NEW YORK CITY BOARD OF CORRECTION

Comments Submitted by June 17, 2024

Rulemaking Concerning Restrictive Housing & Local Law 42

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THE COUNCIL
OF
THE CITY OF NEW YORK

JENNIFER GUTIÉRREZ

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ECONOMIC DEVELOPMENT
EDUCATION
ENVIRONMENTAL PROTECTION
HOSPITALS
STATE AND FEDERAL LEGISLATION
WOMEN AND GENDER EQUITY

June 4, 2024

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

In the interest of safety, dignity, and human rights, I urge the Board of Correction to adopt its proposed rules, with the slight modifications outlined below.

These proposed rules and these modifications are both urgent and necessary to ensure compliance with Local Law 42, which was enacted by an overwhelming supermajority of the City Council. Fully implementing Local Law 42 and adopting these rules will ensure the use of real alternatives scientifically proven to reduce violence and improve health. This approach will stop torture, save lives, and enhance safety for everyone. We must not allow the rule of law to be bent; adherence to the original intent of the law is paramount.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latino people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Lives are in your hands, and the time to act is now. The Board must adopt its rules in strict accordance with Local Law 42, and the Department of Correction must fully implement this law. By doing so, we can finally end solitary confinement and replace it with alternative forms of separation that are scientifically proven to reduce violence and better protect health and well-being - not just for some, but for entire communities.

Thank you for your consideration.

Sincerely,

Jennifer Gutiérrez
Council Member, District 34

URBAN JUSTICE CENTER

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. The Mental Health Project as part of the Urban Justice Center is writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

The Mental Health Project's mission is to disrupt and dismantle the cycle of hospitalization, homelessness, and incarceration that traps low-income New Yorkers with serious mental health concerns. We intervene at all parts of this cycle: we work to secure financial and medical benefits to prevent homelessness and hospitalizations; we help individuals obtain housing; we provide peer advocacy to empower our clients; we ensure proper discharge planning occurs prior to release from jails and hospitals; and we provide social work support to clients.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.

8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

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Jails Action Coalition & #HALTsolitary Campaign
Public Comment

Presented before the New York City Board of Correction
Regarding Restrictive Housing Rulemaking
June 17, 2024

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you to the Board of Correction for considering this public comment. The New York City Jails Action Coalition (JAC) and the #HALTsolitary Campaign present this public comment to urge the Board to adopt its proposed rules, with the modifications discussed below. We urge the rules' adoption to comply with Local Law 42 and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

It is long past time for New York City to end solitary confinement. Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. In New York City, it is almost exclusively inflicted on Black and Latinx people. Alternative forms of separation have been scientifically proven to reduce violence and better protect people's health and well-being. In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 daily hours of real out of cell time with group programming and activities. The BOC should adopt its proposed rules, with the modifications discussed below, and the Department of

Correction must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating effective, engaging programming.

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 campaign 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.

Background on the Urgent Need to End Solitary Confinement in NYC

Solitary confinement is government torture that inflicts devastating and deadly harm. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, solitary confinement is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails.

Even after release from incarceration, a study of hundreds of thousands of people released from prison in North Carolina over a 15-year period found that people who had spent time in solitary were significantly more likely to die by suicide and other causes. Research shows that even only one or two days in solitary leads to significantly heightened risk of death by accident, suicide, violence, overdose, and other causes.

Solitary confinement killed Kalief Browder nine years ago and Layleen Polanco five years ago. On the day of her death in solitary confinement on Rikers Island, Layleen Polanco had been locked in her cell for two or three hours before she died.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts. Numerous studies, such as the Zgoba, Pizarro, and Salerno study of recidivism post prison release and Wildeman and Andersen's research on recidivism outcomes,

show that people who have spent time in solitary or restrictive housing are more likely to be re-arrested after release from incarceration.

On the other hand, the evidence is clear: if a system is trying to reduce violence, what works much better than solitary is the exact opposite of solitary: pro-social, program-based interventions that involve full days of out-of-cell group programming and engagement, like the CAPS and PACE programs as originally operated in NYC jails, the Merle Cooper Program in NYS prisons, the MAN program designed by people incarcerated in NY prisons, and the RSVP program in San Francisco jails. For example, the RSVP program included people who had carried out acts of assault, sexual assault, other violent acts, and repeated "heinous" acts. It led to a precipitous drop in violence among participants to the point of having zero incidents over a one year period. People who participated in the program also had dramatically lower rates of re-arrest for violent charges after release from jail. Best practices in youth and mental health facilities limit isolation to minutes or hours at most, with positive impacts on safety and people's health and well-being.

In this op-ed, Dr. James Gilligan and Dr. Bandy Lee, who have decades of experience designing, operating, and evaluating violence prevention programs in jails and prisons, laud the City Council for taking a crucial step toward scientifically proven methods of violence prevention by passing Local Law 42 and document how – contrary to critics' claims – Local Law 42's ban on solitary and utilization of proven alternatives will stop torture, save lives, and *reduce* violence.

Despite repeated promises over many years to end solitary – invoking Layleen's and Kalief's names, the city jails have continued to lock people in solitary by many different names, with torturous and deadly results.

Brandon Rodriguez died after he was locked in solitary in a shower cage. The city jails locked Elijah Muhammad in solitary in those same shower cages to the point he was found with a ligature around his neck, and then placed Elijah in another form of solitary confinement that is supposed to be "de-escalation confinement", leading to his death. DOC initiated yet another form of solitary in 2022 through automatic lockdowns in general population in George R. Vierno Center (GRVC), and that is where Erick Tavira died after being locked in solitary.

A Columbia University Center for Justice report in December 2023 documents how NYC jails have continued to lock people in solitary confinement in various units by various names, with devastating and deadly consequences. People in the city jails have continued to be locked in solitary in: (1) so-called de-escalation units and decontamination showers, (2) so-called structurally restrictive housing in North Infirmary Command (NIC) and West Facility that is nothing more than solitary confinement by another name for 23 to 24 hours a day, (3) Enhanced Supervision Housing (ESH), (4) Rose M. Singer ESH (RESH), (5) GRVC automatic lockdowns

in supposed general population, (6) repeated lockdowns throughout the jails, and more. People are still locked in solitary for 23 to 24 hours a day for days, weeks, months and more. There are people who have been in solitary for nearly a year.

As discussed in this op-ed by Tamara Carter, while the Mayor falsely claims there's been no solitary in NYC since 2019, Tamara's son Brandon died in solitary in a shower cage in August 2021. Tamara talks about all of the continued various forms of solitary and their harmful impacts, and how her son would still be alive today if Local Law 42 had been in place. "I couldn't save my son's life, but if I can help save another person's life and make sure no other family has to go through what we have gone through, that is so important to me."

Summary of What Local Law 42 Does

The core of Local Law 42, and in turn the Board's proposed rules, is ending solitary confinement, in all forms by all names, beyond a maximum of four hours for de-escalation or emergencies, while instead allowing alternative forms of separation proven to better support people's health and safety for everyone.

To be clear, under Local Law 42 and the Board's proposed rules, if someone engages in violence, they can immediately be locked in a cell on an emergency basis for purposes of de-escalation in order to address the immediate situation, for up to four hours. After that immediate period, people can still be separated from the general facility population in alternative units. Local Law 42 would change the nature of that separation. Rather than isolation that is known to cause harm and increase the likelihood of violence, people who are separated would be placed in environments, like CAPS, Merle Cooper, and RSVP described above, that are better suited for actually reducing and preventing violence and keeping people more healthy.

To ensure that the ban on solitary confinement is real and to prevent the Department of Correction from imposing solitary confinement by a different name as it has repeatedly done, the law and the Board's rules provide very clear definitions of various terms, including "cell", "out of cell", and "restrictive housing." Although one might not think it necessary to define "cell" or "out of cell", given that the Department has in the past considered being locked alone in an extended cell as "out of cell", these definitions are imperative to ensure that people have access to actually being outside of a cell, in a shared space with other people and not, for example, subjected to being placed in individual locked cages.

Also to ensure that alternative units do not replicate the harms of solitary by another name and instead follow proven programs like CAPS and RSVP, the law requires that the forty-year-old basic minimum standard for out-of-cell time in NYC jails – namely access to 14 hours of daily out-of-cell time with people only involuntarily locked in for eight hours at night for sleep and

two hours during the day for count – applies to all people in the jails apart from when a person is in de-escalation confinement or an emergency lock-in, including people in alternative units. The law also requires people to have access to seven hours of daily out of cell group programming or activities, and limits the use of restraints, for example to prevent people from automatically being chained to desks during out-of-cell time.

The law also enhances fairness, transparency and accountability by enhancing due process protections, including access to representation, time limits on placement in restrictive housing, and public reporting on the use of solitary and alternatives.

Despite some critics' claims, as seen in this point-by-point response, the status quo has led to horrible cycles of abuse, violence, and death, and can not continue. Local Law 42 presents an opportunity for an alternative approach scientifically proven to reduce violence and better protect people's health.

Widespread Support for Local Law 42 to End Solitary in NYC

After all of the failed promises in the names of Kalief and Layleen, now is the moment for the Board to adopt rules and the Department of Correction to carry out practices to implement Local Law 42 to finally end solitary confinement.

A large veto-proof supermajority of the City Council passed Local Law 42 on December 20, 2023, by a vote of 39-7 and then an even larger number of Council Members voted to override the Mayor's veto, 42-9 on January 30, 2024, thereby enacting Local Law 42.

Polling data shows the vast majority of voters across the country support ending solitary specifically in line with the provisions of Local Law 42, by a +32-point margin, with 78% of Democrats, 61% of Independents, and 51% of Republicans supporting it.

Every member of the NYC Democratic U.S. House delegation urged NYC to fully end solitary. Over 160 leading civil rights, racial justice, and human rights organizations urged New York City to fully end solitary confinement. 74 state legislators said DOC's policies and practices violate the state HALT Solitary Law and urged Council action. 1199SEIU United Health Care Workers East endorsed Local Law 42 and urged the City Council to pass it.

In this op-ed, Haydeth and Amariliz Torres Tavira, whose son and brother, Erick Tavira, died in solitary on Rikers in 2022, praised the Council for passing Local Law 42. Similarly, in this op-ed, Akeem Browder, whose brother Kalief Browder was killed by solitary and whose mother subsequently died of a broken heart, urged enactment of Local Law 42.

Coverage of the Council's vote to ban solitary was in nearly every major news outlet in New York and across the country, including in The Hill, NPR, New York Magazine, NYT here and here, NBC, PBS, Gothamist, Reuters, AP, Daily News, Black Enterprise, El Diario, City Council, NY1, AMNY, Brooklyn Daily Eagle, Queens Daily Eagle, Truthout, ABC 7 NY, ABC 10 News, CBS, News12, Pix11, Independent, and more.

With the years-long deadly crisis plaguing Rikers and the city jails, ending solitary and providing people with access to real out-of-cell time and programming is one concrete and urgent step to save lives, better support people's health, and reduce violence. With the prospect of receivership looming and the possibility of closing Rikers and operating jails with a different approach, it is more urgent than ever to implement Local Law 42 to ensure that solitary confinement is no longer practiced in New York City.

Summary of Key Positive Components of Board's Proposed Rules

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended in the ways discussed below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, with clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

Proposed Amendments to the Board's Proposed Rules

In order to ensure the Board's rules are fully in compliance with Local Law 42 and carry out its provisions, the Board should make the following amendments to its proposed rules.

Section 1-05

We recommend that the Board revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.

To that end, we recommend the following:

1. We recommend that subdivision (a) *Policy* end after the first sentence and the newly added language regarding out-of-cell time, congregate engagement, and programming be new additional subdivisions.
2. For the exceptions in this section, we recommend that the rules make explicit which specific provisions the exceptions apply to.
    a. Specifically, the rules should be explicit that the exceptions for de-escalation confinement and emergency lock-ins apply to the involuntary lock-in provisions. Local Law 42 explicitly states in section 167(b) and section 167(i) that the lock-in provisions – namely that people are only able to be locked in at night for sleep for up to eight hours and during the day for count for up to two hours, and in turn that people have access to at least 14 hours of daily out-of-cell time – apply to everyone in the city jails other than during de-escalation confinement and emergency lock-ins.
    b. Relatedly, the exception listed for contagious disease units should be removed from this section, not be listed as an exception to the lock-in provisions nor the out-of-cell time requirements, and instead remain as written in section 6-30. Local Law 42 explicitly states that all housing for people in contagious disease units must comply with subdivisions (b), (c), (e), (i), (j) and (k) and paragraphs 4, 5, and 6 of subdivision (h) of section 167 of the law, which includes for example the prohibitions on involuntary lock-ins, the 14 hour minimum daily out-of-cell requirements, and programming requirements. Rather than create an exception to these requirements, Local Law 42, as included in section 6-30 of the Board's rules, instead provides caveats for how such requirements should be carried out

for people in contagious disease units in a way that can be done with appropriate medical protections and treatment.

3. Finally related to this section, we recommend adding the explicit Local Law 42 provision that "All incarcerated persons must have access to at least 14 out-of-cell hours every day except while in de-escalation confinement and during emergency lock-ins." While the Board's rules have a provision requiring that all people in restrictive housing have access to at least 14 hours of daily out-of-cell time, in addition the rules should also be explicit – as Local Law 42 is – that this 14 hour daily out-of-cell requirement applies to everyone in the city jails other than while a person is in de-escalation confinement or an emergency lock-in.

Section 6-05

We recommend that the rules make more explicit all of the time limit requirements in Local Law 42 for de-escalation confinement. Specifically, section 6-05(j)(1) currently prohibits de-escalation confinement for more than four hours in any 24-hour period and more than 12 hours in any seven day period. In addition to those requirements, Local Law 42 also requires that de-escalation confinement "not exceed four hours immediately following the incident precipitating such person's placement in such confinement", and we recommend that the rules also explicitly add this requirement.

Section 6-06

We recommend the Board add the following Local Law 42 restrictions on the scope of emergency lock-ins, namely that "Emergency lock-ins must be confined to as narrow an area as possible and limited number of people as possible."

Section 6-19

We recommend that the Board revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled to such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers. To that end, we recommend the following:

1. In section 6-19(b), we recommend that the term "out-of-cell" be added between "daily" and "congregate" in both instances where that phrase appears in that subdivision. We would recommend the same change in section 6-19(f) and anywhere else that phrase appears in the Board's rules. Local Law 42 is very explicit that people in restrictive housing have "access to at least seven hours per day of *out-of-cell* congregate programming or activities with groups of people in a group setting all in the same shared

space without physical barriers separating such people that is conducive to meaningful and regular social interaction," with the law and the Board's rules specifically defining out-of-cell (and not defining "congregate"). As such, section 6-19 should use the same "out-of-cell" language requirement as in Local Law 42.

2. We recommend that the Board either amend section 6-19(d) or add another provision under section 6-19 to state that "all programming to fulfill the seven hour programming requirement shall be led in-person by therapeutic staff, programming staff, outside community groups, or other peer incarcerated persons." While section 6-19 rightfully requires that people receive access to seven hours of daily congregate programming, section 6-19(d) currently states that the Department must provide in-person therapeutic programming for only one hour per day. The rules are silent about the remaining six hours. The Board should make explicit who can lead the remaining six hours of daily programming, again namely therapeutic staff, programming staff, outside community groups, or other peer incarcerated persons.

Section 6-23

We recommend that the Board add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process. To that end, we recommend the following for all people charged with any infraction that could result in a sentence to restrictive housing, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status.

1. In order to ensure the right to legal representation is realized in practice, we recommend the Board include subdivisions under section 6-23(d)(6)(i) that require the DOC to provide notice of the right to legal representation at least 48 hours prior to a scheduled hearing, videotape any refusal of representation, notify the designated contact for each defense office and attorney of record, and provide a list of eligible legal representatives and advocates.
2. We recommend the Board amend section 6-23(d)(6)(ii) to require DOC to inform a person charged of their right to appear at their disciplinary hearing and the right to adjourn the hearing so that they may appear and to establish that a person who does not appear had knowingly and voluntarily waived their right to appear (with an infraction dismissed if it is not established or if there is not video evidence of a refusal).
3. We recommend the Board also amend section 6-23(d)(6)(ii) to require that a legal representative or advocate may elect to represent an individual at a hearing *either*

in-person or virtually and in either case shall be provided the ability to privately confer with their client both before and during a hearing.

4. We recommend the Board amend section 6-23(d)(6)(v) to ensure that a charged individual has a right to receive any evidence or information related to the grounds for which DOC seeks to charge them, including but not limited to: a) Surveillance footage video and surveillance footage stills; b) Body-worn camera footage; c) Notices of infraction; d) Facility reports; e) Staff reports; f) Use of force reports; g) Injury reports; h) Medical documentation; i) Witness list; j) All statements, written or recorded or summarized in any writing or recording, made by persons who have evidence or information relevant to the allegations being relied upon by DOC; (k) Any evidence of an alleged refusal, including body-worn camera footage or evidence that the charged individual knowingly and voluntarily waived their right to appear, or their right to access to legal counsel.
    a. We recommend the Board provide protections to ensure the credibility of any redacted evidence presented as from a confidential informant.
    b. We recommend the Board require appropriate remedies for failure to comply with these evidentiary requirements, specific remedies for lost or destroyed evidence, and the remedy of dismissal of the charges if relevant body worn camera footage is lost or destroyed, or the officer fails to turn on body worn camera when required by DOC policy.
5. We recommend the Board amend section 6-23(d)(8)(ii) to designate additional grounds for granting an adjournment of a hearing, including reasonable time for both the legal representative or advocate and client to be notified, to review discovery, and to confer with their client, and any other basis justifying the need for an adjournment.

Section 6-25

We recommend in section 6-25(c) that the Board require DOC to submit to the Board its progress in reducing to zero the punitive segregation population and any other population in conditions that do not comply with either restrictive housing or general population requirements under Local Law 42 and the Board's proposed rules, including PSEG I/Central Punitive Segregation Unit (CPSU), PSEG II, Restrictive Housing Unit (RHU), Enhanced Supervision Housing, West Facility, NIC Structurally Restrictive Housing and any other units that do not comply with the law's and the rules' restrictive housing or general population requirements. The Board's proposed rules seem to leave out subdivision (c) in this section and we would recommend putting it back in with these proposed modifications of adding additional units that do not comply with restrictive housing or general population requirements.

Section 6-26

We recommend that the Board make explicit requirements to ensure that the proposed Restorative Rehabilitation Units (RRUs) comply with requirements for general population and protections for restrictive housing. It is positive that participation in the RRUs is voluntary and that people can transfer from RRUs to general population whenever they make that decision, and the rules should be even more explicit about such voluntariness and about the conditions in the RRUs. To that end, we make the following recommendations.

1. We would recommend modifying section 6-26(b)(4) to read as follows: "A person in custody can request to be discharged from a RRU at any point during their placement, *and shall be discharged to general population upon such request*."
2. We would recommend adding additional subdivisions under 6-26(c) to explicitly state that conditions in RRUs shall comply with section 6-15 and 6-16(a), (b), (c), (e), and (j) and all provisions regarding conditions, services, and programs for people in general population.

Section 6-27

We recommend the Board include Local Law 42's explicit requirement that "The department shall not place an incarcerated person in restraints unless an individualized determination is made that *restraints are necessary to prevent an imminent risk of self-injury or injury to other persons*." Section 6-27 does require an individualized determination, section 6-27(d) states that restraints may be used no longer than necessary to abate such an imminent risk, and section 6-27(g)(4) requires that any continued use of restraints must be discontinued when there is no longer such an imminent risk. The rules should also add in the general explicit requirement of Local Law 42 that from the outset restraints are only used when necessary to prevent such an imminent risk of self-injury or injury to other persons.

Conclusion

Solitary confinement is torture. It causes devastating and deadly harm. It worsens safety for everyone. It is long past time for it to end in New York City. Now that an overwhelming supermajority of the City Council enacted Local Law 42, the Board should build off of its longstanding work reducing the use of solitary by adopting its proposed rules with the modifications discussed throughout this comment, in order to comply with and implement Local Law 42. Moreover, the Department must act now to begin implementation of the law, including by bringing in outside experts to design and operate real alternatives that have been proven to reduce violence and better protect people's health. Adopting these rules and fully and properly implementing Local Law 42 will stop torture, improve safety for everyone, and save lives. Thank you for your consideration.

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. Housing Works is writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

Housing Works is a healing community of people living with and affected by HIV/AIDS. Our mission is to end the dual crises of homelessness and AIDS through relentless advocacy, the provision of lifesaving services, and entrepreneurial businesses that sustain our efforts.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has

taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. I am writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

I am just a regular citizen who wants to be safe, but doesn't want to be cruel. I believe I would rather die than be locked in solitary confinement, and that is a serious statement which requires, I think, an equally serious response.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of

separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42

for how such out-of-cell time can take place in line with appropriate medical protections and treatment.

