a neutral decision-maker and are overseen by Department staff, do not provide meaningful review of alleged incidents. At a minimum, providing access to representation will provide some semblance of fairness and accountability for the operation of these hearings and the placement and retention of people in highly restrictive and damaging environments. Access to representation is also critical to ensuring that the periodic placement reviews are meaningful and that any decision to continue placement in restrictive environments is supported by evidence that meets the standard set forth in the rules.

Even under the HALT Solitary Confinement Act, people at hearings that can result in placement in solitary confinement or alternatives to solitary are permitted to be represented by lawyers, paralegals, law students, or another incarcerated person. As such, under HALT at the very least people are permitted to be represented by counsel or an advocate at any proceedings that can result in placement in RMAS.

Recommendation 7: People should have access to their own counsel or legal advocate for hearings that can result in placement in RMAS or any other restrictive environment as well as

placement reviews for continued placement in any RMAS level. People should also have the right to present evidence and cross-examine witnesses at such hearings and placement reviews. Both the person incarcerated and their attorney of record should be provided timely written notice of the reason for proposed placement in restrictive housing. This notice should include specific information regarding the allegations. A failure to provide such notice should constitute a due process violation warranting dismissal. Counsel should be provided adequate time to prepare for such hearings, including requests for adjournments. People also should not be required to remain in a restrictive environment for the duration of the disciplinary process.

8. The Rules Should Prohibit Young Adults, Elderly People, and All People with Mental Health Needs, Physical Disabilities, and Medical Conditions from Being Locked in Restrictive Housing

The proposed rules have very limited designations of people who are excluded from placement in the RMAS. The rules use a very narrow definition of people with mental health needs by focusing only on people with “Serious Mental Illness.” The rules also do not exclude young adults or elderly people at all, nor people who have physical disabilities or medical conditions. Particularly given the highly restrictive environments in RMAS, all of these categories of people should be excluded from placement.

Even under the HALT Solitary Confinement Act, if the conditions in the RMAS remain and unless people have access to at least seven hours of out-of-cell congregate programming in an appropriate space with other people in the same space, HALT would at least prohibit various categories of people from being in RMAS levels one and two. HALT prohibits segregated confinement - which again is defined as having less than seven hours out of cell per day - for people who are most vulnerable to the harms of solitary. Under HALT, all young people 21 and under, people 55 and older, pregnant women, new mothers, people with mental health needs, and people with physical disabilities are prohibited from placement in segregated confinement. Given that RMAS level one, and RMAS level two at least in some circumstances, constitute segregated confinement under HALT, the proposed rules must expand the very limited designations of people who are excluded from placement in the RMAS. Currently, again the proposed rules use a very narrow definition of people with mental health needs by focusing only on people with “Serious Mental Illness”, and do not exclude young adults or elderly people at all, nor people with physical disabilities or who have medical conditions. Under HALT, these categories of people should be prohibited from RMAS level one and the most restrictive form of RMAS level two.

Recommendation 8: The rules should prohibit from placement in the RMAS or other forms of restrictive housing all young people aged 25 and under, elderly people aged 55 and over, people

with mental health needs, people who have physical disabilities, and people with medical conditions.

9. The Rules Must Prohibit, or At Least Place Strict Limits on the Time, Criteria, and Scope of, Other Forms of Solitary Rather than Again Allowing Indefinite Solitary Confinement by Another Name

The rules must prohibit all forms of solitary confinement, and ensure there are strict time, criteria, and scope limits on any lock-ins to prevent them from becoming solitary by another name. While the rules allow for other forms of solitary confinement, they do not specify definitive time limits on them. For example, the rules do not provide for any time limits on emergency lock-ins, again allowing the use of widespread solitary confinement indefinitely. The rules also do not provide specific meaningful limits on the scope of emergency lock-ins or the situations that can result in lock-ins, offering only vague reference to being “no longer than necessary” and requiring reporting the reasons for the lock-ins without limiting what those reasons can be.

The rules also do not provide specific definitive time limits on so-called “deescalation” confinement. The rules purport to put a six-hour limit for each instance of deescalation confinement but do not do anything to prevent people from being repeatedly placed in deescalation confinement on the same day or repeated days.

There must not be any loopholes to prohibitions on solitary confinement that could provide the opportunity for the DOC to place people in what amounts to solitary by another name. The end to solitary confinement must be real and effective. It is thus imperative that there be strengthened language related to time limits on, the criteria that can result in placement in, and the scope of emergency lock-ins, deescalation confinement, or any forms of lock-ins or restrictive environments.

