



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

December 16, 2019

By Electronic Mail: BOC@boc.nyc.gov

Members of the Board of Correction
Attn: Michele M. Ovesey
Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

Re: Notice of Rulemaking Concerning Restrictive Housing in Correctional Facilities

Dear Members of the Board of Correction:

I write today in response to the publication by the Board of Correction (“BOC” or “the Board”) of a proposed rule governing the use of restrictive housing in New York City jails. I commend the Board for initiating this rulemaking process, a step that I know has come after many years of deliberation and policy development alongside the Department of Correction (“DOC” or “the Department”) and is only possible due to the courageous testimony of survivors of solitary confinement, their family members, and advocates. We now have before us a historic opportunity to end the use of solitary confinement in our city. Unfortunately, the proposed rule as currently written falls far short of that mark.

Let me state at the outset: solitary confinement is torture and should have no place in our City jails.

While I appreciate the four core principles on which you state you have based the proposed rule—promoting the safety of people in custody and Correction Officers, upholding due process, supporting rehabilitation, and monitoring compliance—the proposed rule itself diverges from these important goals in several ways. What’s more, certain provisions in the proposed rule are in conflict with existing evidence and best practices.

Indeed, we know that solitary confinement is inherently unsafe and that those placed in such settings often suffer great physical, emotional, and psychological harm, including self-harm. The Nelson Mandela Rules (the [United Nations Standard Minimum Rules for the Treatment of Prisoners](#)) prohibit solitary confinement of more than 15 days. Yet the proposed rule would leave open the possibility that people in custody could be kept in solitary confinement for 60 days, while limiting some in custody to a mere four hours of out-of-cell time per day.

The latest annual analysis by my office, released on December 6, 2019, found that over the last decade incidents of violence and use of force in DOC facilities have risen, even as the number of people in DOC custody continues to fall. Between Fiscal Years (FYs) 2009 and 2019, the raw number of fight and assault infractions increased 79 percent, and use of force incidents tripled. It is abundantly clear that the status quo is not working. Yet the proposed rule codifies the use of solitary confinement as a disciplinary tool to address violence.

We know young people's brains are still developing well into their twenties and that they have different needs than older adults. Yet the proposed rule removes the requirement that young adults ages 18 to 21 be housed separately from older adults and provided age-appropriate programming. We also know DOC has time and again requested variances of the minimum standards of care. Yet the proposed rule gives the Department immense discretion in implementation.

We know all of this to be true, and yet here we are.

To be clear, Correction Officers deserve to feel safe, and DOC should have the ability to separate people who are posing a threat to themselves or others from the general population. But it is critical that the housing unit in which they are placed be focused on rehabilitation, not punishment. Fortunately, we have effective models of what this could look like in practice, including the State's former Merle Cooper Program and the Clinical Alternatives to Punitive Segregation program here in New York City, participants of which were shown to have lower rates of self-harm and injury than those placed in restrictive housing. These and other non-punitive, non-sanction-based alternatives across the country should be the standard for all restrictive housing in the city.

The funding needed for such therapeutic programming is surely there to be found. As it stands, and as reports by my office have consistently shown, DOC spending continues to outpace the population in custody. With the closure of the George Motchan Detention Center and removal of 16- and 17-year olds under Raise the Age reforms, FY 2019 marked the first time in recent history that DOC's budget actually declined, contracting by some \$60 million. Meanwhile, the City now projects that the jail population will be more than halved by 2026 – and if additional investments are directed toward decarceration in the intervening years, we should expect even fewer people in DOC custody. I see no reason why the City cannot provide alternatives to punitive segregation to every person who cannot be housed with the general population.

As you develop the final regulations, I urge you to review the NYC Jails Action Coalition and the #HALTsolitary Campaign's blueprint to end solitary confinement, which offers a detailed, evidence-based plan to abolish the practice here in New York City. Among other reforms, the blueprint would completely eliminate punitive segregation, ensure that the Board's minimum standards of 14 hours of out-of-cell time apply to all people in custody, and require that people placed in housing units apart from the general population have access to quality programming, including congregate activity, as a matter of course, rather than as a reward for good behavior. In

addition, the NYC Jails Action Coalition and #HALTsolitary Campaign are calling for a strong presumption against the use of restraints, which I hope is reflected in the final rule. No one in our city should ever be shackled to a desk, a practice that has persisted for too long already. The rules should impose a much faster timeline for ending the use of restraint desks than the current date of March 2022.

Finally, I implore you to keep at the forefront the voices of survivors of solitary confinement and of the friends and family members whose loved ones cannot testify themselves. They are telling you that solitary confinement does not work, that it does real and lasting damage. In sharing their experiences, they are excavating and reliving deep, painful trauma precisely so that no one has to suffer such harms again. You have the opportunity now to help ensure that no New Yorker does. I hope you seize it.

Sincerely,



Scott M. Stringer
New York City Comptroller