2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Nick Staff
63 W. 17th St.
Apt 4D
New York, NY 10011
310 490 9630

6/4/24

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. I am writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

I've lived in New York for over 2 decades now, working as a professional movie maker and designer. As a resident I have grown increasingly concerned about the criminal injustice system in this city, especially with those detained pretrial on Rikers Island. It's unconstitutional, its torture, and it ruins peoples lives.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives. Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

- Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
- Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
- Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group

- Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Lee Clayton

Board of Correction
Attn: Jemarley McFarlane
2 Lafavette Street. Room 1221
New York. NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

I am an upstate retired teacher urging you to adopt your own rules. I am concerned about the incarceration of millions of fellow citizens and have organized and participated In groups such as Decarcerate Tompkins County and Ithaca Prisoner Justice Network

At the state level, I am a member of the Campaign for Alternatives to Isolated Confinement. Our group worked for more than 10 years to finally pass the HALT (Humane Alternatives To Long Term Solitary Confinement). Furthermore. I have visited NYS prisons as a member Of the Correctional Association.

Solitary confinement does not make prisons safer. (Vera April 2021) The proposed rules to limit solitary to a maximum of four hours are more humane and effective. Please make me Proud to be a New Yorker by adopting these rules.

Sincerely,

Josephine Cardamone

Josephine Cardamone
103 E Jay Street
Ithaca, New York 14850

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. I am writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

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The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

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3. Require that people in restrictive housing have access to at least 14 hours of real daily out-of-cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.

5. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
6. Ban the use of locked decontamination showers.
7. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.

To ensure they fully comply with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to Section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) make clear that the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to Section 6-19 to make clear that a) for the seven-hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
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In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Sincerely,

Michael Laird

Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing.

FILL IN GROUP NAME OR CHANGE TO "I am writing" IF INDIVIDUAL PERSON is writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

FILL IN INFO ABOUT YOURSELF OR YOUR GROUP
It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.
Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.
Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.
In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.
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administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.

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In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

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2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both
4. in-person and virtual hearings and how each would work, and timelines for the entire process.

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Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Marlena Lange

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Dear Board of Correction:

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. I am writing—in the interest of safety, dignity, and human rights—to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

In line with this long-standing evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

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4. de-escalation confinement and emergency lock-ins.
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In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

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In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Joe Pfister

Donna Robin Lippman, LCSW
521 E 14 St
New York, NY 10009

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. I am writing in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

I am a retired NYC public school teacher. In retirement I got my MSW and went to work at a NYC HHC hospital, working with survivors of domestic violence and sexual assault. Some of my clients were formerly incarcerated; many had relatives who were. These were people who had made a mistake and needed help more than they needed punishment. With help, many are able to establish meaningful lives. If we severely punish people who commit crimes, it will take much longer, if it is at all possible, to help them recover. A criminal justice system that is humane would go a long way toward building sustainable healthy and safe communities. It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the

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DAILY NEWS

Banning solitary stems violence

The New York City Council has taken a crucial step toward scientifically proven methods of violence prevention b...

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The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.

9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Sincerely,
Donna Robin Lippman, LCSW

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I am a concerned community member who desperately wants to see the end of solitary confinement.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

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Thank you for your consideration.
Caitlyn Passaretti

--
"If you have come to help me you are wasting your time. But if you have come because your liberation is bound up with mine then let us work together"
-Lila Watson

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Thank you for your consideration.

Sarah Rosenblatt
she/her/hers

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

I am a born and raised New York City resident urging you to implement Local Law 42. I write to honor the memory of Kalief Browder to say that solitary confinement does not make prisons safer, and results in horrible consequences for the isolated human beings. I am deeply concerned about the incarceration of millions of fellow citizens and have participated in rallies and petition drives against solitary confinement. The proposed rules to limit solitary to a maximum of four hours, in emergency situations, are more humane and effective. Please make me proud to be a New Yorker by adopting these rules.

Sincerely,

Tamar K. Smith
82 President Street
Brooklyn, NY 11231

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

I am a retired teacher urging you to adopt your own rules. I am concerned about the incarceration of millions of fellow citizens and have organized and participated in groups such as RAPP.
.
At the state level, I am a member of the Campaign for Alternatives to Isolated Confinement. Our group worked for more than 10 years to finally pass the HALT (Humane Alternatives To Long Term Solitary Confinement). Furthermore, I have visited NYS prisons as a member of the Correctional Association. (Vera April 2021) The proposed rules to limit solitary to a maximum of four hours are more humane and effective. Please make me proud to be a New Yorker by adopting these rules.

Sincerely,

Erica Itzkowitz
90 La Salle St. Apt. 8A
NYC, NY 10027

Dear Board of Correction,

Solitary confinement is cruel and unusual punishment with severe effects on mental health. New York City is supposed to be a center of civilization and should treat people humanely. I applaud the City Council for passing Local Law 42 to end solitary – please accept it.

John C. Markowitz, M.D.
Professor of Clinical Psychiatry
Columbia University Vagelos College of Physicians & Surgeons
Research Psychiatrist
New York State Psychiatric Institute
1051 Riverside Drive, Unit #129
New York, NY 10032
(646) 774-8098

Private office:
40 East 83rd Street
New York, NY 10028
(212) 288-3070

Online Comment via NYC Rules

Commenter: Amy Harlib

Comment added May 28, 2024 at 3:22PM

“END THE CRUEL AND UNUSUAL PUNISHMENT OF SOLITARY CONFINEMENT WHICH IS SHEER TORTURE!”

Please implement Local Law 42 to end solitary confinement in NYC.

Sincerely,
Katharine Tussing

Board of Correction
Attn: Jemarley McFarlane
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I have worked as a social worker in NYC for the last 8 years and have witnessed firsthand the profoundly negative impact that solitary confinement has on those who have been forced to endure it. And I have watched with horror as people in city jails continue to die in isolated confinement. It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

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18. for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

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In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Sincerely,
Brooke Taylor, LMSW

Dear Board of Correction,

I am a concerned citizen urging you to adopt Local Law 42. I am concerned about the incarceration of millions of fellow citizens, particularly in conditions of solitary confinement.

Solitary confinement does not make prisons safer. (Vera April 2021) The proposed rules to limit solitary confinement are more humane and effective. Please make me proud to be a New Yorker by adopting these rules.

Sincerely,
Gabi Yamout

6/12/2024

RE: Please implement Local Law 42 - my experience

I just read news about the possibility of ending solitary. Please consider the value of Local Law 42 and turn it into constructive reality.

I am writing because solitary can have a very destructive impact on people who are innocent until proven guilty - and drive the guilty to harden against any chance of rehab.

Why I am writing:

1. - A person I know was sentenced to 37 days in solitude because was trying to defend himself from a gang member and the guards thought he was just fighting.
2. - He was in Rikers for 14 months, under pressure to plead guilty. He insisted on his innocence. I saw the main evidence - no sign of guilt.
3. - After a 10-day trial, the jury acquitted him on all 7 felonies and he was released.
4. - When he was released, the entire experience but particularly the 37 days being in solitary made him extremely unbalanced, paranoid and suicidal. For about five years, he was tortured by flashbacks of being caged in a coffin-like box and sudden panic attacks in enclosed areas that he never had before. He could not focus on getting a job or trust free mental health help. Wanted to self-medicate with drugs to drown the memories.

He was innocent and mentally destroyed for years from solitary confinement.

But I am not just concerned about the personal impact of solitary on an inmate. I've spoken to other people who were actually guilty but had the same reaction to long stays in solitary, became physically stressed with heart problems - and so emotionally imbalanced that after sentencing and prison, when released, sometimes committed worse crimes.

Their experiences show me that the impact of solitary on an individual can have serious negative consequences on society by people who have become mentally ill and more likely to commit crimes.

Tita Theodora Beal

PS I think of the news about that teen whose last name began with a B Brawley or Browder?) who was arrested for jumping a turnstile, could not raise bail, and when finally released after a year or more, committed suicide.

National Police Accountability Project
A Project of the National Lawyers Guild

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. The National Police Accountability Project is writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

NPAP is a nonprofit organization dedicated to holding law enforcement and corrections officers accountable to constitutional and professional standards. While we work to get justice for victims of police misconduct in the courts, we also advocate in the legislatures for reforms that will prevent law enforcement abuse from happening in the first place. There are inherent harms and constitutional violations in solitary confinement. Accordingly, NPAP strongly supports the adoption of rules to implementing Local Law 42.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.

6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed

successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

If you have any questions, please do not hesitate to contact Lauren Bonds at legal.npap@nlg.org or (620) 664-8584.

Sincerely,

Lauren Bonds
National Police Accountability Project

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. I am writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

My name is Ryan Acquaotta, and I work with Freedom Agenda, a member-led project at the Urban Justice Center. Our members are New Yorkers who have been detained on Rikers, or who have loved ones who are or have been detained there. Some of our members have lost loved ones to Rikers Island. Nearly all of our members have either experienced the horrors of solitary confinement themselves, or have accompanied a loved one through that horrific experience.

For years, our members have testified in hearings before the Board of Correction, the City Council, and the State legislature, and have spoken out at rallies, town halls, webinars, and more. They have outlined repeatedly the horrors of solitary confinement, and the ways that the

Department Of Correction has continued to utilize solitary confinement no matter how many times over the years they have changed what they call it.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.

6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Ryan Acquaotta
Campaigns Coordinator, Freedom Agenda
racquaotta@urbanjustice.org

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. North Star Fund is writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

North Star Fund is a social justice fund that supports grassroots organizing led by communities of color building power in New York City and the Hudson Valley.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the

risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42

for how such out-of-cell time can take place in line with appropriate medical protections and treatment.

2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Sincerely,

Jennifer Ching
Executive Director

Board of Correction

Attn: Jemarley McFarlane

2 Lafayette Street, Room 1221

New York, NY 10007

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. I am writing in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below.

These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while using alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities.

Adopting these rules, fully implementing Local Law 42, and using real alternatives is scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone.

Solitary causes people to engage in self-mutilation.

It causes heart disease. It causes anxiety, depression, and psychosis.

In New York City, it is almost exclusively inflicted on Black and Latino people, who make up over 90% of all people in NYC jails.

Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

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Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

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10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
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In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

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Thank you for your consideration.

Kind regards,

ERICA B. BERSIN
President
+1.917.612.8810
ericabersin@erohealthcomms.com
erohealthcommunications.com

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. Uptown Progressive Action is writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

Uptown Progressive Action is a group of people in Washington Heights, Inwood and Marble Hill who seek to build a grassroots movement to bring real progressive change in this time of increasing attacks on working people: we seek to protect immigrants and the most vulnerable in our neighborhood, create a single payer health care system, stop gentrification and the power of the real estate industry, raise the minimum wage, address climate change, get money out of politics, bring free tuition at public colleges, and more. It is an affiliate of NYPAN.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

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9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
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3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying

defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.
Uptown Progressive Action
Uptown Progressive Action.org

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. I, Anisah Sabur am writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.
I am a solitary survivor, and for the past 20 years, I have been advocating for the ending of this practice. Solitary confinement has caused me collateral consequences in my early re-entry. I today am urging you all to stop this practice by enacting the rules that will keep people out of solitary confinement and save lives.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of

separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42

for how such out-of-cell time can take place in line with appropriate medical protections and treatment.

2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007

Dear Board of Correction,
The Board and the Department of Correction are now in a position to update the rules so as to comply with Local Law 42. You should do this. You really have no other legal option.
Thank you for your kind attention.
Yours sincerely,

--
Wayles Browne
206 Eddy St.
Ithaca, New York 14850, U.S.A.

APPELLATE ADVOCATES

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June 14, 2024

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing and Local Law 42

Dear Board of Correction:

In the interest of safety, dignity, and human rights, Appellate Advocates urges the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42, which was enacted by an overwhelming supermajority of the City Council, and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

Founded in 1995, Appellate Advocates provides post-conviction representation to individuals convicted of crimes who cannot afford a lawyer. The centerpiece of our work are the direct appeals to which we are assigned by the Appellate Division, Second Department, and the Appellate Term, 2d, 9th & 13th Judicial Districts, representing people whose convictions originated from Brooklyn, Queens, and Staten Island. We are the primary appellate defender in the Second Department. In conjunction with our

direct appeal work, we represent people at Sex Offender Registration Act hearings and the appeals from those adjudications, on motions pursuant to the Domestic Violence Survivors Justice Act and the appeals from those denials, and on collateral review challenging wrongful convictions, among other things. We provide advocacy and support for the people we represent who are in New York jails and prisons, and have worked with many people who suffer mistreatment and violence while in such facilities. We regularly see the harm that is caused by solitary confinement.

It is long past time for New York City to end solitary confinement. The Department of Correction ("DOC") and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

People who have contact with the criminal legal system are disproportionately survivors of childhood trauma – sexual, physical, and emotional – that suffer various mental disorders as a result.[1] Solitary confinement is torture; putting a traumatized person in solitary is unconscionable.

Solitary confinement causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation.[2] It causes heart disease.[3] It causes anxiety, depression, and psychosis.[4] In New York City, it is almost exclusively inflicted on Black and Latine people, who make up over 90% of all people in NYC jails. Trans, gender non-conforming, non-binary, and inter-sex people have more frequent contacts with the prison disciplinary system: 83% reported being in solitary for a disciplinary reason.[5] Solitary confinement has taken the lives of Kalief Browder, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others. To make clear the horror of solitary: Layleen Polanco died of neglect in a solitary confinement cell on Rikers Island, where she was placed for

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[1] Nancy Wolff & Jing Shi, "Childhood and Adult Trauma Experiences of Incarcerated Persons and Their Relationship to Adult Behavioral Health Problems and Treatment," 9 Int. J. Environ. Res. Public Health 1908, 1909 (May 2012).

[2] Fatos Kaba et al., "Solitary Confinement and Risk of Self-Harm Among Jail Inmates," 104 Am. J. Public Health 442 (Mar. 2014).

[3] Tasfia Jahangir, "Solitary confinement is bad for the heart too," Massive Science (Jan. 20, 2020), available at https://massivesci.com/notes/cardiovascular-health-comparison-solitary-confinement-prison-health/.

[4] Stuart Grassian, "Psychiatric Effects of Solitary Confinement," 22 Wash. Univ. J. L. & Pol'y 325 (Jan. 2006).

[5] Sylvia Rivera Law Proj. et al., "It's Still War in Here" at 22, available at https://takerootjustice.org/wp-content/uploads/2021/06/Its-Still-War-In-Here-1.pdf.

nearly three weeks despite her history of epilepsy, the obvious deterioration of her mental and physical health, and against procedures.[6]

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home.[7] Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in New York City jails, the Merle Cooper Program in New York State prisons, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.[8]

In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires the Board to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four-hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.

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[6] See Erika Lorshbough, NYCLU, "Black Trans Lives Matter – Here's How our Criminal System Fails Them" (June 30, 2020), available at https://www.nyclu.org/en/news/black-trans-lives-matter-heres-how-our-criminal-system-fails-them.

[7] Christopher Wildeman & Lars Højsgaard Andersen, "Long-term consequences of being placed in disciplinary segregation," 58 Criminology 423 (2020); Kristen M. Zgoba et al., "Assessing the Impact of Restrictive Housing on Inmate Post-Release Criminal Behavior," 45 Am. J. Crim. Just. 102 (Feb. 1 2020).

[8] Sr. Bandy X. Lee & Dr. James Gilligan, "Banning Solitary Stems Vioelnce," N.Y. Daily News (Jan. 18, 2024).

6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by the Board.
10. Make clear that DOC cannot request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven-hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how DOC shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

It is time for the Board to adopt rules in line with Local Law 42 and for DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

THE COUNCIL *of* THE CITY OF NEW YORK
OFFICE OF COUNCIL MEMBER CARLINA L. RIVERA

June 17, 2024

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007

Re: Rulemaking Concerning the Implementation of Local Law 42 and Restrictive Housing

Thank you for the opportunity to submit testimony regarding the Board of Correction's proposed rules for the implementation of Local Law 42. I write in support of the proposed rules, with modifications included below.

Due to decades of disinvestment and underinvestment, individuals in need of mental health or substance use services repeatedly end up in the jail system, and instead of receiving the treatment they need, they end up in solitary confinement. Research shows that solitary confinement exacerbates mental illness and destabilizes people in a way that increases the likelihood of violence, which undoubtedly runs counter to all of our public safety goals. We must strive for a criminal legal system that leads the nation in reforms rather than accepting a status quo where our neighbors are locked away in violent and dangerous conditions.

Local Law 42 was passed by a super majority in City Council to provide the Department of Correction with procedures to responsibly remove someone from the general population and address incidents where a person has caused physical injury or poses a specific risk of imminent serious physical injury to themselves or others. This legislation moved forward with a broad-based coalition and was extensively negotiated with the administration and labor, winning the endorsement of 1199SEIU, the largest healthcare union in the country. Advocates, experts and employees inside the jail system agree that solitary does not make anyone safer — in fact, it only puts people further into harm's way and is often a death sentence for incarcerated New Yorkers.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying

defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

June 17, 2024

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Comments on Proposed Rulemaking to Title 40 of the Rules of the City of New York, Concerning Restrictive Housing in Correctional Facilities

Dear Mr. McFarlane,

On behalf of the Vera Institute of Justice, a national organization working to create a fair, accountable justice system, I am submitting comments in response to the Board of Correction's (BOC) proposed changes to Title 40 of the Rules of the City of New York to comply with Local Law 42's new requirements about the use of restrictive housing and restraints in correctional facilities. We acknowledge the care that went into the drafted rules and appreciate the opportunity to comment.

Placing incarcerated people in solitary confinement causes them incredible harm. One study of New York City jails found that people exposed to solitary confinement were more than three times more likely to self-harm while incarcerated.[1] Further, how the Department of Correction (DOC) treats people while they are in detention has an impact on them after they leave jail, too. One study found that after release, people who spent time in solitary were 78 percent more likely to die from suicide within the first year of release compared to the general incarcerated population.[2]

In addition to its effect on incarcerated people, the experience of working in solitary confinement units takes a significant toll on corrections officers. One 2015 study found that working in solitary confinement units "is a stressful and demoralizing experience that can breed distrust, frustration, anger, psychological damage, and sometimes violence."[3] Other research shows that the use of solitary confinement does not increase safety or decrease misconduct—in fact, assaults on corrections officers may even be higher in solitary confinement units than in general housing units.[4] In addition, results from Chicago show that banning solitary confinement is associated with a decrease in violent incidents and assaults on staff.[5]

For the sake of safety and the humane treatment of all people, BOC must implement Local Law 42 meticulously, and DOC must adhere to it. To that end, we recommend adding the following to the proposed changes to Title 40 of the Rules of the City of New York:

1. **Update section 1-02(1)(c)** to require that the "trauma-informed, age-appropriate programming and services on a consistent, regular basis" be provided by external service providers with the relevant training or lived experience to create and deliver such programming in an evidence-based, effective manner. This programming should not be

provided by corrections officers, who are poorly positioned to provide supportive services and build trust due to the disciplinary nature of their roles.

2. **Update section 6-03(b)(18)** to specify that the "enhanced programming, security, and therapeutic support for people stepping down from restrictive housing" must be provided by external service providers with the relevant training or lived experience to create and deliver such programming in an evidence-based, effective manner. Again, trauma-informed care requires that external providers with relevant training provide it, not corrections officers.
3. **Update section 6-11(a)** to stipulate that case managers must be external service providers and not uniformed or civilian DOC employees. Part of the case manager's role is to ensure DOC provides incarcerated people with the planning and support they need to facilitate their "reintegration into housing in the general population." If this oversight is provided by DOC employees, case managers may feel unable to challenge DOC's planning.
4. **Update section 6-12(a)** to be more specific about who should create individual behavior support plans (IBSPs) and what relevant training and experience they must possess to create "measurable, achievable goals" for a person in restrictive housing. Because these plans are a tool for facilitating "the person's reintegration into housing in the general population," it is essential that people with relevant expertise create them.
5. **Update section 6-12(b)** to require that the case manager review IBSPs within 24 hours (rather than the proposed 72 hours) to ensure that they contain all necessary information and are "informed by an evidence-based assessment" as stipulated in section 6-12(a)(1). Waiting a full 72 hours to validate IBSPs may miss a critical window to connect people in crisis with the support they need to leave restrictive housing.
6. **Update section 6-23(d)(6)(i) and 6-23(d)(9)** to include specific requirements for how the DOC shall carry out the legal representation requirement including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings, and timelines for the entire process. Such requirements will ensure that incarcerated people who want legal representation at their hearings are able to have a lawyer present in a timely manner.