Recommendation 9: There should be strict and precisely defined limits on the scope, reasons for, and lengths of time in emergency lock-ins and “deescalation confinement”, if they are to be permitted at all. Emergency lock-ins and placement in deescalation should be reviewed at least every hour and should never last more than four hours in any 24-hour period nor more than 12 hours in any seven-day period.

10. The Rules Should Fully Ban Restraint Desks and Other Forms of Restraints

While the proposed rules purport to end the use of so-called restraint desks and other restraints during out-of-cell time, it does not place limitations on restraints until November 2021. It also continues to allow people to be chained to desks or placed in five point restraints or in other

forms of restraints not in response to an immediate threat of harm but if a person “recently” engaged in serious violent conduct and there is a review every seven days.

Recommendation: The rules should ban restraint desks and other forms of restraint during out-of-cell time entirely, or at the very least ensure that every use of restraints is in response to an immediate threat of imminent and serious physical harm.

11. The Rules Must Prohibit Restrictive Housing for Non-Violent Conduct Such as Drug Possession

People should only be placed in an alternative or more restrictive environment if they have engaged in the most serious harmful misconduct and are in need of an intensive intervention. The proposed rules continue to allow people to be placed in RMAS level two for non-violent conduct, including the possession of drugs or tobacco products.

Even under the HALT Solitary Confinement Act, there are stricter criteria for when a person can be placed in an alternative unit (or in solitary). There are enumerated rule violations in the HALT Act that are the only bases for placement in an alternative unit, including causing or attempting or threatening to cause serious physical injury, compelling someone to engage in a sexual act, extortion by force or threat, coercion by force or threat, inciting a riot, procuring a deadly weapon or dangerous contraband that poses a serious threat, and escaping or attempting escape or facilitating an escape. For any of these acts to result in placement in an alternative, the acts have to be determined to be “so heinous or destructive” that the person poses a “significant risk of imminent serious physical injury” and “an unreasonable risk” to security.

Recommendation: The proposed rules should only allow placement in a more restrictive environment than the general jail population at most in response to contemporaneous grave and dangerous behavior that resulted in injury or presents a specific, significant, and imminent threat to the safety and security of people who live and work in the facility, at the very least in compliance with the language of the HALT Act.

12. The Rules Should Prohibit or At Least Strictly Limit the Use of Variance Requests

The Board must ensure that the rules it adopts are strictly followed, and as such, given past practice, the Board must prohibit or at least strictly limit the ability of the DOC to request, and the Board to grant, variance requests to its rules.

The Board often fails to act to enforce the existing minimum standards regulating conditions of confinement. Past practice shows that the Board will grant the DOC variances for years at a time that allow the DOC to circumvent the Board’s own minimum standards, and even fail to take

action when the DOC continues to circumvent rules after the Board stops granting variances. The Board must ensure that such practices do not occur with these rules. There is no indication that the Department will change its abusive practices without being held accountable by the Board. The Board must commit to not only amend its proposed rules to actually end solitary confinement in a real and meaningful way as outlined throughout this testimony, but also take action if the Department fails to comply with the rule's provisions.

Recommendation 12: The proposed rules should prohibit the DOC from requesting, and the Board from granting, variance requests from these new rules and all minimum standards. At the very least, the Board should place stricter limitations on how long a variance can be granted for, under what circumstances a variance can be granted, and the scope of which portions of the minimum standards variances can be granted for, including to ensure that the core provisions of fully ending solitary confinement in all its forms for all people is protected.

CONCLUSION: THE BOARD MUST FOLLOW THE SCIENCE, THE WILL OF THE PEOPLE, AND YOUR OWN CONSCIENCE TO TRULY AND FULLY END SOLITARY CONFINEMENT

People who have testified before the Board - including people who have lived through solitary, family members, advocates, and correction officers - have raised two fundamental questions. The first is how do our city institutions, using city taxpayer dollars, treat people in their care? Do they treat people in custody as human beings or as something less than? The second fundamental question is how does the city improve safety in the city jails and in our outside communities when people in the jails return home?

Fortunately, the answers to both of these two questions are perfectly in alignment. All evidence and science shows that treating people as less than, punishing and isolating people, leads to more violence, not less. All evidence and science also shows that treating people as human beings, providing real opportunities for meaningful engagement and programming, dramatically reduces violence.

