



**BROOKLYN  
DEFENDER  
SERVICES**

March 28, 2018

Martha King, Executive Director  
New York City Board of Correction  
1 Centre Street  
New York, NY 10007  
Via Email: [mking@boc.nyc.gov](mailto:mking@boc.nyc.gov)

Dr. Robert Cohen, Board Member  
New York City Board of Correction  
1 Centre Street  
New York, NY 1007  
Via Email: [bobby.bobbycohen@gmail.com](mailto:bobby.bobbycohen@gmail.com)

**RE: Recommendations for Rulemaking on Restrictive Housing Units**

Dear Ms. King and Dr. Cohen:

On behalf of thousands of clients who are housed in the Department of Correction (“DOC” or “the Department”) each year, Brooklyn Defender Services (“BDS”) commends the Board of Correction (“BOC” or “the Board”) for its leadership in developing policies and procedures governing restrictive housing. We applaud your ongoing effort to address serious challenges posed by DOC’s restrictive housing practices through the upcoming rulemaking.

In addition to specific concerns and suggestions outlined below, we urge the Board to require DOC to comply with existing minimum standards, particularly those concerning restrictive housing. These minimum standards were adopted following extensive research and with active participation from stakeholders. DOC’s continued practice of shirking these requirements through the use of variances undermines the Board’s authority and allows DOC to operate without mandated accountability. Relatedly, we urge the Board to limit DOC’s ability to perpetuate harmful practices and circumvent the Board’s requirements by simply changing the name of a unit or security status.

**Due Process**

*As a result of disciplinary incidents in DOC, incarcerated people are routinely subject to disciplinary sanctions—frequently in the form of restrictive housing. These sanctions are often imposed absent due process: notifications are regularly delayed or non-existent and incarcerated people typically have no meaningful opportunity to be heard or to access legal counsel. We urge the BOC to impose strict standards to ensure that individuals are able to effectively participate in the disciplinary process before sanctions are imposed.*

- Prior to placing any person in restrictive housing, DOC should be required to: (i) notify individuals in writing of all charges, the bases for those charges, and pending disciplinary consequences, including the maximum time a person may be placed in any restrictive housing unit; (ii) provide the same information to the defense attorney of record for individuals with open criminal cases; (iii) offer the individual facing disciplinary sanctions the opportunity to respond orally or in writing to the charges; and (iv) facilitate the opportunity for individual to receive assistance from counsel or other legal advocate.
- DOC should be prohibited from imposing or extending disciplinary sanctions, including restrictive housing, because an incarcerated individual exercises his or her right not to answer questions or chooses not to do so without access to legal representation.
  - The Honorable Bryanne Hamill, a member of the Board, appropriately recognized that interviews and psychosocial examination that DOC conducts often place incarcerated individuals at risk of incriminating themselves. Individuals who refuse to participate without counsel are deemed non-compliant for exercising their Fifth Amendment rights and are unable to advance to less restrictive placements.
- When identifying the justification for placing young adults in Enhanced Supervision Housing (“ESH”), or incarcerated individuals in other restrictive housing units, DOC should only consider disciplinary history during the current period of incarceration.
- Individuals housed in units without a durational cap on placements frequently languish in the most restrictive settings. Reviews are infrequent and operate as little more than a rubber stamp on DOC’s earlier decisions. This problem is exacerbated for individuals who are shuffled between housing units repeatedly. DOC should implement regular assessments by a multidisciplinary committee (CHS, civilian staff, and other knowledgeable parties) and allow incarcerated individuals to advocate for themselves during these assessments. Individuals who have been moved to a new restrictive housing placement should be provided the opportunity to continue advancing to less restrictive units despite the new housing assignment. Any adverse decisions that prevent the person from advancing should be provided in writing and include clear expectations that a person must meet to progress to a less restrictive setting.
- Collateral punishments, including non-contact visits, should be imposed on an individualized basis rather than as an automatic consequence of being placed in restrictive housing and reviewed frequently to determine whether the punishment is still warranted. At a minimum, a multidisciplinary committee should review collateral punishments each time a person is advanced to a less restrictive housing unit.

### **Healthcare, Education, and Services for Individuals with Disabilities:**

*Challenges that incarcerated people face when attempting to access medical, mental health, education, and disability services are exacerbated for people in restrictive housing units. DOC should increase programs, recordkeeping, and accountability to ensure that young people and individuals with medical needs, mental health needs, intellectual disabilities, or developmental disabilities are provided constitutionally adequate care.*

- Because restrictive housing and restraints increase the risk of harm to all individuals, Correctional Health Services (“CHS”) should be notified prior to the sanctions being imposed. If CHS opposes a sanction, the case should be escalated to the executive staff of DOC and CHS. Both DOC and CHS should track instances of sanctions imposed over the



CHS's objection and both agencies should report these instances to the Board as they occur.

- DOC should be required to provide enhanced medical and mental health services for individuals in restrictive housing units to prevent additional delays and offset the risks presented by isolation. In particular, DOC should ensure that individuals in restrictive housing have frequent contact with medical providers (including mental health staff) and access to specialty appointments and treatment (including substance use disorder treatment) as needed.
- Each time an individual currently receiving educational services, or a person under age 21, is transferred to a restrictive housing unit, DOC should be required to collaborate with Department of Education ("DOE") staff to develop a plan to ensure the person continues to receive educational services, especially those with special education needs.
- When individuals in restrictive housing units are unable to attend DOE sessions, they should be provided with a form to identify the reason for missing school (possibilities include fear, lockdown, violence, no escort available, etc.). A copy of the forms should be provided to DOE. DOC and DOE should provide the Board with compiled data from the forms on a monthly basis.

### Restraints

- The Board has already determined that DOC should comply with the ABA standards on the use of restraints. Restraints should only be used when absolutely necessary, and then in the least restrictive manner possible and following an individualized assessment.
- The Department should provide a daily report to the Board and CHS including personal identifying information, duration, and justification for each person subject to restraints. CHS should provide a monthly report to the Board detailing injuries or treatment stemming from the use of restraints.

Finally, we ask the Board to require DOC to provide additional public reporting on restrictive housing. Through DOC's website, the public can learn valuable information to determine whether a publicly-funded agency is complying with the Board's requirements and protecting and serving those individuals in its care.

We would welcome the opportunity to discuss these issues further. Please contact Brooke Menschel, Civil Rights Counsel, at (718) 254-0700 x241 or [bmenschel@bds.org](mailto:bmenschel@bds.org) if we can provide additional information or assistance. Thank you for considering our concerns related to the care and treatment of our incarcerated clients.

Sincerely,



Lisa Schreibersdorf  
Executive Director