We are grateful for the opportunity to engage in the rulemaking process and invite questions or feedback regarding the Vera Institute's comments on the proposed rules.

Sincerely,

Jullian Harris-Calvin
Program Director, Greater Justice New York
Vera Institute of Justice
(323) 304-1982
jharriscalvin@vera.org

[1] Kaba Fatos, Andrea Lewis, and Sarah Glowa-Kollisch, et al., "Solitary Confinement and Risk of Self-Harm Among Jail Inmates," *American Journal of Public Health* 104, no. 3 (2014), 442-447, https://perma.cc/QJ6M-VDLM.

[2] Lauren Brinkley-Rubinstein, Josie Sivaraman, and David L Rosen et al., "Association of Restrictive Housing During Incarceration with Mortality After Release, *Journal of the American Medical Association Network Open* 2, no. 10 (2019), https://perma.cc/NFT2-SPBZ.

[3] David H. Cloud, Ernest Drucker, Angela Browne, and Jim Parsons, "Public Health and Solitary Confinement in the United States," *American Journal of Public Health* 105, no. 1 (2015), 18-26, https://perma.cc/8FV3-A93Q.

[4] Andreea Matei, *Solitary Confinement in US Prisons* (Washington, DC: Urban Institute, 2022), 7, https://www.urban.org/sites/default/files/2022-08/Solitary%20Confinement%20in%20the%20US.pdf; and Benjamin Steiner and Calli M. Cain, "The Relationship Between Inmate Misconduct, Institutional Violence, and Administrative Segregation: A Systematic Review of the Evidence," in *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions* (Washington, DC: U.S. Department of Justice, National Institute of Justice, 2016), 178-179, https://perma.cc/BCJ3-HYK3.

[5] Tom Dart, "My Jail Stopped Using Solitary Confinement. Here's Why," *Washington Post*, April 2019, https://perma.cc/T2AX-4799.

Christ Church RIVERDALE
Loving God, Loving our neighbors

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www.christchurchriverdale.org

Social Justice Ministry

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

RE: **Rulemaking Concerning Restrictive Housing & Local Law 42**

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. The Social Justice Ministry of Christ Church Riverdale is writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

CCR Social Justice Ministry is a group of parishioners who have responded to the Episcopal Church's policy for action to fight racism and discrimination within and beyond the criminal justice system. The Ministry — a multicultural group of CCR parishioners, advocate for causes that align with the Episcopal Diocese of New York (EDNY) and our national church. Our church had had forums on the harms of solitary confinement to the community and we condemn prolonged solitary confinement and view it as a form of torture. The EDNY encompasses 192 worshipping communities in the boroughs of Manhattan, the Bronx, and Staten Island in New York City; and the New York counties of Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester. The Diocese has approximately 50,000 members.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has

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taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four-hour limit on de-escalation confinement and emergency lock-ins, and provide additional protection during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC cannot request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

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Social Justice Ministry

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1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Roberta Todd
Coordinator

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THE COUNCIL
OF
THE CITY OF NEW YORK

SANDY NURSE
COUNCIL MEMBER, 37TH DISTRICT, BROOKLYN

CHAIR
CRIMINAL JUSTICE

COMMITTEES
CONTRACTS
ENVIRONMENTAL PROTECTION
RESILIENCY AND WATERFRONTS
SANITATION AND SOLID WASTE MANAGEMENT
VETERANS

SUB-COMMITTEE
LANDMARKS, PUBLIC SITINGS,
AND DISPOSITIONS

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. I am writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

I am a New York City Council member representing the 37th District, including Brownsville and several other nearby neighborhoods. I also serve as the Chair of the Committee on Criminal Justice. It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

Contrary to the purported justification for its use, solitary also makes jails and outside communities less safe for everyone by causing people to deteriorate and in turn increasing the risk of harmful acts both in jail and after people return home. Meanwhile, alternative forms of separation, like those used in the original CAPS and PACE programs in NYC jails, the Merle Cooper Program in NYS, and the RSVP program in San Francisco jails have been scientifically proven to reduce violence and better protect people's health and well-being.

In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
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Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Sincerely,

Councilmember Sandy Nurse

New York City Council District 37

The Bronx Defenders

Redefining public defense

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. The Bronx Defenders is writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction ("BOC") to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health will stop torture, save lives, and improve safety for everyone.

The Bronx Defenders is a public defender non-profit that is transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child

welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. In our Criminal Defense Practice, our attorneys routinely represent clients, who are housed at Rikers Island. And, advocates from our Prisoner's Rights Project routinely advocate for our client's individual rights at their housing facilities.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

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In line with this long standing evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

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1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled to such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments submitted jointly by the public defender organizations, who will be providing much of that legal representation. The proposed specific requirements include processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process. The joint-defender proposed rules and the letter that were previously sent are attached for your convenience.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and for DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

Joint Memorandum in Support of Draft Rules for the Implementation of Local Law 42

May 30, 2024

New York City Board of Correction
2 Lafayette Street Suite 1221
New York, NY 10007

Dear New York City Board of Correction,

We are public defender offices in New York City and we write to urge you to adopt our proposed language for Board rules in response to recently passed Local Law 42.

Local Law 42 sought to ensure that due process was afforded to incarcerated people charged with infractions that could result in placement in restrictive housing, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Status. The Department of Correction must adhere to these rights in such placement.

Crucially, among the rights granted by the law is our clients' right to access legal representation during any hearing that could result in that client's placement in restrictive housing or status. To ensure our clients will actually be guaranteed the due process that Local Law 42 sought to afford our clients, along with the attendant — but critical — right to access to legal representation, we have collaborated over the past several months in efforts to iron out the timeline, logistics, and process required. Our suggestions are highlighted in yellow throughout the attached document.

The law plainly states that all incarcerated people charged with infractions that could result in placement in restrictive housing, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Status are entitled to legal representation. However, it does not outline how our clients will be made aware of this right, how their advocate or legal counsel will be notified of their alleged infraction, or the manner, including obtaining necessary discovery, and procedures that will govern these hearings. All of these questions are addressed in our draft rules.

Collectively, we have familiarity with the Department of Correction disciplinary process and the policy that informs it. We have experience with the hearing process and how it is supposed to work. It is this institutional knowledge and experience that inform these draft rules. We sincerely hope that the Board

will heed these suggestions when resubmitting their proposed rules at the conclusion of the public comment period.

Please feel free to reach out to us with any questions about these draft rules.

Regards,

New York County Defender Services
Brooklyn Defender Services
The Bronx Defenders
Queens Defenders
Neighborhood Defender Service of Harlem

§ 9. Section 6-03 of Title 40 of the Rules of the City of New York is amended to read as follows:

(b) For the purposes of this Chapter, the following terms related to restrictive housing have the following meanings:

[...]

(1) “Advocate” means a law student **who works under the supervision of an attorney, or a layperson, such as a** paralegal~~,~~ or another incarcerated person who represents an incarcerated person at a restrictive housing placement hearing or a continued use of restraints hearing pursuant to this chapter.

[...]

([8]11) "Legal Representative" is an attorney ~~or layperson who works under the supervision of an attorney~~.

§ 34. Paragraphs (5) through (9) of subdivision (d) of section 6-23 of Title 40 of the Rules of the City of New York, as renumbered by this rule, are amended to read as follows:

(5) *Refusal to Attend or Participate*. The refusal of people in custody to attend or participate in their hearing must be videotaped [or audiotaped] with audio and made a part of the hearing record.

(6) *Rights of the Person Charged*. The Hearing Adjudicator shall advise the person charged of the following rights at the hearing **and on the record, and** ~~which~~ must also be set forth in the notice of infraction:

(i) The right to legal representation: People charged with any infraction that could result in a placement in [RMAS Level 1 or 2] restrictive housing, **Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status** have the right to legal representation at their disciplinary hearing. If a person eligible for legal representation appears at a hearing unrepresented, the Department shall inform the person that they have the right to adjourn the hearing so they can engage a legal representative **or advocate**.

(A) Any person charged with any infraction that could result in a sentence to restrictive housing, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status shall be provided written notice of their right to legal representation upon service of the infraction. Such notice must be provided no less than 48 hours prior to the scheduled hearing. Such notice must be provided even in cases when the person has waived their right to appear at their hearing. The Adjudication Captain must also notify the person charged of their right to legal representation on the record at the disciplinary hearing.

(B) Any refusal of representation must be recorded on body-worn camera upon service of the infraction and at the disciplinary hearing

(C) The Department of Correction shall notify the designated contact for each defense office and attorney of record who represents the person charged with the infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status on each criminal case.

(a) In the event that the person charged with an infraction is unable to secure legal representation for the hearing through their counsel of record, the Department shall provide the person a list of current eligible legal representatives or advocates.

(b) The Department shall regularly update the list of current eligible legal representatives or advocates.

(ii) The right to appear: The person charged **with any infraction that could result in a placement in restrictive housing, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status** has the right to appear personally unless the right is waived in writing or the person refused to attend the hearing. **The Department shall inform the person charged that they have the right to appear, and the right to adjourn the hearing so that they may appear.**

(A) If the person charged **with the infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status** is excluded or removed from **their disciplinary** ~~a restrictive housing~~ hearing because it is determined that such person's presence will jeopardize the safety of themselves or others or security of the facility, the basis for such exclusion must be documented in the hearing record.

(B) If the person charged with the infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status allegedly refuses, DOC must establish that the client knowingly and voluntarily waived their right to appear at the hearing, and was aware of the consequences of failing to attend.

(a) If DOC is not able to establish that the individual knowingly and voluntarily waived their right to appear within the statutory time frame of five business days, the infraction shall be dismissed.

(b) If the statutory time frame has not expired, the individual charged with the infraction shall be given 24 hours to confer with their legal representative or advocate to secure the individual's appearance at the hearing. The hearing shall accordingly be adjourned for such time and purpose.

(c) A lack of video evidence of a refusal warrants dismissal of the infraction.

(C) Disciplinary hearings for those charged with an infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status shall take place in person in a DOC adjudication room.

(a) A virtual option for the hearing shall be made available upon request of the legal representative or advocate of the person charged with the infraction.

(b) In both the in-person and virtual options, the legal representative or advocate shall be provided the ability to privately confer with their client both before and during the hearing.

(iii) The right to **remain silent** ~~make statements~~: The person charged has the right to make statements. In cases where the infraction in question could lead to a subsequent criminal prosecution, the Hearing Adjudicator must inform the person that while the proceeding is not a criminal one, the person's statements may be used against the person in a subsequent criminal proceeding. The Adjudicator must also inform the person of the right to remain silent and that silence will not be used against the person at the hearing.

(iv) The right to present evidence and call witnesses: The person charged has the right to present evidence [and], call witnesses, and cross-examine witnesses.

(A) Witnesses shall testify in person at the hearing unless the witnesses' presence would jeopardize the safety of themselves or others or security of the facility. If a witness is excluded from testifying in person, the basis for the exclusion shall be documented in the hearing record.

(B) If a witness refuses to provide testimony at the hearing, the department must provide the basis for the witness's refusal, videotape such refusal, or obtain a signed refusal form, to be included as part of the hearing record.

(v) The right to review the Department's evidence:

(A) The person charged and their legal representative or advocate have the right to review~~,~~ the evidence relied upon by the Department **and evidence or information related to the grounds for which the Department seeks to charge them**, prior to the infraction hearing. The Department shall provide such evidence **as soon as practicable but no later than** ~~at least~~ forty-eight (48) hours prior to the hearing.

(B) Such evidence or information includes but is not limited to:

(a) Surveillance footage video and surveillance footage stills;
(b) Body-worn camera footage;
(c) Notices of infraction;
(d) Facility reports;
(e) Staff reports;
(f) Use of force reports;
(g) Injury reports;
(h) Medical documentation;

(i) Witness list;

(j) All statements, written or recorded or summarized in any writing or recording, made by persons who have evidence or information relevant to the allegations being relied upon by DOC to seek an infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status; and

(k) Any evidence of an alleged refusal, including body-worn camera footage or evidence that the charged individual knowingly and voluntarily waived their right to appear, or their right to access to legal counsel shall be included.

(C) Any evidence or information relied on by the facility in support of the infraction must be presented at the hearing.

(D) Specific documented intelligence may be redacted in limited instances where the Department determines that disclosing such information would present a serious safety risk to specific individuals. In such cases, the Department shall inform the person in writing that the information is being redacted due to a specific security risk. The Department shall maintain records of both redacted and unredacted evidence.

(E) If any redacted information is presented as evidence based upon a confidential informant, the hearing adjudicator must determine the reliability of the evidence and the informant's basis of knowledge for such information through an independent credibility review. The adjudicator's findings shall be made part of the hearing record.

(F) Available remedies or sanctions. Where the Department fails to comply with subdivision (6)(v) of this section or an order imposed or issued pursuant to this rule, the adjudicator may make a further order for discovery, grant a continuance, order that a witness be called or recalled, draw an adverse inference regarding the non-compliance, preclude or strike a witness's testimony or a portion of a witness's testimony, admit or exclude evidence, order the dismissal of all or some of the charges, or make such other order as it deems just under the circumstances.

(a) Should the Department provide any evidence to the person for the first time at the hearing, the Department shall inform the person or their legal representative or advocate at the hearing that they have the right to adjourn the hearing so they can review and prepare their defense.

(b) Where evidence is lost or destroyed, or unavailable due to the failure or inability of the department to preserve such evidence, the adjudicator shall impose a remedy that is appropriate and proportionate to the prejudice suffered by the person charged with the infraction.

(c) In the event that relevant body worn camera footage is lost or destroyed, or the officer fails to turn on body worn camera when required by DOC policy, the appropriate remedy shall be dismissal of the infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status.

(vi) The right to an interpreter. The Department shall ensure that every person charged is aware they are entitled to [request] an interpreter in their native language if they do not understand or are not able to communicate in English well enough to conduct the hearing in English. The Department shall take reasonable steps to provide an interpreter. **If after taking reasonable steps, no such interpreter can be procured, the infraction shall be dismissed.**

(vii) The right to an appeal. A person who is found guilty at a disciplinary hearing has the right to appeal an adverse decision as provided in 40 RCNY § [6-24(h)] 6-23(h).

(7) *Burden of Proof*. The Department has the burden of proof in all disciplinary proceedings. A person's guilt must be shown by a preponderance of the evidence to justify [RMAS] restrictive housing, **Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status** placement.

(8) *Hearing Time Frame*.

(i) Once the hearing has begun, the Hearing Adjudicator shall make reasonable efforts to conclude the hearing in one session.

~~(ii) Adjournments may be granted if the person charged or their legal representative requests additional time to locate witnesses, obtain the assistance of an interpreter, or prepare a defense. The Department shall provide the person charged and their legal representative or advocate adequate time to prepare for such hearings and shall grant reasonable requests for adjournments.~~

(ii) Request for adjournments: The person charged or their legal representative or advocate may make a reasonable request for an adjournment. In determining what constitutes a reasonable request for an adjournment, factors that must be taken into account include but are not limited to:

(A) Additional time to locate witnesses;
(B) Additional time to obtain the assistance of an interpreter;
(C) Additional time to prepare a defense;
(D) A reasonable time for both the legal representative or advocate and client to be notified;
(E) A reasonable time for the legal representative or advocate to review discovery;
(F) A reasonable time for the legal representative or advocate to confer with their client; or

(G) Any other basis justifying the need for an adjournment.

(iii) Hearing Adjudicators may also adjourn a hearing to question additional witnesses not available at the time of the hearing, gather further information, refer the person charged to mental health staff, or if issues are raised that require further investigation or clarification to reach a decision.

(iv) Notwithstanding any adjournments, hearings must be completed within five (5) days, absent extenuating circumstances or unless the person charged waives this time frame in writing or on the record.

(9) *Legal Representation*. People charged with any infraction that could result in a sentence to [RMAS Level 1 or 2] restrictive housing shall be permitted to have a legal representative or advocate represent them at their disciplinary hearing and in any ~~in~~ related appeal. People entitled to such representation shall be permitted to choose their legal representative or advocate.

WCJA
Women's Community Justice Association

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. The Women's Community Justice Association is writing – in the interest of safety, dignity, and human rights – to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

The Women's Community Justice Association is an organization that advocates with and on behalf of women and gender-expansive people impacted by mass incarceration, with direct services, education, and policy and community advocacy. We are particularly concerned with the impact of solitary confinement on women, who experience unique harms from solitary confinement and are disproportionately likely to be subjected to it for minor infractions; and on transgender and gender-expansive people, who are overwhelmingly likely to have been subjected to solitary confinement nominally for their own protection but with the same disastrous and harmful consequences as punitive segregation.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. Solitary causes people to engage in self-mutilation. It causes heart disease. It causes anxiety, depression, and psychosis. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

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In line with this longstanding evidence, Local Law 42 rightfully bans solitary beyond four hours and instead allows proven alternative forms of separation with access to 14 hours of real out of cell time with group programming and activities.

The law requires BOC to update its rules to comply with Local Law 42's requirements, and the Board's proposed rules, if amended as below and adopted, will fulfill that requirement. For example, the Board's rules rightfully:

1. Place a four hour limit on de-escalation confinement and emergency lock-ins, and provide for additional protections during those four hours to better protect people's health and well-being.
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of real daily out-of-cell time.
3. Require that people in restrictive housing have access to at least 14 hours of real daily out of cell time with group programming and activities, and clear definitions of "cell" and "out of cell" to prevent solitary by another name.
4. Place appropriate restrictions on restraints.
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing.
6. Add due process protections, including representation at hearings and time limits on alternatives to solitary.
7. Ban the use of locked decontamination showers.

8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.
9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC.
10. Make clear that the DOC can not request variances from Local Law 42 requirements.

In order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.
4. Add specific restrictions to the use of solitary confinement for the safety of incarcerated persons, particularly transgender and gender-nonconforming people, which emphasize that the safety of those individuals must be enforced in the larger jail environment rather than primarily through solitary segregation.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with

alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being.

Thank you for your consideration.

The Fortune Society
Building People, Not Prisons

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction:

Thank you for the opportunity to submit comments on the Board's proposed rules regarding restrictive housing. I am the Senior Vice President of The Fortune Society, and we urge the Board of Correction to adopt rules aligned with Local Law 42 which goes into effect on July 28, 2024. We strongly supported passage of Local Law 42 and remain grateful to the overwhelming majority of the City Council that voted to pass this critical and potentially life-saving legislation.

The Fortune Society is a 57-year-old organization that supports successful reentry from incarceration and promotes alternatives to incarceration, thus strengthening the fabric of our communities. We do this by believing in the power of people to change; building lives through service programs shaped by the experiences of our participants; and changing minds through education and advocacy to promote the operation of a fair, humane, and truly rehabilitative justice system. We have decades of extensive experience working with people in our city jails and immediately upon their release. I also speak from personal experience, as decades ago, I spent a year on Rikers Island and an additional fourteen years in New York state prisons.

Solitary confinement is simply torture by another name. It is well-documented that it causes immediate and lasting physical and psychological damage to the people subjected to those brutal conditions.[1] It is particularly important to ensure that the rules promulgated by BOC allow for full implementation of Local Law 42, given the particular vulnerabilities of the people held there: over half of the people held by DOC have a mental health diagnosis.[2] As of April of this

[1] See, e.g., Grassian, S. (2006), *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POL'Y 325 (2006), Retrieved June 13, 2024 from https://openscholarship.wustl.edu/law_journal_law_policy/vol22/iss1/24; Jahangir, T., (2020, January 20) "Solitary confinement is bad for the heart, too," *Massive Science*. Retrieved June 13, 2024 from https://massivesci.com/notes/cardiovascular-health-comparison-solitary-confinement-prison-health/.
[2] Preliminary Fiscal 2024 Mayor's Management Report, Department of Correction. Retrieved on June 14, 2024 from https://www.nyc.gov/assets/operations/downloads/pdf/pmmr2024/doc.pdf.

year, approximately 20% of people in custody have a serious mental illness.[3] That percentage has not been lower than 20% since January of 2023.[4] People with mental health conditions are especially vulnerable to the harms caused by extended isolation from others.[5] An important component of Local Law 42 is that it requires mental health staff to check frequently on people held for de-escalation purposes, or who are confined to their cells during emergency lock-ins. This is critical because the trauma caused by isolation is also compounded for those who are not provided timely access to mental health care, a failure for which DOC was previously held in contempt.[6] The problem of missed medical appointments persists: in April of this year, there were over 11,000 missed medical appointments.[7] Our jails have become mental health facilities that do not provide adequate care and instead inflict trauma. In such a setting, we must ensure that the inhumane practice of solitary confinement, by any name, is outlawed.