Dr. James Gilligan, who was the director of the Massachusetts prison mental health services, and has studied violence for decades, has [written](#) that: "far from preventing violence, punishment is the most powerful stimulus to violent behavior that we have yet discovered. Punishment does not prevent violence, it causes it, in addition to being a form of it." Recalling his experience observing what happened in an incarceration setting, Dr. Gilligan wrote: "The more violent a person was, the more severely he would be punished, and the more severely he was punished, the more violent he would become. This endless, mutually self-defeating vicious circle kept both

people incarcerated and prison officers in a chronic state of war with each other - which was the opposite of what they both said they wanted.”

With this rulemaking, the Board can take steps in the direction of both treating people as human beings and reducing violence. The proposed rules do not do so. These rules will continue to subject people to torture, and they will continue to perpetuate violence. Isolation and punishment is not working now to reduce violence and it will not work to replicate the same systems in another form.

The RSVP program in San Francisco jails - without restrictions on out-of-cell time and instead meaningful engagement - saw dramatic reductions in violence. CAPS right here in the city jails has seen reductions in violence. The Merle Cooper program in a NY prison - that separated people, without isolating people and had programming and empowerment-based opportunities with people even earning the ability to lock or not lock their own cells - was praised by participants, security staff, and the administration. In [Colorado](#) even “corrections officers who had initially opposed [limits on solitary] changed their minds after they began to see positive results.”

If this Board wants to treat people as human beings and if you want to reduce violence, then the Board must ensure that all people separated from the general population, have at least 14 hours out-of-cell per day, with access to at least 7 hours of congregate programming and activities without having to be strip searched before going to such programming, with strict limits on the time in any alternatives, and with access to representation before being held or kept in alternatives.

For nearly the last year and a half, the City Council Speaker, Public Advocate, Comptroller and several Council Members have publicly advocated for the [Blueprint to End Solitary](#), including specific provisions like the requirement that the minimum standard of out-of-cell time of 14 hours should apply to all people in city jails.

For example, [Speaker Johnson](#) stated in his December 2019 testimony before the Board of Correction: “Change the cap on solitary confinement from 15 days to 0, no exceptions. Mandate truly therapeutic and treatment-based units that give people at least 14 hours out of their cells, with at least 7 hours of congregate programming.”

[Public Advocate Williams and Chair Powers](#) stated in their September 2020 letter: “We believe that the standard practice for housing units should be 14 hours of meaningful out-of-cell-time. This move would include ending existing exceptions to the Board’s minimum standards for Enhanced Supervision Housing (ESH) units.”

[Council Member Rivera](#) stated in her December 2019 testimony before the Board of Correction: “I strongly urge the Board of Correction to adopt the HALT Solitary campaign’s blueprint to end the practice.”

[Council Member Reynoso](#) stated in his December 2019 testimony before the Board of Correction: “To address these issues, I’m endorsing the coalition’s recommendation that minimum standards be applied to all detainees across the board. This includes 14 hours of out-of-cell time for every detainee in City jails and removing any exceptions to standards for punitive segregation, enhanced supervision housing, and other forms of restrictive housing.”

In their current testimonies before the Board during this comment period, the Public Advocate, the Comptroller, City Council members, and state legislators, not to mention countless survivors of solitary confinement, family members who have had family members in solitary or lost family members to solitary, and other allied mental health professionals, attorneys, social workers, and advocates, have continued to call for a full end to solitary confinement with alternatives that are the opposite of solitary and involve 14 days out-of-cell with congregate programming in spaces with other people and in spaces conducive for meaningful human engagement.

We urge you, as the independent jails oversight body that you are, to follow the evidence, follow the science, follow the will of the people and their elected representatives, and follow your moral compass, and do what is actually known to be right to both reduce violence and treat our fellow New Yorkers as fellow human beings.

In line with the Mayor’s and the Board of Correction’s promise, the Board must amend the proposed rules to truly and fully end solitary confinement once and for all in New York City.

APPENDIX I

NYC must truly end solitary confinement

By **MELANIA BROWN**

NEW YORK DAILY NEWS |

APR 13, 2021 AT 7:00 AM

<https://www.nydailynews.com/opinion/ny-oped-nyc-must-truly-end-solitary-confinement-20210413-pns3u65osbhqvg77i3jgtskpgm-story.html>

As correctional officers stood by, my baby sister passed away on June 7, 2019, while being held in solitary confinement at Rikers Island. Countless times, I have watched the [video footage](#) in

disbelief of the cruelty people are capable of. Layleen Xtravaganza Cubilette-Polanco was a beautiful Afro-Latinx transgender woman who had so much to offer this world.

Layleen endured nine days of solitary before she died. On her final morning, she returned from a brief medical visit. Then they locked her back in her solitary cell for the last time, and [within a few hours](#) she was dead.

Solitary confinement is torture, pure and simple. Even short periods of time in solitary, measured in days, can cause horrific suffering, devastating mental, physical and neurological harm, and [self-mutilation](#), [suicide](#) and other [causes of death](#). There are people in solitary right now banging their heads against the wall, cutting their wrists and arms, losing their minds, yelling and screaming for relief.

Because of the permanent trauma it inflicts, solitary confinement causes people to deteriorate, increasing the likelihood they will engage in harmful behavior while in jail and after they return home.

Evidence-based strategies that have been proven to reduce violence in [jails](#) and in [outside communities](#) are in fact the exact opposite of solitary confinement. Aimed at rehabilitation, these alternatives offer [full days out-of-cell, opportunities for meaningful programming](#), and a focus on [treatment and engagement rather than punishment and isolation](#).

I can only imagine the pain and humiliation my sister was feeling as she was slipping away. I will forever be haunted by the thought of her screaming out for her family or even asking for help, with no one coming to help as she took her last breath.

I can't sleep. I see my sister in my dreams. I want to hold her and I can't catch her. It is not ok.

Ignoring the objections of medical personnel warning of Layleen's epilepsy and despite Layleen having had a mental health crisis when she was arrested and incarcerated, correctional officers forced her into what was supposedly an alternative to solitary, what they call "restrictive housing." But it was just solitary by another name.

While [Mayor de Blasio](#) claimed to share in my outrage and shamelessly invoked my sister's name to promise that New York City would end solitary confinement, the city jails oversight body — the [Board of Correction](#) — has put forward proposed rules that will once again simply create a new form of "solitary by another name."

Under the Board's proposed rules that falsely purport to end solitary confinement, people in so-called alternatives will be locked alone in a cell 24 hours a day. While the rules state that these individuals will have 10 hours of "out-of-cell" time, all of this time will be spent [alone in a slightly larger cell](#). Being alone in a cell or cage is not out-of-cell time. It is isolation. It is solitary confinement.

The main harm of solitary stems from the lack of meaningful human engagement and programming. If Layleen had been alone in this “alternative” cell when she had her final seizure, the slightly larger size of the cell would not have prevented her death.

The current minimum standards in New York City jails require all people, other than those in solitary, to have access to at least 14 hours out of cell each day, with programming and meaningful engagement with other people. Ending solitary confinement means applying this standard to everyone. There should be no carveouts, half measures or loopholes. Limiting people’s out-of-cell time does nothing to improve safety, but it can be torturous and it can be deadly.

Following hearings this week, the mayor and the Board of Correction must change these rules to ensure that people are actually treated as human beings and are always in spaces conducive for human beings to meaningfully interact. At the same time, the City Council must finally act to actually and fully end solitary confinement, since the mayor and the board continue to refuse to do so. [City Council Speaker Corey Johnson](#) and various other [City Council members, including Criminal Justice Committee Chair Keith Powers](#), have long advocated for ending solitary confinement in a way that ensures that people have access to at least 14 hours out of cell per day, with at least seven hours of out of cell congregate programming. It is time for them to act and ensure that the law of New York City fully prohibits solitary confinement in all its forms.

My sister went into solitary and came out in a body bag. How many more people have to die before New York City’s political leaders finally and fully end this torture?

Melania Brown is an activist and the sister of the late Layleen Xtravaganza Cubilette-Polanco.

APPENDIX II



HALTsolitary
NEW YORK CAMPAIGN FOR ALTERNATIVES TO ISOLATED CONFINEMENT

Memo on the Impact of the Statewide HALT Solitary Act on Efforts to End Solitary Confinement in NYC

This memo describes the various ways in which the HALT Solitary Confinement Act, recently enacted by New York State and applicable to New York City jails, requires the Board of Correction to strengthen its current proposed restrictive housing rule in order to be in compliance

with HALT. It also discusses the other ways in which HALT interfaces with efforts in New York City to go further to fully and meaningfully end solitary confinement in all its forms.

1. HALT Requires New York City to Go Further In Its Proposed Rules

Politically, morally, legally, and policy-wise, HALT's passage must make the Board of Correction strengthen various aspects of its current proposed restrictive housing rule, including the following.