We support the Board's proposed modifications to its rules to comply with Local Law 42, but we encourage the Board to incorporate further modification to its rules to ensure full alignment and compliance with Local Law 42, as follows:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven-hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying

[3] NYC Comptroller Dashboard Update (2024, April 25). Retrieved June 13, 2024 from https://comptroller.nyc.gov/newsroom/doc-dashboard-update-nyc-comptroller-releases-new-monthly-data-on-department-of-correction-operations-2/.
[4] NYC Comptroller Department of Correction Dashboard. Retrieved June 13, 2024 from https://comptroller.nyc.gov/services/for-the-public/department-of-correction-doc/dashboard/.
[5] Glowa-Kollish, S., et al. (2016, Feb. 2), "From Punishment to Treatment: The 'Clinical Alternative to Punitive Segregation' (CAPS) Program in New York City Jails," *International Journal of Environmental Research and Public Health*. Retrieved June 13, 2024 from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/.
[6] Ransom, Jan (2022, May 18) "Judge Faults Medical Care for Detainees in Latest Sign of Rikers Crisis." *The New York Times*. Retrieved June 13, 2024 from https://www.nytimes.com/2022/05/17/nyregion/nyc-correction-department-rikers.html
[7] NYC Comptroller Department of Correction Dashboard. Retrieved June 13, 2024 from https://comptroller.nyc.gov/services/for-the-public/department-of-correction-doc/dashboard/.

defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

We strongly encourage the Board to adopt its proposed rules, including the modifications above, and to do so with all due urgency on June 25. It is imperative that these rules be in effect when Local Law 42 goes into effect on July 28, to prevent further harm. The Fortune Society stands ready to partner with the City and other stakeholders on ways to improve conditions in our city jails, which ultimately makes all of us safer.

Sincerely,

Ronald F. Day

Ronald F. Day

To the Board of Corrections,

My name is Mari Moss.

My entire life, I was brought up on gaining education, focusing and achieving future goals and staying out of trouble and/ or jail.

As I was obtaining my Master's Degree in public administration, I started to experience domestic violence within my home from my husband. We had three little girls and at that time this matter began they were 2, 4 and 6. This was in 2017.

From that time, my husband, through his mental, physical and emotional abuse began to hinder my life by pressuring me and my abilities as a mother of three young girls, as a wife, and as student trying to achieve higher education to create a better life for my daughters. When my husband could not bully me from home, he went to court to file documents specifically requesting to isolate me from my daughters through cusody requests, and nearly everything he asked was provided to him unlawfully without just reason through the courts, even when it came to charging me for support he actually owes me.

Somehow, a judge signed an erroneous warrant for my arrest and the 24th police precinct officers used that as an opportunity to slam me around and physically abuse me in front of my daughters as they placed me into custody. I was taken back to the 24th precinct and the police, began cutting my clothing with a black hunting knife, shackling me at the ankles and wrist so tightly that I could not feel the circulation in my veins through my ankles or wrists.

I was then taken to a court room where a judge remanded me to stay in jail overnight.

That is when I was taken to Rikers Island prison where I began to have medical issues as I was feeling the trauma from the abuse I endured by police who had taken me into custody. I was lied to about being able to see a physician. I was lied to about being placed into a wheel chair I requested, and then was placed in solitary confinement where there was nearly nothing to sit on. When I opened my eyes, there was a disturbing death message written in white out for me to read. From there, I was constantly lied to about my right to a phone call and told that I had to take off all my clothes and show my private parts before I was provided with clothing and then permittet to have my basic rights to a phone call.

When I was finally released, the trauma I had endured and the bruises on my arms from the abuse I took from the 24th police precinct as well as the horror from being in riker's island prison where the guards completely humiliate, degrade and lie about every aspect without ensuring basic human rights such as the right to a physician, the right to council or right to make a phone call only added to the devastating complex challenges I was already enduring due to the abuse I was experiencing from the father of my children. These horrors were compunded with the injustice I have been experiencing for the last seven years in court rooms and by law enforcement that continuously criminalized motherhood by trying to imprisoned me every chace they had.

The statistics of women incarcerated for reporting abuse in rikers island are proof that many of the people who are there are not even supposed to be there in the first place. In fact the first question to ask when someone is taken to Riker's island is, what crime did they commit to be there in the first place? Reporting abuse of any kind is not a crime. Adding trauma to crisis is not the answer.

If a person is held in Rikers to await a court date or a trial, they should be released immediately. There is nothing more disturbing to the mental health and vitality of a person then being held in an environment that is disintegrating to the wellbeing of an individual as you are trying to gain justice especially if the justice you are awaiting has to do with further abuses.

Before I started to experience abuse in my home, I had no criminal record or any warrants. My crime was enduring abuse at the hands of my former husband and the father of my children. I also never had any challenges checking up on my daughters well being or academic progress at their schools or otherwise until my former husband's abuse was rewarded by being able to impact and devastate my life with imprisoning me and keeping me from being there for the care my children.

When the legal system fails to protect the rights of people any abuser can use it nefariously to hinder and harm the life of the person they are abusing. It is up to the officers, the boards, judges and other officers of the legal system to protect citizens from the tyranny of government or any person using the government to punish those they wish to abuse.

This is why local law 42 and the protections and rights of people must be at the forefront of all decisions and implementations within the legal system.

I am for the implementing of this law as well as for the human rights protections enstated for the needs of people enduring abuse within thier homes which disproportionately affects women mothers.

We have to get this right if we want to create a society that is going to create generations that will overcome these obstacles.

Thank you,

The Honorable Mari Moss, MPA
Mother of Calia, Sophia and Anya
EndGBDV Taskforce, Office of the Mayor
Manhattan Community Action Board 10 &11
Neighborhood Advisory Board 10
Founder, We Love Harlem Initiative
CEO, Midas Touch Consulting
Harlem Community Clergy United and Beyond
Harlem Community Precinct Council
The Abyssinian Baptist Church Faith& Education, Archives Ministry
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We were born to make manifest the glory of GOD

PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

STATEMENT OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE NEW YORK CITY BOARD OF CORRECTION
JUNE 17, 2024

Good afternoon,

My name is Jumaane D. Williams, and I am the Public Advocate for the City of New York. I would like to thank the Board of Correction for holding this meeting today, and for taking seriously the need for specific structures to implement Local Law 42. I would also like to echo the Board's request for adequate funding to fully staff their agency, as they will be an integral part of ensuring the implementation of this law. It is no small feat to reconcile the intentions of any new laws and the day to day practices of an agency like the Department of Corrections.

I want to begin by calling solitary confinement what it is: torture. It is cruel. It is inhumane. It can ruin people's lives, and too many do not survive it. Many try to mask the practice of isolation with euphemistic names like punitive segregation, but there is no difference–it is solitary confinement. Prolonged isolation that looks like, feels like, and acts like solitary confinement—is solitary confinement. Physical isolation coupled with the lack of meaningful social interaction causes or exacerbates trauma, as well as other mental health issues. The law as passed provides guidelines on how detainees should be separated in a way to make both those housed and working in NYC jails, just a bit safer.

People who experience isolation in jails and prisons suffer socially, mentally, emotionally, and financially, both while incarcerated and after release. No one leaves solitary confinement whole. They struggle with the lasting effects of trauma and are disproportionately more likely to die by suicide or homicide. They are also at increased risk for homelessness and substance use: a 2019 North Carolina study found that survivors of solitary confinement were 127 times more likely to die from an opioid overdose within two weeks of their release.[1]

That is why we are today discussing Local Law 42, which bans the harmful experience of isolation in New York City's jails—a law the City Council passed with a supermajority, and then overrode a mayoral veto with an even larger majority, not to mention with widespread public and community support. It is imperative that the Board ensure compliance with this law as written, as the administration has made clear that they do not wish to comply with Local Law 42, and have asked Judge Swain to halt implementation. Instead of trying to delay and circumvent their legal obligations to continue this deeply harmful practice, this administration should act immediately to implement this law.

We appreciate the thoroughness of the proposed drafted rules, but have a few recommendations:

- Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they

[1] https://jamanetwork.com/journals/jamanetworkopen/article-abstract/2752350

are in Local Law 42. Determinations about the access of out-of-cell time for all detainees and designation of contagious diseases should mirror the language written into the law. This would avoid confusion about creating exceptions where there should be none.

- In section 6-05, make explicit all time limit requirements in Local Law 42 for de-escalation confinement.
- In section 6-06, add the following language from Local Law 42 that restricts the scope of emergency lock-ins, namely "Emergency lock-ins must be confined to as narrow an area and limited number of people as possible."
- In section 6-19, revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled to such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
- In section 6-23, add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.
- In section 6-25(c), require DOC to submit to the Board its progress in reducing to zero the punitive segregation population and any other population in conditions that do not comply with either restrictive housing or general population requirements under Local Law 42 and the Board's proposed rules.
- In section 6-26, make explicit requirements to ensure that the proposed Restorative Rehabilitation Units (RRUs) comply with requirements for general population and protections for restrictive housing.
- In section 6-27, include Local Law 42's explicit requirement that "The department shall not place an incarcerated person in restraints unless an individualized determination is made that restraints are necessary to prevent an imminent risk of self-injury or injury to other persons."

I also recommend that the Board give strong consideration to the memorandum submitted by defender organizations particularly as it relates to section 6-23. They will be vital to the execution of due process procedures and it will be helpful to implement their suggestions now rather than later.

Thank you.

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THE COUNCIL
OF
THE CITY OF NEW YORK

SHEKAR KRISHNAN
COUNCIL MEMBER, 25TH DISTRICT, QUEENS

CHAIR
PARKS AND RECREATION

COMMITTEES
CONSUMER AND WORKER PROTECTION
EDUCATION
IMMIGRATION
OVERSIGHT AND INVESTIGATIONS
SMALL BUSINESS

SUB-COMMITTEE
TASK FORCE TO COMBAT HATE

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

Thank you for this opportunity to present comments on the Board's proposed rules regarding restrictive housing. My name is Shekar Krishnan and I am the Council Member for the 25th District representing Jackson Heights, Elmhurst and Woodside. I was proud to be a part of the supermajority in the Council that voted in support of Local Law 42 to ensure the torturous practice of solitary confinement in our New York City jails.

I am writing to urge the Board of Correction to adopt its proposed rules, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 and end solitary confinement in all forms and by all names. Adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

Solitary confinement is torture. It causes devastating and deadly harm and worsens safety for everyone. In New York City, it is almost exclusively inflicted on Black and Latinx people, who make up over 90% of all people in NYC jails. Solitary confinement has taken the lives of Kalief Browder, Layleen Polanco, Brandon Rodriguez, Elijah Muhammad, Erick Tavira, Bradley Ballard, Jason Echeverria, and countless others.

In order to ensure full compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including:

1. Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
2. Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
3. Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

While outside the scope of the Board's rules, it must be noted that DOC must prepare now for implementation, bring in outside experts who have designed successful interventions like the RSVP program in San Francisco jails, and start operating that type of programming so that it is fully prepared to implement the law on the July 28 effective date.

Now is the moment for the Board to adopt its rules in line with Local Law 42 and the DOC to fully implement Local Law 42 in order to finally end solitary confinement and replace it with alternative forms of separation scientifically proven to reduce violence and better protect people's health and well-being. In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

Thank you for your consideration.

Sincerely,

Shekar Krishnan
Council Member, District 25 – Jackson Heights, Elmhurst, Woodside

Board of Correction
Attn: Jemarley McFarlane
2 Lafayette Street, Room 1221
New York, NY 10007
BOC@boc.nyc.gov

Re: Rulemaking Concerning Restrictive Housing & Local Law 42

Dear Board of Correction,

I am writing in support of the Board's proposed rules regarding restrictive housing, with slight modifications outlined below. These proposed rules are urgent and necessary in order to comply with Local Law 42 — enacted by an overwhelming supermajority of the City Council—and end solitary confinement in all forms and by all names beyond four hours, while utilizing alternative forms of separation without isolation and with access to 14 hours of daily out-of-cell time with group programming and activities.

As a longtime New Yorker and public librarian who sees the results of our often harmful criminal legal system in our civic spaces, I believe that adopting these rules, fully implementing Local Law 42, and utilizing real alternatives scientifically proven to reduce violence and improve people's health, will stop torture, save lives, and improve safety for everyone.

It is long past time for New York City to end solitary confinement, and the Department of Correction and the Board must act now to implement Local Law 42 to finally end solitary and utilize proven alternatives. Furthermore, in order to ensure they are fully in compliance with Local Law 42 and carry out its provisions, the Board should make some technical and strengthening amendments to the proposed rules, including the following. Specifically, the Board should:

- Revisit the changes to section 1-05, to make sure that all provisions are as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units, with appropriate caveats in Local Law 42 for how such out-of-cell time can take place in line with appropriate medical protections and treatment.
- Revisit the changes to section 6-19 to make clear that a) for the seven hour programming requirement, everyone is entitled such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.
- Add specific requirements for how the Department shall carry out the legal representation requirement as detailed in the public comments by public defender organizations, who will be providing much of that legal representation, including processes for notifying defense offices, rules for providing discovery, options for both in-person and virtual hearings and how each would work, and timelines for the entire process.

In summary, the Board should adopt its proposed restrictive housing rules, with the above modifications, on June 25 so that the rules are in effect on July 28, the effective date of Local Law 42.

Thank you for inviting community input on these proposed rules.

Sincerely,
Melissa Morrone
Brooklyn, NY

Testimony of Dr. Frances Geteles, PhD., Clinical Psychologist

Presented before the Board of Corrections

Regarding the Proposed Rules for Implementation of Local Law 42

June 17,2024

My name is Frances Geteles and I am a Clinical Psychologist, licensed in New York State. Since 1993, I have been a member of the Asylum Network of Physicians for Human Rights (PHR) providing psychological assessments for asylum seekers who were survivors of persecution and torture. That work led me to also become a member of the Campaign for Alternatives to Isolated Confinement (CAIC) and the Jails Action Coalition (JAC). As a member of these organizations, I have been working with colleagues to reform the way solitary confinement is used in the prisons and jails throughout New York State. These two areas of work are closely related since, as you might know, The United Nations, in its Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), has declared prolonged solitary confinement to be a form of torture.

I wish to begin by thanking the City Council for Passing Local Law 42, calling for the end to the inhumane use of the torture of solitary confinement in the New York City jails. I also wish to thank the Board of Corrections for proposing new rules for the implementation of this law – rules that are largely in keeping with its purposes.

The urgency of the matter is best understood when we review what history, experience and research have shown to be the effects of long- term isolation on individuals' emotions, behavior and cognition (thinking). These effects are traumatic and often lead to severe and irreversible psychological harm. Reported symptoms have included: anxiety, depression, anger, cognitive disturbances, and damage to the brain. The severe damage just described can occur in individuals who did not have serious mental health issues before placement in solitary as well as in those who are already mentally ill.

One critical point in the information above, which I wish to emphasize is that one effect of isolation is an increase in the anger that individuals feel. This is important because it is often claimed that solitary confinement is needed as a way of increasing safety in the jails. And yet, how can increasing people's anger and irritability be thought to make everyone safe. The data contradicts that claim.

The critical source of the damages mentioned above, are the result of isolation, which creates extreme boredom and loneliness by depriving people of social interaction and adequate sensory stimulation. Thus, when we speak about ending solitary confinement, we are really talking about ending all forms of extreme isolation, whatever name it is given (solitary confinement, punitive segregation, restrictive housing, the "box," etc.) or even if it has no name but is part of an established structure. It is only by "fully" ending all these practices that we will stop the suffering, save lives, and increase safety for people who are incarcerated, for staff, and for the communities to which incarcerated people will ultimately return.

We understand that individuals when they are truly dangerous to themselves or others may need to be separated from the general population for a limited period of time. What Local Law 42 will change is the nature of that separation. The people who are separated would be given out of cell time with opportunities for meaningful social interaction with others as well as access to evidence-based therapeutic interventions and restorative justice programs aimed at addressing the conduct resulting in their placement in restrictive housing. Such programs shall be trauma-informed, shall include positive incentive behavior modification models, and shall follow best practices for violence interruption.

There is evidence of the effectiveness of such programs.

The CAPS Program (Clinical Alternative to Punitive Segregation), here in New York City offered a full range of therapeutic activities and interventions for individuals with serious mental illness, including individual and group therapy, art therapy, medication,

counseling and community meetings. As a result, their rates of injury and self-harm were significantly lower than they were for individuals with less severe mental health problems who were still subjected to solitary confinement. In 2016, the staff who evaluated the program stated that health outcomes and basic human rights concerns supported the elimination of solitary confinement. That idea was not pursued, but it is what we are finally working to accomplish.

RSVP (the Resolve to Stop the Violence Project) in San Francisco, used therapy and restorative practices with incarcerated people, including those who had carried out acts of assault, sexual assault, other violent acts, and repeated "heinous" acts. There was a precipitous drop in violence among participants to the point of having zero violent incidents over a one year period.

The Merle Cooper program in Clinton (Annex) Prison in New York State provided group sessions, peer-led counseling, and more — not less — freedom of movement within the facility. Staff treated the participants with respect while working to foster maturity, empathy and self-respect, rather than feelings of deprivation and degradation. This program, received widespread praise from both officers and incarcerated people alike.

What we learn from these efforts is that key to helping people who exhibit serious behavioral problems is the need for nurturing and mentoring, while helping them to understand who they are and what have been the sources of their problematic behavior. These can come from one's peers as well as from properly trained staff. Hence the need for out of cell time with real and effective programming in a group setting that will enable people to engage with other incarcerated people in a meaningful way.

As a psychologist and based on this information, to me it is clear that ending solitary confinement and replacing it with supportive, therapeutic programming is critically important. And while Local Law 42 specifically requires this therapeutic programming for the people who are in restrictive housing, I believe it would be helpful to most of the individuals in the jail populations.

Accomplishing the goals of Local Law 42 requires creating a new culture within the jails. This will likely require critical retraining for the staff, especially those who interact regularly with the incarcerated people. They will need to know how to de-escalate tension and turmoil and how to help people find better ways to interact with others. Some staff may already be good at accomplishing such things, but others may need to sharpen their skills or even learn new skills. It is also likely that the process of change might be made somewhat easier if you, the Board members as well as the DOC staff can learn from the people who initiated and ran the programs mentioned above. Just telling the Corrections Officers that they must simply adhere to a new set of rules will likely not be enough.

Thus, while I am urging you to implement your new rules as immediately as possible, I am also urging you to make sure that there is a new commitment to actually looking at the psychological needs of the people in custody and doing everything possible to help them to grow and change.

For far too many years now, the use of isolated confinement accompanied by the lack of much needed and appropriate educational and psychological programming has been part of a terrible humanitarian crisis in our city jails. But you can change that.

You have an opportunity to do something really important and worthwhile. Please do it now – and do it right.

END THE CRUEL AND UNUSUAL PUNISHMENT OF SOLITARY CONFINEMENT WHICH IS SHEER TORTURE!

- Amy Harlib

The Dangers of Isolation for Young Adults in the Custody of the New York City Department of Correction

Public Comment Submitted by Children's Rights
to the New York City Board of Correction Regarding
Rulemaking on Local Law 42 Banning Solitary Confinement

June 12, 2024

I. Introduction

Children's Rights is a national legal and policy advocacy organization dedicated to improving the lives of children living in or impacted by America's child welfare, immigration, juvenile legal, education, and healthcare systems. We use civil rights impact litigation, advocacy and policy expertise, and public education to hold governments accountable for keeping children safe and healthy. Our work centers on creating lasting systemic change that will advance the rights of children for generations.

As we previously explained in our December 2014 Public Comment, research from biology, neuroscience, and social science shows that youth development does not end at age 18. This finding has only been reinforced since then. Young people continue to mature well into their mid-twenties, making them uniquely vulnerable to the trauma and stress of living in isolation. This is especially true for the adolescents and young adults in child welfare and criminal legal systems, who are more likely to enter these systems with mental health conditions that are subsequently untreated and even exacerbated. Young people require supports that respond to these needs.

As the Board of Correction drafts and promulgates rules to implement Local Law 42 banning solitary confinement in the City's jails,[1] we urge the Board to eliminate Enhanced Supervision Housing (ESH), Secure Unit, and the Risk Management Accountability System (RMAS), and to bring any form of restrictive housing into strict compliance with Local Law 42's provisions concerning out-of-cell time, congregate activities, de-escalation, length of stay, and more. Any method of isolation not in compliance with Local Law 42 would be punitive segregation, and tantamount to torture for all incarcerated persons, especially for youth up to age 25.[2]

[1] New York City Administrative Code, Title 9: Criminal Justice, Ch. 1: Department of Correction, § 9-167 Solitary Confinement. Rulemaking to implement Local Law 42 has provided this opportunity for Children's Rights to update our December 2014 Public Comment, *Older Youth Development: Insights from Child Welfare and Implications for New York City Department of Correction Policy and Practice*.

[2] "United States: Prolonged solitary confinement amounts to psychological torture, says UN expert," United Nations Human Rights Office of the High Commissioner, February 28, 2020, https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture; Columbia University Center for Justice, *Solitary by Many Other Names: A Report on the Persistent and Pervasive Use of Solitary*

We also urge the Board to ensure that all work with young adults in New York's criminal legal system complies with the Minimum Standards governing correctional facilities[3] and incorporates the recommendations and best practices described below. This is critical for supporting incarcerated youth not only now while Rikers is being governed largely by executive order, but also when the Island closes and young adults are housed in the new borough-based jails.[4]

II. Children's Rights' Positions

Following is a brief outline of our positions, which are described in more detail in Sections IV through VII.

The New York City Department of Correction should revise its categorization of young adults to include all youth from ages 18 to 25, not just youth from ages 18 to 21.[5]

Children's Rights joins with other advocates and the New York Advisory Committee to the U.S. Commission on Civil Rights[6] to urge the Board of Correction to protect young people ages 18 to 25 by excluding them from punitive segregation.[7] Neural pathways established during adolescence and young adulthood are critically important to brain development.[8] Neuroscience research has found that the brain, including the frontal lobe, which regulates judgment, reasoning, decision-making, impulsivity, and emotions, is not fully mature until the early to mid-twenties.[9] In fact, the frontal lobe undergoes far more change during young adulthood than at any other stage

Confinement in New York City Jails (2023), https://centerforjustice.columbia.edu/news/new-report-solitary-many-other-names-report-persistent-and-pervasive-use-solitary-confinement.

[3] New York City Administrative Code, Title 40: Board of Correction, Ch. 1: Correctional Facilities. Chapter 1 is referred to as the "Minimum Standards" regulating conditions of confinement and correctional and mental health care in all City correctional facilities, https://www.nyc.gov/site/boc/jail-regulations/jail-regulations.page.

[4] *See, e.g.*, Emergency Executive Order 601, https://www.nyc.gov/office-of-the-mayor/news/601-003/emergency-executive-order-601; A Roadmap to Closing Rikers, *NYC Borough-Based Facilities*, https://rikers.cityofnewyork.us/nyc-borough-based-jails/.

[5] New York City Administrative Code, Title 40: Board of Correction, Ch. 1: Correctional Facilities, § 1-02(b) and (c) Classification of People in Custody.

[6] New York Advisory Committee to the U.S. Commission on Civil Rights, *The Solitary Confinement of Youth in New York: a Civil Rights Violation* (2014), at 31, 56.

[7] New York City Administrative Code, Title 40: Board of Correction, Ch. 1: Correctional Facilities, § 1-17(b)(1)(i) Limitations on the Use of Punitive Segregation.

[8] Jim Casey Youth Opportunities Initiative, *The Adolescent Brain: New Research and its Implications for Young People Transitioning from Foster Care* (2011), at 7-8; National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Division of Behavioral and Social Sciences and Education; Board on Children, Youth, and Families; Committee on the Neurobiological and Socio-behavioral Science of Adolescent Development and Its Applications, *The Promise of Adolescence: Realizing Opportunity for All Youth* (Emily P. Backes and Richard J. Bonnie, eds., 2019).

[9] Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra* note 8, at 20-23; Adam Ortiz, American Bar Association Juvenile Justice Center, *Adolescence, Brain Development and Legal Culpability* (2004), at 1-2; Child Welfare Information Gateway, *Helping Youth Transition to Adulthood: Guidance for Foster Parents* (2018), at 3, https://www.childwelfare.gov/pubPDFs/youth_transition.pdf; Jim Casey Youth Opportunities Initiative, *The Road to Adulthood* (2017), at 8-9, https://assets.aecf.org/m/resourcedoc/aecf-theroadtoadulthood-2017.pdf; Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, The Sentencing Project, Mar. 1, 2023, https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/.

of life;[10] experiences during this period shape young people's futures as adults.[11] In particular, chronic adverse experiences can "permanently alter the functioning of key neural systems involved in learning, memory, and self-regulation."[12] As a result, young people ages 18 to 25 have unique needs and face a serious risk of harm if subjected to chronic adverse experiences such as excessive isolation while in custody.

Solitary confinement is inappropriate for older youth up to age 25.

Local Law 42 recognizes the devastating consequences of excessive isolation on incarcerated persons; the Board of Correction should fully incorporate the law's language in its rulemaking. Other forms of solitary confinement must be abolished as part of this process. For example, RMAS, which was developed in 2021 but is currently suspended, is the latest iteration of solitary confinement; it was supposed to replace ESH, another form of punitive segregation for young adults. (Secure Unit is yet another form of solitary confinement for young adults that unduly restricts out-of-cell time.) In violation of Local Law 42's ban on solitary confinement, RMAS would lock young people in their cells for 12 to 14 hours a day, and limit their access to visitation and participation in programming.[13]

This is wholly counter-productive for older youth, who need developmentally appropriate services and connections with community. Older youth up to age 25 should always have 14 hours a day of out-of-cell time in accordance with Local Law 42[14] and New York City's Minimum Standards regulating lock-in time in non-restrictive housing.[15]

Adequate and quality programming, education, mental health services, and recreation are essential to improving conditions in the City's jails.

The Department must take meaningful steps to fulfill the stated mission of the Young Adult Plan "to provide all young adults in . . . custody with comprehensive, individualized, outcome-oriented jail and community-based services in safe environments."[16]

Every day, young adults must receive Local Law 42's prescribed seven hours of programming in a group setting, and one hour of recreation.

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[10] ABA Juvenile Justice Center, *Adolescence, Brain Development and Legal Culpability*, *supra* note 9, at 2.
[11] Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra* note 8, at 7-8.
[12] *Id.;* Philip A. Fisher *et al*., *A Translational Neuroscience Perspective on the Importance of Reducing Placement Instability Among Foster Children*, 92 Child Welfare 9, 11 (2015).
[13] New York City Administrative Code, Title 40: Board of Correction, Ch. 6: Restrictive Housing in Correctional Facilities, § 6-03(b)(16) Definition of Restrictive Housing and Related Terms and § 6-16 Required Out-of-Cell Time; Columbia University Center for Justice, *Solitary by Many Other Names*, *supra* note 2.
[14] New York City Administrative Code, Title 9: Criminal Justice, Ch. 1: Department of Correction, § 9-167(b) Solitary Confinement.
[15] New York City Administrative Code, Title 40: Board of Correction, Ch. 1: Correctional Facilities, § 1-05 Lock-in; Columbia University Center for Justice, *Solitary by Many Other Names*, *supra* note 2.
[16] NYC Department of Correction, *Presentation to the Board of Correction on the Young Adult Plan* (2017), at 3, https://www1.nyc.gov/assets/doc/downloads/press-release/BOC_YA_presentation_n.pdf; *see also* NYC Board of Correction, *Young Adult Plan*, https://www.nyc.gov/site/boc/jail-regulations/ya-plan.page and NYC Department of Correction, *2020-2021 Young Adult Plan*, https://www.nyc.gov/assets/doc/downloads/pdf/2020-2021_Young_Adult_Plan.pdf.

Appropriate training is critical for effectively working with older youth up to age 25.

Department of Correction staff do not have the appropriate training and skills to work with adolescents and young adults.[17] During this limited window of time, older youth have the chance to develop the knowledge and skills that will help them navigate the adult world.[18] No one benefits from continuing to warehouse older youth without regard to their developmental needs and the opportunities to promote positive outcomes. The Department must provide corrections staff specific, developmentally-appropriate, ongoing training that recognizes that adolescents and young adults up to age 25 are different from older adults.

III. M.B.'s Experience in New York's Foster and Criminal Legal Systems

M.B. is a formerly incarcerated young adult on Rikers. He reflects the widely-recognized overlap between young people involved in the child welfare and criminal legal systems.[19] As many who work in these fields agree, "[y]outh involved in the child welfare and juvenile justice systems are among the most vulnerable children in society."[20] Historically marginalized adolescents and young adults are disproportionately represented in both systems: "[y]outh who have contact with these systems are overwhelmingly poor, from [Black and Brown] populations, and tend to have limited access to social supports and resources that might allow them to avert system involvement."[21]

After being removed from his mother's home, M.B. entered New York's foster system when he was six years old. He was placed for the first year with a verbally and physically abusive foster parent. He then bounced from placement to placement, living in four separate foster homes, before spending three years in his final placement. While in the foster system, he was diagnosed with mental health conditions and was prescribed medications that made him feel "empty and blank." He had to fight every day and felt like he "couldn't be a kid" because he had to suppress his feelings. M.B. returned to his mother's home when he was 11 after she advocated for five years for his return.

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[17] Status Report of the *Nunez* Independent Monitor (Apr. 18, 2024), at 50, 153, 225; Status Report of the *Nunez* Independent Monitor (Dec. 22, 2023), at 87-88; Status Report on DOC's Action Plan by the *Nunez* Independent Monitor (Nov. 8, 2023), at 73, 117; *see* Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra* note 8, at 28-32 (discussing trauma-informed child welfare practice and positive youth development models) and at 33-37 (providing recommendations to guide child welfare practice); Ellen Yaroshefsky, *Rethinking Rikers: Moving from a Correctional to a Therapeutic Model for Youth*, *Proposal for Rule-Making Report for the NYC Board of Correction* (2014), at 44-48.

[18] Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra* note 8, at 7-8.

[19] *See* Casey Family Programs, *Improving Outcomes for Older Youth in Foster Care* (2008), at 4; *see also* Denise C. Hertz *et al.*, *Challenges Facing Crossover Youth: An Examination of Juvenile-Justice Decision Making and Recidivism*, 48 Fam. Ct. Rev. 305, 305-06 (2010); Miriam Aroni Krinsky, *A Not So Happy Birthday: The Foster Youth Transition from Adolescence into Adulthood*, 48 Fam. Ct. Rev. 250, 251 (2010); Miriam Aroni Krinsky, *Disrupting the Pathway from Foster Care to the Justice System – A Former Prosecutor's Perspectives on Reform*, 48 Fam. Ct. Rev. 322, 324-25 (2010); Lauren Wylie, *Closing the Crossover Gap: Amending Fostering Connections to Provide Independent Living Services for Foster Youth who Crossover to the Justice System*, 52 Fam. Ct. Rev. 298 (2014).

[20] Jennifer K. Pokempner *et al.*, *The Legal Significance of Adolescent Development on the Right to Counsel: Establishing the Constitutional Right to Counsel for Teens in Child Welfare Matters and Assuring a Meaningful Right to Counsel in Delinquency Matters*, 47 Harv. C.R.-C.L. L. Rev. 529, 529 (2012).

[21] *Id.* (citations omitted).

Unfortunately, shortly after he graduated from high school, M.B. was arrested and charged with grand larceny. M.B. was detained for 15 months on Rikers Island. He applied for mental health services as soon as he arrived; however, he did not receive any until five months before he was released. Initially, M.B. was able to see a therapist once a week, but after eight sessions, only twice a month. Nevertheless, M.B. found these therapy sessions to be helpful in processing the violence and trauma he faced while incarcerated and in the foster system.

M.B. was sent to Rikers' Transitional Restorative Unit (TRU) three times, where he was only able to leave his cell for two or three hours each day. During his third stay at TRU, M.B. was locked alone in his cell for an entire week due to an incident that occurred on the unit before he arrived. M.B. was prohibited from participating in any programming while at TRU.

Despite sporadic mental health resources and the lack of access to recreation, M.B. took advantage of the limited programming available on Rikers. He obtained certificates in construction, scaffolding, and welding. He sometimes worked in the kitchen during the night shift.

M.B. returned to his mother's home at age 20. At almost 22, he is still struggling to find affordable housing. He has been working for a nonprofit focusing on probation and parole, whose staff he had met on the Island. M.B. also advocates for reforms on Rikers Island, including the need for (a) increased access to programming and recreation; (b) officers to show up for work; (c) family and friends to be able to visit the Island more frequently; and (d) detainees to have information about their charges prior to court hearings.

Young adults, especially young men of color like M.B., commonly find themselves moving from the foster system to corrections systems. "Former foster youth are ten times more likely to be arrested than other youth of the same age, race, and sex, and twenty-five percent of emancipated youth will spend time in jail within two years of leaving the system."[22] One study found that children who were victims of maltreatment had a 55 percent increased risk of arrest and a 96 percent increase in risk for arrest for a violent crime when compared with children who had not suffered abuse or neglect.[23] Another study found that by age 23 or 24, 81 percent of young men who had been in the foster system reported having been arrested, compared with only 17 percent of the general public.[24]

The overlapping populations and experiences of older youth in the foster system and correctional settings provide opportunities to share therapeutic practices that are trauma-informed and developmentally appropriate (*e.g.*, cognitive behavioral therapy, skill-building, alternative discipline) across systems, and to inform policy decisions to improve outcomes for young adults incarcerated in the City's jails.[25]

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[22] Wylie, *Closing the Crossover Gap*, *supra* note 19, at 300 (citing Krinsky, *A Not So Happy Birthday*, *supra* note 19, at 251).
[23] Janet Wiig & Cathy Spatz Widom, *Understanding Child Maltreatment & Juvenile Delinquency: From Research to Effective Program, Practice, and Systemic Solutions* (2003), at 2.
[24] Jim Casey Youth Opportunities Initiative, *Foster Care to 21: Doing it Right* (2011), at 2.
[25] *See, e.g.*, Yaroshefsky, *Rethinking Rikers*, *supra* note 17, at 25, 31-32.

IV. Youth Does Not End at Age 21: Development Continues Through Early Adulthood

Adolescents and young adults involved with the child welfare and criminal legal systems have much in common. Both populations of youth disproportionately experience domestic and community violence,[26] mental and physical abuse and neglect,[27] chronic and acute mental and behavioral health conditions,[28] unmet physical and dental health needs,[29] substance use,[30] and educational disadvantages.[31] They also share a likelihood of compromised social and family networks that would normally help older youth establish effective life skills during this time of intense emotional and cognitive development.[32]

While most young adults in the general public have access to emotional support systems through their early adult years, older youth involved with the child welfare and criminal legal systems often do not have these supportive relationships in place, and may face obstacles to building supports that ease the transition to adulthood. Older youth need ongoing support and services; without them, they are "more likely to be unemployed or underemployed, to require long-term government support, and to experience life-long difficulties" including involvement with the criminal legal system, low educational attainment, and homelessness.[33] Studies show that incarceration reduces youth's success in education and employment, and also leads to lasting

[26] American Academy of Pediatrics, Task Force on Health Care for Children in Foster Care, *Fostering Health: Health Care for Children and Adolescents in Foster Care* (2d ed. 2005), at 3 (foster system); American Academy of Pediatrics, *Advocacy and Collaborative Health Care for Justice-Involved Youth*, 146, Pediatrics 1, 2 (2020), https://pediatrics.aappublications.org/content/pediatrics/146/1/e20201755.full.pdf; Jim Casey Youth Opportunities Initiative, *Trauma-Informed Practice with Young People in Foster Care* (2012) (foster system).

[27] Yaroshefsky, *Rethinking Rikers*, *supra* note 17, at 18 (juvenile legal); Jim Casey Youth Opportunities Initiative, *Trauma-Informed Practice*, *supra* note 26, at 1 (foster system).

[28] U.S. Department of Justice, United States Attorney, Southern District of New York, *CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island* (2014), at 47 (juvenile legal); Yaroshefsky, *Rethinking Rikers*, *supra* note 17, at 25 (criminal legal); American Academy of Pediatrics, *Fostering Health*, *supra* note 26, at ix (foster system).

[29] American Academy of Pediatrics, *Fostering Health*, *supra* note 26, at ix, 1-3 (foster system); American Academy of Pediatrics, *Advocacy and Collaborative Health Care*, *supra* note 26, at 2, 6.

[30] Yaroshefsky, *Rethinking Rikers*, *supra* note 17, at 25 (Rikers); Jim Casey Youth Opportunities Initiative, *Trauma-Informed Practice*, *supra* note 26, at 3 (foster system).

[31] American Academy of Pediatrics, *Fostering Health*, *supra* note 26, at 2 (foster system); Yaroshefsky, *Rethinking Rikers*, *supra* note 17, at 12 (citing Alan Singer, *Rikers Island – Last Stop on the New York City School-to-Prison Pipeline*, Huffington Post, Feb. 3, 2012, http://www.huffingtonpost.com/alan-singer/rikers-island-prison_b_1252325.html) (juvenile legal).

[32] David Altschuler *et al.*, Center for Juvenile Justice Reform and Jim Casey Youth Opportunities Initiative, *Supporting Youth in Transition to Adulthood: Lessons Learned from Child Welfare and Juvenile Justice* (2009), at 8-9; *see also* Mendel, *Why Youth Incarceration Fails*, *supra* note 9.

[33] Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra* note 8, at 12; Rachel Rosenberg & Samuel Abcott, *Supporting Older Youth Beyond Age 18: Examining Data and Trends in Extended Foster Care*, Child Trends, June 3, 2019, https://www.childtrends.org/publications/supporting-older-youth-beyond-age-18-examining-data-and-trends-in-extended-foster-care; Annie E. Casey Foundation, *Fostering Youth Transitions: Using Data to Drive Policy and Practice Decisions* (2018), at 2-3, https://assets.aecf.org/m/resourcedoc/aecf-fosteringyouthtransitions-2018.pdf.

damage to their health and well-being.[34] Studies also show that alternatives to incarceration lead to better outcomes for youth and adolescents, all while costing far less than incarceration.[35]

For nearly 40 years, the federal government has recognized that adolescents and young adults in the foster system are usually less prepared to begin life on their own. Since 1986, the federal government has provided funding to states to help prepare adolescents in the foster system for the transition to adulthood.[36] Today, states are charged with providing life skills preparation, housing support, and educational, vocational, and employment training services for adolescents up to age 21.[37] Federal law permits states to claim federal reimbursement for providing youth up to age 21 with basic necessities, including housing assistance and case management services.[38] The federal government has also authorized funding for education and training vouchers to cover the cost of postsecondary education until age 23.[39] As of 2014, eligible young people who emancipate from the foster system are covered under a mandatory Medicaid pathway until age 26.[40] Implementation of these policies demonstrates how our child welfare and healthcare systems have adapted to reflect current research on youth development. It is long past time for New York's criminal legal system to do the same.

The codified acknowledgement that older youth in the foster system require ongoing support after they attain the legal age of majority is reinforced by decades of scientific research.[41] The concept of emerging adulthood – that young people gradually move toward independence rather than achieving independence at a pre-determined age – has become well-developed in recent years.[42] Research from a number of social science fields has shown that the acquisition of critical life skills happens gradually throughout adolescence and into the mid-twenties.[43]

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[34] Mendel, *Why Youth Incarceration Fails*, *supra* note 9.
[35] *Id.*
[36] Independent Living Initiative of 1986, Pub. L. No. 99-272 (providing funding for services to prepare young adults in foster systems for independent living).
[37] Foster Care Independence Act of 1999, Pub. L. No. 106-169.
[38] Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351.
[39] Promoting Safe and Stable Families Amendments of 2001, Pub. L. No. 107-133.
[40] Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148.
[41] MacArthur Foundation & Models for Change Resource Center Partnership, *Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System* (2014), at 6; Rosenberg & Abcott, *Supporting Older Youth Beyond Age 18*, *supra* note 33; *see also* Child Welfare Information Gateway, *Extension of Foster Care Beyond Age 18* (2017), at 2, https://www.childwelfare.gov/pubPDFs/extensionfc.pdf.
[42] Jim Casey Youth Opportunities Initiative, *Success Beyond 18: A Better Path for Young People Transitioning from Foster Care to Adulthood* (2013), at 8 (citing Jeffrey Arnett, *Emerging Adulthood: The Winding Road from the Late Teens Through the Twenties* (2004)); Vincent Schiraldi *et al.*., *Community-Based Responses to Justice-Involved Young Adults* (2015), at 2, https://www.ojp.gov/pdffiles1/nij/248900.pdf ("young people ages 18-24 are more developmentally akin to juveniles than fully mature adults." Young adults have a greater need for support to enter adulthood than they did 40 years ago, and when one compares "young adulthood in the 19th and 21st centuries, it is no exaggeration to say that 22 is the new 16"); Jim Casey Youth Opportunities Initiative, *The Road to Adulthood*, *supra* note 9, at 8-9, 12; Child Welfare Information Gateway, *Helping Youth Transition to Adulthood*, *supra* note 9, at 3.
[43] Altschuler *et al.*, *Supporting Youth in Transition to Adulthood*, *supra* note 32; Child Welfare Information Gateway, *Helping Youth Transition to Adulthood*, *supra* note 9; *see also* Mendel, *Why Youth Incarceration Fails*, *supra* note 9.