- a. *HALT prohibits people spending even one day in RMAS Level one and, at least in some circumstances, level two.*** HALT defines segregated confinement as confining a person in *any form* of cell confinement for more than 17 hours a day, and prohibits segregated confinement beyond 15 consecutive days. In addition, HALT requires that people in segregated confinement have access to at least four hours of daily out-of-cell programming. Under the current proposed BOC rule, people in RMAS level one are confined to a cell alone 24 hours a day, with purported "out-of-cell" time meaning only that people are in another cell alone, potentially with a person in a separate nearby cell. Similarly, RMAS level two allows at least in some circumstances that people only have out of cell time where they are alone in a cell with other people in a separate nearby cell. Moreover, the proposed rules do not require any specified amount of out-of-cell programming.

As such RMAS level one, and at least in some circumstances RMAS level two, not only fit the definition of segregated confinement under HALT, but also violate the requirement that people in segregated confinement have at least four hours of out-of-cell programming per day. In turn HALT prohibits people being in RMAS level one and the more restrictive form of RMAS level two for even one day. Even if the proposed rules expanded the amount of out-of-cell programming in those RMAS levels, unless people have access to at least seven hours of out-of-cell congregate programming and activities per day, HALT would prohibit people being in RMAS levels one and two in its more restrictive form for more than a total of 15 consecutive days for the two levels combined, and generally more than 20 days total in any 60 day period. Currently, the proposed BOC rule allows people to be in these units indefinitely, in contravention of HALT's requirements. Moreover, given that RMAS level one and the more restrictive form of RMAS level two fits the definition of segregated confinement under HALT, all of the other protections of HALT should apply to RMAS level one and in at least some circumstances level two, including the criteria for being sent to those units and the banning of certain groups of people from ever being in those units (see more below).

- b. ***HALT requires congregate out of cell time in alternatives to solitary.***² In alternatives to solitary under HALT, people are guaranteed access to at least seven hours of daily out-of-cell *congregate* programs and activities. Under the Board’s current proposed rules, there is no requirement that there be congregate out of cell time in RMAS level one or in RMAS level two at least in some circumstances, and indeed it is envisioned that out-of-cell time will consist of being alone in a cage, potentially with another person or persons in a nearby cage(s). “Out-of-cell” time must require access to meaningful congregate interactions with at least several people at a time in the same open space that is conducive for healthy human interaction and engagement.
- c. ***HALT requires congregate programming and activities in alternatives to solitary.*** Under HALT, people generally are required to have access to at least seven hours of out of cell congregate programs, treatment, services, recreation, activities, and/or meals per day. In all RMAS levels, the proposed BOC rule requires five hours of programming per day, but this programming can be in-cell, there is no specified length of time that there has to be out-of-cell programming, and there is no requirement that programming be congregate. To be in compliance with HALT, all people in each of the RMAS levels must generally have at least seven hours of out of cell congregate programs, recreation, and activities, with exceptions in specifically and narrowly defined situations.
- d. ***HALT requires programs comparable to those in general population in alternatives to solitary.*** HALT requires that people in the alternatives have access to programs and types of work assignments comparable to those in general population, as well as additional out-of-cell, trauma-informed therapeutic programming. Again in all of the RMAS levels, the proposed rules do not require any amount of out-of-cell programming nor that programming even be congregate, let alone comparable to general population programming. The rules must change to ensure programming is out of cell, congregate, and comparable to general population programs.
- e. ***HALT prohibits segregated confinement for people most vulnerable to harm.*** Under HALT, all young people 21 and under, people 55 and older, pregnant women, new mothers, people with mental health needs, and people with physical disabilities are prohibited from placement in segregated confinement. Given that RMAS level one and RMAS level two at least in some circumstances constitute segregated confinement under HALT, the proposed rules must expand the very limited designations of people who are excluded from placement in the RMAS. Currently, the rules use a very narrow definition

² The definition of the alternative Residential Rehabilitation Units (RRUs) under HALT say that the RRUs are units for people determined to require more than 15 days of segregated confinement. Because the Board’s current rules and proposed rules do not change the Department of Correction’s practice of issuing disciplinary tickets and sentencing people to what would be lengths of segregated confinement time - albeit now served in RMAS - the definition applies to people in RMAS. In other words, everyone in RMAS is someone who was determined to require more than 15 days of segregated confinement, which is why they are in the RMAS. As such, the RMAS have to comply with all of the requirements for RRUs under HALT, including the criteria for getting in, the mechanisms for getting out, and the required out-of-cell congregate programming comparable to general population plus additional programming.

of people with mental health needs by focusing only on people with “Serious Mental Illness”, and do not exclude young adults or elderly people at all, nor people with physical disabilities or who have medical conditions. Under HALT, these categories of people should be prohibited from RMAS level one and the most restrictive form of RMAS level two.