This developmental period is also a time of greater risk, when a youth's environment can have substantial influence on decision-making.[44] Research has shown that the window of opportunity to positively affect youth development and promote resilience closes in the mid-twenties.[45] Adults working with older youth should address their need for family supports, education and training, employment, community involvement, adequate physical and mental health supports, and supportive relationships with others.[46]

The MacArthur Foundation has reported that in juvenile legal systems, "[t]he most effective programs and services are those that seek to meet youth's needs and influence their development in a positive way, by promoting contact with prosocial peers and adult role models, actively engaging parents and family members, offering tools to deal with negative influences that youth may face in their communities, and engaging youth in educational programming and employment that will prepare them for conventional adult roles."[47]

This is no less true for young adults ages 18 to 25. Regular, consistent access to quality programming, educational opportunities, mental health services, and recreation would also go a long way toward reducing violence on Rikers, and reducing the need for youth to be placed in restrictive housing in the first place.[48] Unfortunately, the City's recent budget cuts, among other policies, make these services all but unavailable for months on end; a recent court filing underscores in particular the ongoing lack of access to education on the Island.[49]

V. Youth Development and the Criminalization of Mental Health

Mental health is integral to overall health and well-being, especially for adolescents, shaping their development and influencing their responses to stress and social interactions, and supporting healthy decision-making.[50] Across the country, including in New York City, the lack of investment in accessible community mental health services results in police and agents of other punitive systems responding to children and young adults experiencing psychiatric distress, rather

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[44] MacArthur Foundation *et al.*, *Because Kids are Different*, *supra* note 41, at 5-6; Jim Casey Youth Opportunities Initiative, *Success Beyond 18*, *supra* note 42, at 5 (citing World Health Organization, *Adolescent Development* (2012)); National Academies of Sciences, *The Promise of Adolescence*, *supra* note 8.

[45] Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra* note 8, at 14.

[46] *See id.*; Annie E. Casey Foundation, *Fostering Youth Transitions*, *supra* note 33.

[47] MacArthur Foundation *et al.*, *Because Kids are Different*, *supra* note 41, at 7; Jim Casey Youth Opportunities Initiative, *The Road to Adulthood*, *supra* note 9, at 19.

[48] *See, e.g.*, Status Report by the *Nunez* Independent Monitor (Apr. 18, 2024), at 6-7, 255-256, https://tillidgroup.com/projects/nunez-monitorship/; Status Report by the *Nunez* Independent Monitor (Nov. 15, 2023), at 3-4, https://tillidgroup.com/projects/nunez-monitorship/; Columbia University Center for Justice, *Solitary by Many Other Names*, *supra* note 2 .

[49] *See, e.g.*, Jacob Kaye, *Mayor restores programming on Rikers months after cutting funding*, *Queens Daily Eagle*, Mar. 6, 2024, https://queenseagle.com/all/2024/3/6/mayor-restores-programming-on-rikers-months-after-cutting-funding; Memorandum of Law in Support of Motion to Alter Judgment under Federal Rule of Civil Procedure 60(b)(5) at 25, *Handberry, et al. v. Thompson, et al.*, 1:96-cv-06161 (S.D.N.Y. 1996) ("access to education is arbitrary, inconsistent, and regularly non-existent"); Michael Elsen-Rooney, *Young Adults on Rikers Say They Are Systematically Blocked From School, The City*, Apr. 4, 2024, https://www.thecity.nyc/2024/04/04/young-rikers-island-blocked-from-school/).

[50] Centers for Disease Control and Prevention, *Children's Mental Health,* https://www.cdc.gov/childrensmentalhealth/basics.html.

than trained behavioral health personnel. As a result, youth with mental health conditions are more likely to be arrested and incarcerated than those without mental health conditions.[51]

Once involved in the child welfare or juvenile legal systems, youth who are Black or Brown, LGBTQ+, and/or living with a disability disproportionally face the most profound mental health challenges. Young people themselves describe the child welfare[52] and juvenile legal[53] systems as traumatic, and youth who experience these systems often have poor mental health outcomes.[54] Up to 80 percent of children in the foster system[55] and 70 percent of young people who are incarcerated present with a serious mental health condition,[56] compared to 18 to 22 percent of all children.[57] Data show that 55 percent of the Department's jail population has been diagnosed with mental health conditions,[58] and over 1,000 detainees have been diagnosed with Serious Mental Illness.[59] Based on these data and studies showing that brain development is ongoing through the mid-twenties,[60] failing to exclude 18- to 25-year-olds with mental health conditions from isolated placements like ESH,[61] Secure Unit, and RMAS leaves these older youth at grave risk of harm.[62]

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[51] *Mental Health and Foster Care*, Nat'l Conf. of State Legislatures (Nov. 1, 2019), https://www.ncsl.org/human-services/mental-health-and-foster-care#:~:text=Up%20to%2080%20percent%20of,percent%20of%20the%20general%20population; *Mental Health By the Numbers*, Nat'l All. on Mental Illness, https://www.nami.org/about-mental-illness/mental-health-by-the-numbers/#:~:text=70%25%20of%20youth%20in%20the,report%20experiencing%20a%20mental%20illness.

[52] Children's Rights, *Are You Listening? Youth Accounts of Congregate Placements in New York State* (2023), https://www.childrensrights.org/wp-content/uploads/2023/01/CR-2023-AreYouListening_report_web.pdf; Sarah Fathallah & Sarah Sullivan, *Away from Home: Youth Experiences of Institutional Placements in Foster Care* (2021), https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96_Away%20From%20Home%20-%20Report.pdf.

[53] Mendel, *Why Youth Incarceration Fails*, *supra* note 9.

[54] Mary Dozier *et al.*, *Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association*, 84 Am. J. Orthopsychiatry 219 (2014), https://www.apa.org/pubs/journals/features/ort-0000005.pdf; Mendel, *Why Youth Incarceration Fails*, *supra* note 9.

[55] National Conference of State Legislatures, *Mental Health and Foster Care*, *supra* note 51.

[56] National Alliance on Mental Illness, *Mental Health By the Numbers*, *supra* note 51.

[57] National Conference of State Legislatures, *Mental Health and Foster Care*, *supra* note 51.

[58] https://vera-institute.shinyapps.io/nyc_jail_population/ (last visited June 12, 2024).

[59] New York City Comptroller, *Dashboard Update: NYC Comptroller Releases New Monthly Data on Department of Correction Operations* (2023), https://comptroller.nyc.gov/newsroom/dashboard-update-nyc-comptroller-releases-new-monthly-data-on-department-of-correction-operations-5/.

[60] Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra* note 8, at 5.

[61] Although the Minimum Standards purport to exclude young adults from ESH placement, this rule appears to be honored more in the breach than the observance. New York City Administrative Code, Title 40: Board of Correction, Ch. 1: Correctional Facilities, § 1-16(c)(1)(ii) and (iii) Enhanced Supervision Housing; *see also* § 1-17 Limitations on the Use of Punitive Segregation.

[62] Kyleigh Clark, *The Effect of Mental Illness on Segregation Following Institutional Misconduct*, 45 Crim. Just. & Behav. 1363, 1376 (2018), https://journals-sagepub-com.proxygt-law.wrlc.org/doi/full/10.1177/0093854818766974 (the presence of mental illness, rather than a detainee's misconduct record, affects the likelihood of being disciplined using segregation. An incarcerated person with mental illness is 1.36 times as likely to be disciplined with segregation compared to incarcerated persons without a mental illness). Although certain rules purport to exclude people with SMI from placement, for example, in RMAS, it is unclear how they would be applied in practice. New York City Administrative Code, Title 40: Board of Correction, Ch. 6: Restrictive Housing in Correctional Facilities,

Young people with unmet mental health needs are more likely to become trapped in systems that are simultaneously causing harm; incapable of providing adequate mental health care; and in some cases, unwilling to support youth's return to the community due to ongoing unmet mental health needs. In this way, government systems reinforce the criminalization of mental health and create a negative feedback loop where people who are experiencing a crisis are responded to with isolation and violence.

VI. No Youth Under 25 Should be Placed in Punitive Segregation by Any Name

Whether in the foster system or detention, while in government custody, all youth must be free from harm.[63] Research and intervention models developed in child welfare show that placement of and services for adolescents and young adults must address trauma and normalize young people's lives.[64] Institutionalized youth need *more* contact with trusted adults and peers – not less.[65] Excessive isolation is incompatible with current research and policy for older youth today.[66]

Adolescents and young adults are more vulnerable than older adults to the negative effects of solitary confinement, including increased risk for mental illness or worsened mental illness; anxiety; rage; insomnia; self-mutilation; suicidal thoughts; and suicide.[67] In addition to the immediate harm it presents, solitary confinement can impede brain development and affect long-term cognitive and social abilities.[68] A report issued by the New York Advisory Committee to the U.S. Commission on Civil Rights affirms the threat that solitary confinement poses to older youth and calls for its prohibition for all young people up to age 25.[69]

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§ 6-09 Exclusions. In any event, there does not appear to be an exclusion for people without SMI, but with significant mental health conditions for whom extended isolation could also be harmful.

[63] *See County of Sacramento v. Lewis*, 523 U.S. 833, 851 (1998); *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 199-200 (1989); *see also R.G. v. Koller*, 415 F.Supp.2d 1129, 1156 (D. Haw. 2006).

[64] Charlyn Harper Browne, Center for the Study of Social Policy, *Youth Thrive: Advancing Healthy Adolescent Development and Well-Being* (2014), at 2; Jim Casey Youth Opportunities Initiative, *Trauma-Informed Practice*, *supra* note 26, at 6.

[65] Jim Casey Youth Opportunities Initiative, *Trauma-Informed Practice*, *supra* note 26, at 6 (foster system); MacArthur Foundation *et al.*, *Because Kids are Different*, *supra* note 41, at 7 (juvenile legal); Jim Casey Youth Opportunities Initiative, *The Road to Adulthood*, *supra* note 9, at 19; Annie E. Casey Foundation, *Turning Brain "Strains" into "Gains" for Adolescents in Foster Care* (Aug. 30, 2017), https://www.aecf.org/blog/turning-brain-strains-into-gains-for-adolescents-in-foster-care.

[66] Local Law 42 banning solitary confinement recognizes the importance of activities with others in a group setting, and prescribes seven hours a day of out-of-cell congregate programming even in restrictive housing. New York City Administrative Code, Title 40: Board of Correction, Ch. 1: Correctional Facilities, § 9-167(h)(4).

[67] MacArthur Foundation *et al.*, *Because Kids are Different*, *supra* note 41, at 10-11. American Academy of Child & Adolescent Psychiatry, *Solitary Confinement of Juvenile Offenders* (2012), https://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx.

[68] Anthony Giannetti, *The Solitary Confinement of Juveniles in Adult Jails and Prisons: A Cruel and Unusual Punishment?*, 30 Buff. Pub. Int. L.J. 31, 45-49 (2011-2012); Brian Levy, *At Baltimore's Youth Detention Center, children are in solitary confinement under "abominable conditions,"* Baltimore Brew (Mar. 12, 2021), https://baltimorebrew.com/2021/03/12/at-baltimores-youth-detention-center-children-are-kept-in-solitary-confinement-under-abominable-conditions/.

[69] New York Advisory Committee to the U.S. Commission on Civil Rights, *supra* note 6; *see also* Stephanie Wykstra, *The case against solitary confinement*, Vox, Apr. 17, 2019, https://www.vox.com/future-perfect/2019/4/17/18305109/solitary-confinement-prison-criminal-justice-reform.

Moreover, warehousing 18- to 25-year-olds in ESH, Secure Unit, RMAS, or any other solitary confinement unit places these "emerging adults"[70] in settings where they are cut off from essential services and connections, jeopardizing young people's access to therapeutic services, education and training, visitation with family and friends, and connection with the social networks older youth need to survive once they exit custody.[71]

The Department of Correction allegedly excludes 18- to 21-year-olds from punitive segregation, which it recognizes is a "severe penalty" that "represents a serious threat to the physical and psychological health of adolescents."[72] But ESH, Secure Unit, and RMAS are just other names for punitive segregation,[73] notwithstanding the Department's statements to the contrary. People are locked in their cells most of the day or are permitted to move only to a slightly extended or larger cell; programming, if it takes place at all, can take place while detainees are shackled to desks; and detainees continue to be isolated without meaningful engagement with other people in the same shared area.[74] It does not appear that New York State's 2022 HALT Act, which prohibits segregated confinement for individuals age 21 and younger, will protect young adults in Department custody as long as euphemistically-named programs keep them isolated. In any event, all youth ages 18 to 25 are vulnerable during this critical period of development, and should be excluded from punitive segregation by any name.

The Department of Justice has found that more than 50 percent of all suicides in juvenile facilities occurred while young people were held in isolation, and more than 60 percent of young people who died by suicide in custody had a history of being held in isolation.[75] For young people who have experienced incarceration on Rikers, the effects are no less deadly. In 2015, at the age of 22, Kalief Browder died by suicide two years after suffering solitary confinement and beatings during the three years he was incarcerated on Rikers Island.[76] Also in 2015, at 25, Jason Echevarria died in solitary confinement while experiencing mental health challenges.[77] In 2021, at 25,

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[70] Jim Casey Youth Opportunities Initiative, *Success Beyond 18*, *supra* note 42, at 4.
[71] MacArthur Foundation *et al.*, *Because Kids are Different*, *supra* note 41, at 10-11; *see* New York City Board of Correction, *Notice of Public Hearing and Opportunity to Comment on Proposed Rules*, https://rules.cityofnewyork.us/wp-content/uploads/2021/03/BOC-Proposed-Amendment-of-Minimum-Standards-Concerning-Restrictive-Housing-Preliminarily-Certified-3.5.21-to-TG-w-certs-1.pdf, at 3-4.
[72] New York City Administrative Code, Title 40: Board of Correction, Ch. 1: Correctional Facilities, § 1-17(a) Limitations on the Use of Punitive Segregation.
[73] New York City Board of Correction, *Notice of Public Hearing and Opportunity to Comment on Proposed Rules*, *supra* note 71, at 10 (April 2021 Proposed RMAS Rules frankly admitted that they "eliminate[d] specific references to punitive segregation and enhanced supervision housing (ESH) and insert[ed] references to RMAS where appropriate"); Columbia University Center for Justice, *Solitary by Many Other Names*, *supra* note 2.
[74] Columbia University Center for Justice, *Solitary by Many Other Names*, *supra* note 2. In order to comply with Local Law 42, the implementing rules should explicitly state that restraints can be used only when necessary to prevent an imminent risk of injury to self or others.
[75] Lindsay M. Hayes, *Juvenile Suicide in Confinement: A National Survey* (2009), at 27, https://www.ojp.gov/pdffiles1/ojjdp/213691.pdf; Brian Levy, *supra* note 68.
[76] Tammie Gregg & Donna Lieberman, *Prolonged solitary confinement is torture. It's time for all states to ban it*, *The Washington Post*, Apr. 28, 2021, https://www.washingtonpost.com/opinions/2021/04/28/ban-prolonged-solitary-confinement/.
[77] *Id.*

Brandon Rodriguez died by suicide in isolation.[78] In 2022, Erick Tavira, 28, died by suicide alone in his cell on the Island.[79]

VII. Department of Correction Staff Must Have Appropriate Training and Skills for Working with Older Youth Up to Age 25

Training and Credentials

Research and best practices support the conclusion that the Department cannot rely on mental health providers and social workers alone to ensure the safety and well-being of young adults on Rikers – corrections staff must receive specific, ongoing training to work with youth. Yet a January 2022 assessment of staff resources at the Robert N. Davoren Complex ("RNDC"), where the majority of young adults are held, found that the Department "cannot accurately identify where staff are assigned or their status at any given time,"[80] and that nearly half of the 929 officers assigned to RNDC were "unavailable to be assigned directly to a post engaged with incarcerated persons."[81] Moreover, even though *Nunez* Monitor Reports[82] show that RNDC has particularly high rates of *avoidable* use of force and violence,[83] staff fail to follow the basic steps of a 2021 Department policy intended to reduce violence.[84] In 2020, the Monitor found that use of force against individuals was often due to "[s]taff's aggressive demeanor and lack of de-escalation skill."[85] These conditions persist to this day, in the form of "poor staff decision making, poor situational awareness, and staff actions that precipitate[] the event."[86]

The Monitor recently reported, however, that proper training of corrections staff could go a long way toward shifting the culture on Rikers away from excessive uses of force: "Substantially reducing the frequency of unnecessary and excessive uses of force will require quality training and

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[78] Columbia University Center for Justice, *Solitary by Many Other Names*, *supra* note 2.
[79] *Id.*
[80] Special Report of the *Nunez* Independent Monitor (Mar. 16, 2022), at 23, https://tillidgroup.com/projects/nunez-monitorship/.
[81] *Id.*
[82] *Nunez v. City of New York*, No. 11 Civ. 05845 (S.D.N.Y. August 18, 2011), was a class action lawsuit brought by incarcerated persons in the custody of the Department of Correction. The 2015 consent judgment entered in the case provided for a monitor to issue progress reports on a regular basis regarding, among other things, the use of force on Rikers, staff training, and the safety and proper supervision of 18-year-old detainees, all with the goal of ensuring major reforms of the system. All *Nunez* Monitor reports can be found at https://tillidgroup.com/projects/nunez-monitorship/.
[83] Special Report of the *Nunez* Independent Monitor (Mar. 16, 2022), at 17; Second Status Report on DOC's Action Plan by the *Nunez* Independent Monitor (Oct. 28, 2022), at 65; Status Report of the *Nunez* Independent Monitor (June 30, 2022), at 17-18. https://tillidgroup.com/projects/nunez-monitorship/.
[84] Status Report of the *Nunez* Independent Monitor (Dec. 22, 2023), at 91, https://tillidgroup.com/projects/nunez-monitorship/.
[85] Eleventh Report of the *Nunez* Independent Monitor (July-Dec. 2020), at 36; *see also* Status Report of the Nunez Independent Monitor (Apr. 18, 2024), at 32, 42. https://tillidgroup.com/projects/nunez-monitorship/.
[86] Status Report of the *Nunez* Independent Monitor (Apr. 18, 2024), at 28 ("While the rates of nearly every indicator reached an apex in 2021 and then subsequently decreased, the decreases – though obviously necessary – are of little consolation. Qualitative assessments of individual incidents show *a continued pattern where staff use force when it is unnecessary and/or in a manner that is excessive and out of proportion to the extant threat*.") (emphasis added), https://tillidgroup.com/projects/nunez-monitorship/.

supervision, strict adherence to sound security practices, and reliable and appropriate staff discipline."[87]

With regard to credentials, the National Association of Social Workers ("NASW") outlines standards for working with adolescents, emphasizing that "everyone – individuals , communities, and society as a whole – reaps the benefits from investments in helping our young people achieve optimal physical and mental health."[88] NASW's comprehensive standards include (a) holding a bachelor's degree or a master's of social work from accredited programs; (b) demonstrating knowledge and understanding of adolescent development; (c) assessing services and community-based resources for how well they meet the adolescent's needs; (d) developing a case plan jointly with youth and their family; and (e) participating in multidisciplinary case consultation across agencies.[89]

While detention and correctional settings have unique concerns that make them different from congregate placements or independent living in child welfare, the needs of the youth are similar. Penological issues of safety and population management are not inconsistent with developmentally-appropriate training that recognizes that adolescents and young adults up to age 25 are different from older adults.[90]

Trauma-Informed Orientation and Services

As noted earlier, adolescents and young adults in child welfare and correctional settings have often experienced severe trauma.[91] The concept of "complex trauma" has come to describe the "dual problem of exposure to multiple traumatic events and the impact of this exposure on immediate and long-term" outcomes.[92] Trauma is especially injurious for adolescents and young adults because it can disrupt and slow brain development.[93]

Research shows, however, that even complex trauma can be remedied when young people have the benefit of corrective experiences and relationships.[94] For this reason, there is a growing consensus that adolescents and young adults can recover from trauma and are entitled to the "'same

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[87] Status Report of the *Nunez* Independent Monitor (Apr. 18, 2024), at 86 and 263-266 (emphasizing the need for consistent staffing); *see also* Status Report of the Nunez Independent Monitor (Apr. 18, 2024), at 32, https://tillidgroup.com/projects/nunez-monitorship/; Yaroshefsky, *Rethinking Rikers*, *supra* note 17, at 7, 44-48.
[88] https://www.socialworkers.org/Practice/NASW-Practice-Standards-Guidelines/NASW-Standards-for-the-Practice-of-Social-Work-with-Adolescents.
[89] *Id.*
[90] The Board of Correction acknowledges the special treatment that young adults should receive in the Young Adult Plan specifying that "[h]ousing for people in custody ages 18 through 21 shall provide such people with age-appropriate programming." New York City Administrative Code, Title 40: Board of Correction, Ch. 1: Correctional Facilities, § 1-02(c)(1) Classification of People in Custody. Again, the Young Adult Plan should be expanded to include youth up to age 25.
[91] *See, e.g.*, Mendel, *Why Youth Incarceration Fails*, *supra* note 9.
[92] Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra* note 8, at 13.
[93] *Id.* at 25 (citing D.F. Becker *et al.*, *Trauma and Adolescence: The nature and scope of trauma* (2003)); Schiraldi *et al.*, *Community-Based Responses to Justice-Involved Young Adults*, *supra* note 42, at 2.
[94] Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra* note 8, at 27-28 (citing Bessel A. van der Kolk, *Clinical implications of neuroscience research in PTSD*, Ann. N.Y. Acad. Sci. (2006)); Jim Casey Youth Opportunities Initiative, *The Road to Adulthood*, *supra* note 9, at 8-9.

opportunities, experiences, and high expectations as all other youth in the community.'"[95] Experts working with young adults agree that "[i]t is important for people working in youth-serving systems to understand young people's responses to trauma in order to promote healing and emotional security."[96]

Trauma-informed and trauma-specific practices are essential components of serving older youth.[97] Local Law 42 mandates that young adults "receive access to trauma-informed, age-appropriate programming and services on a consistent, regular basis."[98] Professional standards call for youth-serving organizations to "provide therapeutic and practical opportunities for youth to learn how to acknowledge and cope with past trauma, and to create a meaningful sense of personal identity."[99] Older youth in the custody of New York City's Department of Correction deserve no less.

VIII. Conclusion

Children's Rights has helped lead child welfare and juvenile legal reform in states across the country for nearly three decades, and understands how challenging systemic change can be. The Board of Correction has an opportunity, and the responsibility, to align Department of Correction rules with best practices in youth development. By doing so, young adults in New York City's correctional facilities will be safer and less likely to re-enter detention after their release.[100]

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[95] *See* Browne, *Youth Thrive*, *supra* note 64, at 2 (collecting authorities on foster systems; citation omitted); Jim Casey Youth Opportunities Initiative, *The Road to Adulthood*, *supra* note 9, at 10; Jim Casey Youth Opportunities Initiative, *Success Beyond 18*, *supra* note 42.

[96] Jim Casey Youth Opportunities Initiative, *Trauma-Informed Practice*, *supra* note 26, at 1; Jim Casey Youth Opportunities Initiative, *The Road to Adulthood*, *supra* note 9, at 7.

[97] *Id.*

[98] New York City Administrative Code, Title 9: Criminal Justice, Ch. 1: Department of Correction, § 9-167(k) Solitary Confinement. Local Law 42 also recognizes the critical nature of trauma-informed therapeutic interventions for those held in restrictive housing. New York City Administrative Code, Title 9: Criminal Justice, Ch. 1: Department of Correction, § 9-167(h)(5).

[99] Child Welfare League of America, *Standards of Excellence for Transition, Independent Living, and Self-Sufficiency Services* (revised ed. 2005), at 115; Jim Casey Youth Opportunities Initiative, *The Road to Adulthood*, *supra* note 9, at 13, 17-18.

[100] *See, e.g.*, Baser, O., Rodchenko, K., Zeng, Y. *et al.*, Mental Health Disparities in Young Adults with Arrest History: A Survey-Based, Cross-Sectional Analysis. *Health Justice* 12, 1 (2024), https://doi.org/10.1186/s40352-023-00257-2

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June 14, 2024

New York City Board of Correction
2 Lafayette St., Room 1221
New York, NY 10007

Re: Proposed Rules Concerning Restrictive Housing

Dear Chair Sampson, Board Members, and Executive Director Georges-Yilla,

The Legal Aid Society submits these public comments on the Board of Correction's ("BOC") Proposed Rules Concerning Restrictive Housing ("Proposed Rules"), which were issued on May 13, 2024.

Our Criminal Defense Practice, which serves as the primary defender of low-income people in New York City prosecuted in the State court system, interacts daily with incarcerated people and their families to hear their experiences in DOC custody. In addition, since its inception 50 years ago, the Prisoners' Rights Project has investigated and remedied unconstitutional and unlawful conditions in the City jails through individual and class action lawsuits and administrative advocacy. Our litigation has included reform of the systems for oversight of use of force and violence in the jails; relief from dangerous conditions such as fire risks, overcrowding, and unsafe sanitation; successful efforts to bring high school education to youth held in these adult facilities; and redress of the failures of medical and mental health care systems that result in needless deaths in custody.

I. Introduction

It has long been necessary to reform the use of isolated confinement in the Department of Correction ("DOC"). As we detailed in our comments during the 2021 rulemaking process on restrictive housing,[1] inhumane practices in DOC facilities have persisted under the guise of many different names and failed plans, including punitive segregation, MDC 9 South, CMC Max, North Infirmary Command (NIC), West Facility, and Enhanced Supervision Housing ("ESH").

"New" models purport to be innovative, but they inevitably replicate the same harms. The current model—ESH at the Rose M. Singer Center ("RESH")—demonstrates this cycle. The rates of use of force and stabbings and slashings in RESH are shockingly high—both are quadruple that of any

[1] N.Y.C. Board of Corr., Comment Letter on Proposed Rule Concerning Restrictive Housing in Correctional Facilities (Apr. 21, 2021), www.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2021-Restrictive-Housing/04-21-21-las-comments-on-boc-proposed-rules-concerning-restrictive-housing-with-appendix-a.pdf.

other DOC facility.[2] Fires are prevalent.[3] DOC staff fail to adhere to security requirements and do not implement the basic structure of the RESH model.[4] And DOC does not consistently maintain required staffing levels in RESH units, resulting in housing areas without necessary floor officers.[5] Nine months after it opened, RESH is mired in operational failures, and unsafe for the people DOC houses there.

DOC's various isolated confinement models have in common two realities: DOC reflexively reaches for isolation to address behavioral concerns, and DOC's implementation of the models counterproductively perpetuates danger and harm.

The City Council passed Local Law 42 to address these harms. We support all efforts to end the harms of isolated confinement and to require the City to invest in humane and effective interventions to prevent and address violence.

II. Recommended Amendments to the Proposed Rules

Legal Aid proposes some amendments to the Proposed Rules. We recognize that the Proposed Rules are intended to mirror the language of Local Law 42, and so our suggestions focus on language that is not required by the law and aim to protect the rights of people in custody.

A. Proposed § 1-05(b)(2): Involuntary Lock-In

Our concern: Proposed § 1-05(b)(2) provides, "People shall not be required to remain confined to their cells except for the following purposes . . . [d]uring the day for count **or required facility business that can only be carried out while people are locked in,** not to exceed two hours in any 24-hour period" (emphasis added). The term "facility business" is vague, undefined, and does not appear in Local Law 42. Inclusion of this term introduces confusion and may allow DOC to abuse its discretion by defining "facility business" broadly to include more than the statutorily permitted reasons for lock-ins: sleep, count, de-escalation confinement, and emergency lock-ins.

Our recommendation: Omit the clause "or required facility business that can only be carried out while people are locked in."

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[2] Report of the *Nuñez* Independent Monitor in *Nuñez v. City of New York et al*., 11-cv-5845 (LTS) (S.D.N.Y.), filed Apr. 18, 2024, at 33, 42.
[3] *Id*. at 40.
[4] *Id*. at 45-46.
[5] *Id*. at 47.

B. Proposed § 6-05(a)(2): De-Escalation Confinement

Our concern: Proposed § 6-05(a)(2) includes language indicating that one purpose of de-escalation confinement is "to . . . [t]emporarily place a person in custody for the person's own safety after the person has been assaulted or otherwise victimized by another person in custody." This language is a product of the 2021 rulemaking process. But Local Law 42 does not contemplate DOC placing a person who was the subject of an assault in isolation. Rather, Local Law 42 requires isolating someone "immediately following an incident where the person has caused physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons."

Our recommendation: Omit the referenced language in § 6-05(a)(2).

C. Proposed § 6-14(c): Periodic Reviews

Our concern: To determine whether ongoing placement in restrictive housing is appropriate, Local Law 42 instructs DOC staff to consider only "whether the incarcerated person continues to present a specific, significant and imminent threat to the safety and security of other persons if housed outside restrictive housing." But proposed § 6-14(c) contains language from the 2021 rulemaking process that lists other criteria DOC staff should consider, including a person's "attitude" since their placement in restrictive housing began. That highly subjective criterion invites personal bias in an already discretionary process. It also provides no guidance to individuals on what choices they can make to change their placement. And it penalizes normal and emotionally appropriate responses people may show to being locked in objectively harsh and unsafe conditions, denied contact with family and loved ones, deprived of liberty, and facing criminal penalties and possible prison time.

Our recommendation: Omit "attitude" as a ground for consideration.

D. Proposed § 6-23: Due Process

Our concern: People in custody may not be able to obtain counsel for due process hearings. Under BOC Minimum Standard § 1-17(c)(4), people who are illiterate or unable to understand or prepare for a hearing process were able to request a "hearing facilitator" to assist them by clarifying the charges, explaining the hearing process, and helping them gather evidence.

Our recommendation: Allow people in custody who are unable to obtain counsel for a due process hearing to request a hearing facilitator.

E. Proposed § 6-27: Restraints

Our concern: DOC often imposes, without a due process hearing, restraints on people in custody whom DOC has designated as a Central Monitoring Case.

Our recommendation: Amend this section to clarify that the section's due process protections apply to all instances in which restraints are used, including but not limited to people in restraints because DOC has designated them as a Central Monitoring Case, Red ID, or Enhanced Restraint status.

III. This Rulemaking Presents an Opportunity to Incentivize Other Interventions

Regulations serve the valuable purpose of clarifying and detailing how laws should be implemented—a purpose BOC Minimum Standards can and do serve for DOC. By removing isolated confinement as a tool, Local Law 42 seeks to incentivize DOC to develop and implement responses to violence other than isolation. In requiring BOC to develop regulations responsive to the statute, Local Law 42 provides an opportunity for BOC to set forth critical specifics that ensure DOC develops other interventions. We urge the BOC to use this opportunity to do so.

For example, given the *Nuñez* Monitor's finding that DOC fails to adequately staff RESH, BOC could set a floor for staffing ratios in restrictive housing units. It also could require consistent assignment of officers, captains, and Assistant Deputy Wardens to restrictive housing units—as *Nuñez* court orders require in Young Adult units[6]—to promote operational competence and stability. And BOC could set a timeline for DOC to provide public updates as to its development of programming, requiring the Department to delineate what programming is being offered, when, and by whom; whether it has secured commitments from community partners and how extensive those commitments are; and what auditing strategies it is using to assess how consistently that programming is provided and attended.

IV. Conclusion

We sincerely appreciate the Board of Correction's longstanding efforts to engage the complex questions posed by restrictive housing. As the City Council recognized, isolated confinement is not a solution to crises. Placing people in isolation serves only to exacerbate trauma and deprivation, which decreases safety for all. New York City must not lose sight of the fact that people housed in restrictive housing units are human beings, with communities, families, and loved ones.

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[6] Consent Judgment § XV, ¶ 17; First Remedial Order § D, ¶ 1 in *Nuñez v. City of New York et al*., 11-cv-5845 (LTS) (S.D.N.Y.).

We welcome additional opportunities to discuss these critical human rights issues with Board Members.

Regards,

/s/ *Mary Lynne Werlwas*

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WRITTEN TESTIMONY OF:

Michael Klinger, Jail Services Attorney
Civil Rights and Law Reform
BROOKLYN DEFENDER SERVICES

Presented before
The New York City Board of Correction
Dwayne C. Sampson, Chair

June 17, 2024

My name is Michael Klinger and I am a Jail Service Attorney in the Civil Rights and Law Reform unit at Brooklyn Defender Services (BDS). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation, and other serious legal harms by the government. For more than 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Thousands of the people we represent are detained or incarcerated in the New York City jail system each year while fighting their cases in court or serving a sentence of a year or less upon conviction of a misdemeanor. We thank the Board of Correction (BOC or the Board) for the opportunity to submit testimony today.

The Board of Correction is proposing to amend Chapter 1 and Chapter 6 of Title 40 of the Rules of the City of New York (Restrictive Housing in Correctional Facilities) to comply with the requirements set forth in Local Law No. 42 of 2024. The City Administrative Procedures Act requires the Board to provide an opportunity for and consideration of agency and public comment. Today's public hearing is an opportunity for members of the public to provide comments on the proposed rules, which the Board circulated on May 15, 2024, and published in the City Record on May 16, 2024.[1] The Board should adopt its proposed rules with clarifying modifications and amendments as detailed herein.

[1] *See* Board of Correction, City of New York, "Notice of Rulemaking Concerning Restrictive Housing in Correctional Facilities," Proposed Rules, New York City Law Department Certificate Pursuant to Charter Section 1043(d), and New York City Mayor's Office of Operations Certification / Analysis Pursuant to Charter Section 1043(d), May 16, 2024. *Available at* https://a856-cityrecord.nyc.gov/RequestDetail/20240514008.

Brooklyn Defenders

A. Local Law 42 and the Board's Proposed Rules

The New York City Council passed Local Law 42 on December 20, 2023, by a vote of 39-7.[2] In response to a subsequent Mayoral veto, an even larger majority of Council members voted to override the veto and pass the law by a vote of 42-9, on January 30, 2024.[3]

Local Law 42 ends solitary confinement in all forms and by all names in the New York City jails, for any period of time longer than four hours, and even then, only for de-escalation or emergencies. Critically, the Law allows for alternative forms of separation, which are intended to better support the health and safety of people in the Department's custody, as well as the safety and security of all people living and working in the Department's facilities.[4]

The city, over many years, has heard from experts whose research shows that greater safety and security result from reductions in reliance on punitive segregation and other related means of separating people alleged to have engaged in violent acts.[5] The Enhanced Security Housing model currently employed by the Department is a testament to the failure of such methods to actually reduce violence and increase security in jail settings.[6]

Advocates have long pointed to innovations both in New York City and elsewhere where pro-social, program-based interventions that involve full days of out-of-cell group programming and engagement have

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[2] Local Law 42 of 2024, Intro. No. 549-A, The New York City Council, Adrienne E. Adams, Speaker. Available at https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5698267&GUID=6F47F49A-06A3-444C-BBB7-3CBFF899DD84&Options=ID|Text|&Search=549.

[3] *Id.*

[4] *Id.*

[5] *See*, *e.g.*, James Gilligan, M.D., and Bandy Lee, M.D., Jan. 13, 2015, Testimony on Proposed Rule by the New York City Board of Correction ("Decreased interaction with other people, rather than decreasing violence, actually increases violent behavior and increases the need for more intensive measures. This is because solitary confinement, in which people are deprived of human contact, interactions, and relationships, actually increases violent behavior toward others and toward the self."). *Available at* https://www.nyc.gov/site/boc/jail-regulations/rulemaking-2014-2015.page. *See also*, James Gilligan, M.D., and Bandy Lee, M.D., Sept. 5, 2013, Report to the New York City Board of Correction, (writing generally that punishment "is the most powerful tool we have yet created for stimulating violence," that "prolonged solitary confinement can only be seen by both inmates and staff as one of the most severe forms of punishment that can be inflicted on human beings," and that such confinement "can precipitate and/or exacerbate the symptoms of mental illness; that it can provoke suicidal, assaultive and homicidal behavior, self-mutilation, and other pathologic behaviors; and that it has been more or less universally recognized among the civilized nations of the earth as a form of torture and thus a most serious violation of human rights."). *Available at* https://solitarywatch.com/wp-content/uploads/2013/11/Gilligan-Report.-Final.pdf.

[6] *See*, *e.g.*, *Nunez* Monitor's Status Report, Apr. 18, 2024 at 45-48, *available at* https://www.nyc.gov/assets/doc/downloads/Nunez/2024-04-18%20--%20Monitor's%20Report.pdf (Citing continuing "unacceptably high rates of violence" at the Enhanced Supervision Housing unit now located at Rose M. Singer Center).

simultaneously created healthier outcomes for individuals in custody as well as safer and more secure environments for entire housing units and facilities. Almost 20 years ago, San Francisco's Resolve to Stop the Violence Project (RSVP) demonstrated that a housing unit comprising individuals with a history of serious violent crimes, when provided an "intensive, multi-modal in-house 'culture'" would experience a precipitous drop in violence while incarcerated, and would even significantly improve outcomes for people served by such a housing unit after release from jail.[7]

While Local Law 42 essentially provides a new set of minimum requirements, full implementation requires a meaningful reconsideration of how life looks and feels for people in the custody of the Department of Correction. For example, the Law's required out-of-cell time and congregate programming requirements leave open the possibility of providing the sort of programming that was so effective in San Francisco's RSVP, and which led to emphatic reductions in violence and better outcomes for people in custody even after their return to the community. At a minimum, however, the statutory language of Local Law 42 bans solitary confinement beyond four hours, while requiring 14 hours of daily out-of-cell time with group programming and activities, and it also provides for greater due process protections, including access to representation, time limits on placement in restrictive housing, and public reporting on the use of solitary confinement and alternatives. It further requires the Board to craft rules to be followed by the Department in fully implementing the law.

In its Proposed Rules, the Board captures important aspects of Local Law 42. In particular, the Board's proposed rules correctly:

1. Place a four-hour limit on de-escalation confinement and emergency lock-ins and provide for additional protections during those four hours to better protect people's health and well-being;
2. Require that outside of such confinement everyone in the city jails must only be locked in for eight hours at night for sleep and two hours during the day for administrative reasons and thus must have access to 14 hours of out-of-cell time each day;
3. Require that people in restrictive housing have access to at least 14 hours daily of out-of-cell time with group programming and activities, with clear definitions of "cell" and "out of cell" to prevent solitary by another name;
4. Place appropriate restrictions on restraints;
5. Restrict the type of conduct and/or circumstances that can result in placement in de-escalation confinement, emergency lock-ins, or restrictive housing;
6. Increase due process protections, including representation at hearings and time limits on alternatives to solitary;
7. Ban the use of locked decontamination showers;
8. Ensure that young people have access to trauma-informed, age-appropriate programming and services on a consistent, regular basis;

[7] *See* James Gilligan, M.D., and Bandy Lee, M.D., "The Resolve to Stop the Violence Project: transforming an in-house culture of violence through a jail-based programme," Journal of Public Health, June 2005, Volume 27, Issue 2, pages 149-155. *Available at* https://academic.oup.com/jpubhealth/article/27/2/149/1595844.

9. Provide data reporting requirements on solitary and alternatives, with oversight by BOC; and
10. Make clear that the Department cannot request variances from Local Law 42 requirements.

B. Disciplinary Hearings

Among the rights granted by Local Law 42 is the right of individuals facing placement in restrictive housing or restraints to a hearing, at which they will further have the right to be represented by legal counsel or an advocate, the right to present evidence and cross-examine witnesses, the right to have any witnesses testify in person at the hearing, the right to written notice of any hearing at least 48 hours prior to such hearing, the right to adequate time to prepare for any such hearing and the related right to have the Department grant reasonable requests for adjournments, and the right to an interpreter if needed.[8] In anticipation of implementation of this crucial set of due process rights that will apply to individuals represented by Brooklyn Defenders and our peer legal defense organizations, our office joined our defender colleagues in drafting a proposed set of rules for the Board's consideration.[9]

The rules we propose will give full effect to the statutory language of Local Law 42, particularly in light of the many critical details left to the board in its rulemaking capacity. For example, although the Law states that people charged with infractions that could result in placement in restrictive housing, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Status are entitled to legal representation, the law does not specify how individuals will be made aware of this right, how they and their advocate or legal counsel will be notified of any alleged infraction and subsequent hearing, or the procedures – including obtaining necessary discovery – that will govern these hearings. The rules proposed by the defender organizations and formally submitted on May 30, 2024, address each of these.

Recommended Amendments

Our suggestions are presented as amendments to the Board's current proposed rules, and refer to specific sections within that document.

1. Section 9, amending section 6-03 of Title 40 of the Rules of the City of New York

The Board's proposed rule already states that advocates – including law students and paralegals – should be permitted to provide representation to people facing disciplinary hearings that could lead to placement

[8] *See* Local Law 42, amending Section 9-167 of the New York City Administrative Code, subsection f ("Restrictive housing hearing"), requiring that "the department shall not place an incarcerated person in restrictive housing until a hearing on such placement is held and the person is found to have committed a violent grade I offense. Any required hearing regarding placement of a person into restrictive housing shall comply with the rules to be established by the board of correction."