- f. ***Legal Representation at Hearings.*** Under HALT, people at hearings that can result in segregated confinement or an alternative are permitted to be represented by lawyers, paralegals, law students, or another incarcerated person. As such, under HALT people are permitted to be represented at any proceedings that can result in placement in RMAS.

It would be an absurd situation, and now contrary to the law in New York State, if New York City had policies that were worse for people than in jails and prisons across the state under HALT, including in alternatives to solitary. As such, the BOC’s rules should be strengthened to ensure that at a minimum during the hours of out-of-cell time that people in alternatives are to have, that they actually be in congregate settings conducive to interacting with other people in a meaningful way in the same space, and that the programming be required to be out-of-cell and congregate with multiple other people, again in the same space.

2. New York City Must Go Further than HALT to End Solitary Completely

While the HALT Solitary Confinement Act provides for transformational change that will relieve suffering and make prisons, jails, and outside communities across New York State safer, there is a growing recognition that New York City must go farther to ban solitary confinement entirely and lead the way for ultimately ending this practice across the state and country. Solitary confinement is torture, and any length of time in such conditions can cause immense suffering and devastating harm. While the 15 day limit on solitary under international law is more widely known, the UN Special Rapporteur on Torture also called for the prohibition of solitary confinement for people in pretrial detention, who make up the vast majority of people in city jails (with the rest of people in the jails serving sentences for relatively minor misdemeanor charges).

Research and studies show that even a few days in solitary confinement can cause physical and mental harm and increase the risk of death. On the day she passed away, Layleen Polanco spent only a few hours locked in her cell before she tragically and preventably died. At the same time, while there is no evidence that restricting people’s out of cell time improves safety, evidence shows the exact opposite is true and units - like the CAPS program in NYC jails, the former Merle Cooper Program in a NY state prison, and the RSVP program in San Francisco jails - that involve full-days out of cell with pro-social programming achieve far better results and reduce violence. The Mayor and the Board of Correction have promised to fully end solitary confinement in New York City jails, and they must do so in a real and meaningful way, including by going farther than HALT in the following ways.

- a. ***Fully end solitary confinement and not just solitary beyond 15 days.*** While the HALT Solitary Confinement Act prohibits solitary confinement beyond 15 days for all people and bans solitary confinement for certain categories of people, New York City must completely end solitary confinement - of any length of time - in its jails, as the Mayor and the Board of Correction have promised to do.
- b. ***Fully ending solitary confinement in New York City means 14 hours out of cell per day with meaningful congregate programming and activities.*** While HALT creates alternatives to solitary that provide people with access to at least seven hours out of cell per day, New York City has a general minimum standard that all people - other than those in solitary confinement or other restrictive housing - have at least 14 hours out of cell per day. As such, ending solitary confinement should mean that all people in the city jails have access to at least 14 hours out of cell per day, with access to meaningful congregate programming with other people.
- c. ***People's right to representation should be strengthened, with enforceable notice requirements.*** While HALT provides that people are permitted to have access to attorneys, paralegals, law students, or other incarcerated people at disciplinary hearings, because people in the city jails generally already have attorneys representing them in their pending court cases, people should have access to their own counsel or legal advocate for hearings and placement reviews, and both the person incarcerated and their attorney of record should be provided timely written notice of the reason for proposed placement in restrictive housing. This notice should include specific information regarding the allegations and a failure to provide such notice should constitute a due process violation warranting dismissal.
- d. ***There should be a shorter time limit for getting out of alternative units.*** Particularly in the context of city jails where people spend much shorter times in the jails than in state prisons, there should be shorter time limits for getting out of alternative units. Under HALT, there are various mechanisms to be released from alternatives, with an ultimate outside limit of one year absent extraordinary circumstances. If in fact there are changes made in the RMAS to have meaningful congregate programs and activities in each level, the time limits listed in the proposed rule should be actual hard limits, meaning that people should move through each level after 15 days or at the very least move through level one in 30, 45, or at most 60 days, and should move through levels two and three after at most 15 days. If the RMAS conditions were to remain similar to what are now proposed, as noted above, there should be a full prohibition on RMAS level one and the most restrictive form of level two.