[9] "Joint Defender Proposed Rules Regarding Access to Legal Representation and Procedures Governing Hearings," attached as Appendix (*hereinafter* "Appendix").

in enhanced supervision housing or other restraints. We propose that the board clarify that any such law students must be working under the supervision of an attorney.[10]

2. Section 34, amending Paragraphs (5) through (9) of subdivision (d) of section 6-23 of the Rules of the City of New York, as renumbered by this rule

The Rights of the Person Charged

The specific recommendations for amendments to these sections proposed by the defender organizations seek to make explicit certain protections required by the Law. The rules must not only require that the Department, through its hearing adjudicator, create a full record of the proceeding(s), but must specify what is required to be made part of any such record.[11]

The Right to Legal Representation

The rules must explicitly state that they apply to individuals facing the possibility of placement in restrictive housing, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status.[12]

While Local Law 42 provides that notice must be provided no less than 48 hours prior to any hearing, the Board's rules must specify that such written notice shall also inform the individual of their right to legal representation, shall be provided even in cases where the person has waived their right to appear at the hearing, and that this is in addition to the duty of the Adjudication Captain to notify the person charged of their right to legal representation on the record at the hearing.[13] Further, the rules must specify that any

[10] *See* Appendix, Section 9, in reference to Board of Correction Proposed Rules, Section 6-03(b)(1) (defining "Advocate").

[11] The Board's proposed rule, Section 34, Paragraph (6), requires that both the notice of infraction and the Hearing Adjudicator shall advise the person of their rights. We propose that the Hearing Adjudicator shall do so on the record. Moreover, as we propose in Paragraph (6)(i)(A), the Adjudication Captain must specifically notify the person charged of their right to legal representation on the record at the hearing.

[12] The Board's proposed rule Section 34, Paragraph (6)(i) must explicitly state these restraint statuses, each of which is contemplated by Local Law 42 in amendments to Sections 9-167(e) and (f) of the New York City Administrative Code, requiring that the department "shall not place an incarcerated person in restraints … until a hearing is held to determine if the continued use of restraints is necessary for the safety of others," and requiring that the department "shall not place an incarcerated person in restrictive housing until a hearing on such placement is held and the person is found to have committed a violent grade I offense."

[13] *See* Appendix, Section 34, in reference to Board of Correction Proposed Rules, Section 6-23(d)(6)(i)(A).

refusal of representation must be recorded, on camera, both upon the service of the infraction and at the disciplinary hearing.[14, 15]

Critical to the right of a detained individual to be represented by legal counsel at a hearing is the ability of the department to promptly notify any such counsel of all details related to the hearing. Our rules propose that the department shall notify the designated contact for each defense office and attorney of record who represents the person charged, and that to the extent an individual is unable to secure legal representation for the hearing through their counsel of record, the department shall maintain and regularly update a list of current eligible legal representatives or advocates.[16]

The Right to Appear

We propose bolstering the individual's right to appear personally at any hearing with an affirmative obligation on the department to inform the person charged that they have the right to appear, and to adjourn the hearing so that they may do so. Here, again, the department must be required to record, using video with audio, and to preserve such a record of any alleged refusal on the part of the person charged, such that it can establish that the individual knowingly and voluntarily waived their right to appear at the hearing and was aware of the consequences of failing to attend. A lack of video evidence of refusal should require dismissal of any alleged infraction.[17, 18]

The rules must further clarify that all disciplinary hearings covered under these rules shall take place in person in a DOC adjudication room, but must also provide for a virtual option upon request of the legal

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[14] *See* Appendix, Section 34, in reference to Board of Correction Proposed Rules, Section 6-23(d)(6)(i)(B).

[15] Our previously-submitted proposed rules contemplate the use of body-worn cameras. In May 2024, the Department took all body-worn cameras out of service following an allegation that one of the cameras spontaneously ignited. *See*, *e.g.*, Graham Rayman, "City Dept. of Correction pulls all body worn cameras after one ignites, injuries captain," Daily News, May 4, 2024. *Available at* https://www.nydailynews.com/2024/05/04/city-dept-of-correction-pulls-all-body-worn-cameras-after-one-ignites-injures-captain/.

To the extent the department may choose not to use body-worn cameras, we note that the department has testified to the City Council that it is prepared to use handheld cameras, in addition to the cameras placed throughout its facilities, to capture video. *See* Testimony of Department of Correction Commissioner Maginley-Liddie, at Executive Budget Hearing held jointly by the City Council Committees on Finance and Criminal Justice, May 17, 2024. *Available at* https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=1194772&GUID=F0F72E46-17DA-4C60-9C74-F185AC4580E1&Options=info|&Search= ("[I]n the absence of a Body Worn Camera I just want to reiterate that we have over 12 thousand cameras throughout, departmentwide, and we also have handheld cameras that we are utilizing to capture any of these incidents.") We propose that the department's use of handheld cameras, which can also record audio, are appropriate to the task of recording any refusals.

[16] *See* Appendix, Section 34, in reference to Board of Correction Proposed Rules, Section 6-23(d)(6)(i)(C).

[17] *See* Appendix, Section 34, in reference to Board of Correction Proposed Rules, Section 6-23(d)(6)(ii)(B).

[18] As above, whether the video recordings are made using handheld cameras or body-worn cameras, the critical detail is that the recordings must include both video and audio.

representative or advocate of the person charged, such that in both in-person and virtual formats, the legal representative or advocate shall have the ability to privately confer with the person charged both before and during the hearing.[19]

The Right to Review the Department's Evidence

We propose clarifying that the person charged and their legal representative have the right to review all evidence that the department relies upon for its allegations, and all other evidence or information related to the grounds for which the department seeks to charge the person.[20] All such evidence must be provided to the individual and their legal representative no later than 48 hours prior to the hearing.[21] Additionally, the rules must require that any evidence or information relied upon by the department or facility in support of the alleged infraction be presented at the hearing and made part of the record.[22]

To the extent any redacted information may be presented as evidence based upon a confidential informant, the rules must require the hearing adjudicator to determine the reliability of the evidence and the informant's basis of knowledge for such information through an independent credibility review, which must be made part of the record.[23]

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[19] *See* Appendix, Section 34, in reference to Board of Correction Proposed Rules, Section 6-23(d)(6)(ii)(C).

[20] *See* Appendix, Section 34, in reference to Board of Correction Proposed Rules, Section 6-23(d)(6)(v)(A).

[21] *See id.* We provide a non-exhaustive list of the types of evidence or information contemplated by these rules, as follows:

(a) Surveillance footage video and surveillance footage stills;
(b) Body-worn camera footage;
(c) Notices of infraction;
(d) Facility reports;
(e) Staff reports;
(f) Use of force reports;
(g) Injury reports;
(h) Medical documentation;
(i) Witness list;
(j) All statements, written or recorded or summarized in any writing or recording, made by persons who have evidence or information relevant to the allegations being relied upon by DOC to seek an infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status; and
(k) Any evidence of an alleged refusal, including body-worn camera footage or evidence that the charged individual knowingly and voluntarily waived their right to appear, or their right to access to legal counsel.

[22] *See* Appendix, Section 34, in reference to Board of Correction Proposed Rules, Section 6-23(d)(6)(v)(C).

[23] *See* Appendix, Section 34, in reference to Board of Correction Proposed Rules, Section 6-23(d)(6)(v)(E).

Available Remedies or Sanctions

In the event that the department fails to comply with its obligations under these rules to provide the charged person with an opportunity to review evidence and prepare for the hearing, the rules must explicitly empower the adjudicator to make a further order for discovery, grant a continuance, order that a witness be called or recalled, draw an adverse inference regarding the non-compliance, preclude or strike a witness's testimony or a portion of that testimony, admit or exclude evidence, order the dismissal of all or some of the charges, or make such other order as it deems just under the circumstances.[24]

With regard specifically to any situation in which evidence is lost or destroyed, or unavailable due to the failure or inability of the department to preserve it, the rules must require the adjudicator to impose a remedy that is appropriate and proportionate to the prejudice suffered by the person charged. Further, in the event that relevant body-worn (or handheld) camera footage is lost or destroyed, or the officer fails to turn on the body-worn camera when required by DOC policy, the rules should require that the remedy shall be dismissal of the infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status.[25]

The Right to an Interpreter

In order to give effect to the Law's right of an individual to an interpreter in their native language if they do not understand or are otherwise unable to communicate in English, the rules must specify that the consequence to the department for failure to provide an interpreter when one is needed shall be dismissal of the infraction.[26]

[24] *See* Appendix, Section 34, in reference to Board of Correction Proposed Rules, Section 6-23(d)(6)(v)(F).

[25] *Id.*

[26] *See* Appendix, Section 34, in reference to Board of Correction Proposed Rules, Section 6-23(d)(6)(vi).

Requests for Adjournments

Local Law 42 requires that the department "shall grant reasonable requests for adjournments." The rules must clarify, in a non-exhaustive list, some of the factors that must be considered when determining what constitutes a reasonable request for adjournment.[27, 28, 29]

C. Other Recommendations

In order to ensure that the Board's rules are in full compliance with Local Law 42, the Board should make some additional technical and strengthening amendments to its proposed rules. Specifically, the Board should:

1. Revisit section 1-05, to make sure that all provisions are at least as explicit as they are in Local Law 42, including that: a) all people in the jails, other than while people are in de-escalation confinement or emergency lock-ins, must have access to at least 14 hours of daily out-of-cell time; and b) the minimum out-of-cell requirements under the rules still apply to people in contagious disease units and involuntary protective custody.
2. Revisit section 6-19 to make clear that a) for the seven-hour programming requirement, everyone is entitled to such programming outside of a cell in a group setting; and b) all programming time shall be led by therapeutic staff, programming staff, outside community groups, or peers.

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[27] *See* Appendix, Section 34, in reference to Board of Correction Proposed Rules, Section 6-23(d)(8)(ii).

[28] The rules should explicitly state that the following are reasonable bases for such a request:

(a) Additional time to locate witnesses;
(b) Additional time to obtain the assistance of an interpreter;
(c) Additional time to prepare a defense;
(d) A reasonable time for both the legal representative or advocate and person charged to be notified;
(e) A reasonable time for the legal representative or advocate to review discovery;
(f) A reasonable time for the legal representative or advocate to confer with their client; or
(g) Any other basis justifying the need for an adjournment.

[29] In addition, the rules should establish that if the Department fails to turn over complete discovery to the accused person and their representative or advocate at least 48 hours prior to the hearing, any adjournment sought by the person placed in pre-hearing temporary restrictive housing or their advocate should be treated as if it is requested by the Department. Pursuant to Section 6-04(d), "[i]f the Department does not hold an infraction hearing within [seven (7)] five (5) [business] days and the person placed in pre-hearing temporary restrictive housing has not sought a postponement of such hearing, the Department must release the person from pre-hearing [detention] temporary restrictive housing." To treat any requested adjournment under this circumstance otherwise would create an unintended exception to Section 6-04(d) that would run counter to the intent of these rules.

Brooklyn Defenders

D. Conclusion

Local Law 42 brings long-needed reform to the Department of Correction by finally and unequivocally disallowing the practice of separating people for solitary detention for periods longer than four hours, with only minor and carefully controlled exceptions. Just as critically, the law provides the due process protections necessary to ensure that the Department complies with the law with respect to its limitation on any restrictive housing for only those individuals found to have committed a grade I offense.

The Board should adopt its proposed rules with clarifying modifications and amendments as detailed herein.

If you have any additional questions, please feel free to contact me at mklinger@bds.org.

APPENDIX

§ 9. Section 6-03 of Title 40 of the Rules of the City of New York is amended to read as follows:

(b) For the purposes of this Chapter, the following terms related to restrictive housing have the following meanings:

[...]

(1) “Advocate” means a law student **who works under the supervision of an attorney, or a layperson, such as a** paralegal~~,~~ or another incarcerated person who represents an incarcerated person at a restrictive housing placement hearing or a continued use of restraints hearing pursuant to this chapter.

[...]

([8]11) "Legal Representative" is an attorney ~~or layperson who works under the supervision of an attorney~~.

§ 34. Paragraphs (5) through (9) of subdivision (d) of section 6-23 of Title 40 of the Rules of the City of New York, as renumbered by this rule, are amended to read as follows:

(5) *Refusal to Attend or Participate*. The refusal of people in custody to attend or participate in their hearing must be videotaped [or audiotaped] with audio and made a part of the hearing record.

(6) *Rights of the Person Charged*. The Hearing Adjudicator shall advise the person charged of the following rights at the hearing **and on the record, and** ~~which~~ must also be set forth in the notice of infraction:

(i) The right to legal representation: People charged with any infraction that could result in a placement in [RMAS Level 1 or 2] restrictive housing, **Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status** have the right to legal representation at their disciplinary hearing. If a person eligible for legal representation appears at a hearing unrepresented, the Department shall inform the person that they have the right to adjourn the hearing so they can engage a legal representative **or advocate**.

(A) Any person charged with any infraction that could result in a sentence to restrictive housing, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status shall be provided written notice of their right to legal representation upon service of the infraction. Such notice must be provided no less than 48 hours prior to the scheduled hearing. Such notice must be provided even in cases when the person has waived their right to appear at their hearing. The Adjudication Captain must also notify the person charged of their right to legal representation on the record at the disciplinary hearing.

(B) Any refusal of representation must be recorded on body-worn camera upon service of the infraction and at the disciplinary hearing

(C) The Department of Correction shall notify the designated contact for each defense office and attorney of record who represents the person charged with the infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status on each criminal case.

(a) In the event that the person charged with an infraction is unable to secure legal representation for the hearing through their counsel of record, the Department shall provide the person a list of current eligible legal representatives or advocates.

(b) The Department shall regularly update the list of current eligible legal representatives or advocates.

(ii) The right to appear: The person charged **with any infraction that could result in a placement in restrictive housing, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status** has the right to appear personally unless the right is waived in writing or the person refused to attend the hearing. **The Department shall inform the person charged that they have the right to appear, and the right to adjourn the hearing so that they may appear.**

(A) If the person charged **with the infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status** is excluded or removed from **their disciplinary** ~~a restrictive housing~~ hearing because it is determined that such person's presence will jeopardize the safety of themselves or others or security of the facility, the basis for such exclusion must be documented in the hearing record.

(B) If the person charged with the infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status allegedly refuses, DOC must establish that the client knowingly and voluntarily waived their right to appear at the hearing, and was aware of the consequences of failing to attend.

(a) If DOC is not able to establish that the individual knowingly and voluntarily waived their right to appear within the statutory time frame of five business days, the infraction shall be dismissed.

(b) If the statutory time frame has not expired, the individual charged with the infraction shall be given 24 hours to confer with their legal representative or advocate to secure the individual's appearance at the hearing. The hearing shall accordingly be adjourned for such time and purpose.

(c) A lack of video evidence of a refusal warrants dismissal of the infraction.

(C) Disciplinary hearings for those charged with an infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status shall take place in person in a DOC adjudication room.

(a) A virtual option for the hearing shall be made available upon request of the legal representative or advocate of the person charged with the infraction.

(b) In both the in-person and virtual options, the legal representative or advocate shall be provided the ability to privately confer with their client both before and during the hearing.

(iii) The right to **remain silent** ~~make statements~~: The person charged has the right to make statements. In cases where the infraction in question could lead to a subsequent criminal prosecution, the Hearing Adjudicator must inform the person that while the proceeding is not a criminal one, the person's statements may be used against the person in a subsequent criminal proceeding. The Adjudicator must also inform the person of the right to remain silent and that silence will not be used against the person at the hearing.

(iv) The right to present evidence and call witnesses: The person charged has the right to present evidence [and], call witnesses, and cross-examine witnesses.

(A) Witnesses shall testify in person at the hearing unless the witnesses' presence would jeopardize the safety of themselves or others or security of the facility. If a witness is excluded from testifying in person, the basis for the exclusion shall be documented in the hearing record.

(B) If a witness refuses to provide testimony at the hearing, the department must provide the basis for the witness's refusal, videotape such refusal, or obtain a signed refusal form, to be included as part of the hearing record.

(v) The right to review the Department's evidence:

(A) The person charged and their legal representative or advocate have the right to review~~,~~ the evidence relied upon by the Department **and evidence or information related to the grounds for which the Department seeks to charge them**, prior to the infraction hearing. The Department shall provide such evidence **as soon as practicable but no later than** ~~at least~~ forty-eight (48) hours prior to the hearing.

(B) Such evidence or information includes but is not limited to:

(a) Surveillance footage video and surveillance footage stills;
(b) Body-worn camera footage;
(c) Notices of infraction;
(d) Facility reports;
(e) Staff reports;
(f) Use of force reports;
(g) Injury reports;
(h) Medical documentation;

(i) Witness list;

(j) All statements, written or recorded or summarized in any writing or recording, made by persons who have evidence or information relevant to the allegations being relied upon by DOC to seek an infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status; and

(k) Any evidence of an alleged refusal, including body-worn camera footage or evidence that the charged individual knowingly and voluntarily waived their right to appear, or their right to access to legal counsel shall be included.

(C) Any evidence or information relied on by the facility in support of the infraction must be presented at the hearing.

(D) Specific documented intelligence may be redacted in limited instances where the Department determines that disclosing such information would present a serious safety risk to specific individuals. In such cases, the Department shall inform the person in writing that the information is being redacted due to a specific security risk. The Department shall maintain records of both redacted and unredacted evidence.

(E) If any redacted information is presented as evidence based upon a confidential informant, the hearing adjudicator must determine the reliability of the evidence and the informant's basis of knowledge for such information through an independent credibility review. The adjudicator's findings shall be made part of the hearing record.

(F) Available remedies or sanctions. Where the Department fails to comply with subdivision (6)(v) of this section or an order imposed or issued pursuant to this rule, the adjudicator may make a further order for discovery, grant a continuance, order that a witness be called or recalled, draw an adverse inference regarding the non-compliance, preclude or strike a witness's testimony or a portion of a witness's testimony, admit or exclude evidence, order the dismissal of all or some of the charges, or make such other order as it deems just under the circumstances.

(a) Should the Department provide any evidence to the person for the first time at the hearing, the Department shall inform the person or their legal representative or advocate at the hearing that they have the right to adjourn the hearing so they can review and prepare their defense.

(b) Where evidence is lost or destroyed, or unavailable due to the failure or inability of the department to preserve such evidence, the adjudicator shall impose a remedy that is appropriate and proportionate to the prejudice suffered by the person charged with the infraction.

(c) In the event that relevant body worn camera footage is lost or destroyed, or the officer fails to turn on body worn camera when required by DOC policy, the appropriate remedy shall be dismissal of the infraction, Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status.

(vi) The right to an interpreter. The Department shall ensure that every person charged is aware they are entitled to [request] an interpreter in their native language if they do not understand or are not able to communicate in English well enough to conduct the hearing in English. The Department shall take reasonable steps to provide an interpreter. **If after taking reasonable steps, no such interpreter can be procured, the infraction shall be dismissed.**

(vii) The right to an appeal. A person who is found guilty at a disciplinary hearing has the right to appeal an adverse decision as provided in 40 RCNY § [6-24(h)] 6-23(h).

(7) *Burden of Proof*. The Department has the burden of proof in all disciplinary proceedings. A person's guilt must be shown by a preponderance of the evidence to justify [RMAS] restrictive housing, **Enhanced Restraint Status, Red ID Status, or Central Monitoring Case Restraint Status** placement.

(8) *Hearing Time Frame*.

(i) Once the hearing has begun, the Hearing Adjudicator shall make reasonable efforts to conclude the hearing in one session.

~~(ii) Adjournments may be granted if the person charged or their legal representative requests additional time to locate witnesses, obtain the assistance of an interpreter, or prepare a defense. The Department shall provide the person charged and their legal representative or advocate adequate time to prepare for such hearings and shall grant reasonable requests for adjournments.~~

(ii) Request for adjournments: The person charged or their legal representative or advocate may make a reasonable request for an adjournment. In determining what constitutes a reasonable request for an adjournment, factors that must be taken into account include but are not limited to:

(A) Additional time to locate witnesses;
(B) Additional time to obtain the assistance of an interpreter;
(C) Additional time to prepare a defense;
(D) A reasonable time for both the legal representative or advocate and client to be notified;
(E) A reasonable time for the legal representative or advocate to review discovery;
(F) A reasonable time for the legal representative or advocate to confer with their client; or

(G) Any other basis justifying the need for an adjournment.

(iii) Hearing Adjudicators may also adjourn a hearing to question additional witnesses not available at the time of the hearing, gather further information, refer the person charged to mental health staff, or if issues are raised that require further investigation or clarification to reach a decision.

(iv) Notwithstanding any adjournments, hearings must be completed within five (5) days, absent extenuating circumstances or unless the person charged waives this time frame in writing or on the record.

(9) *Legal Representation*. People charged with any infraction that could result in a sentence to [RMAS Level 1 or 2] restrictive housing shall be permitted to have a legal representative or advocate represent them at their disciplinary hearing and in any ~~in~~ related appeal. People entitled to such representation shall be permitted to choose their legal representative or advocate.