



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

**Leticia James**

DEC 22 '14 PM 12:25  
NYC BOARD OF CORRECTION

December 19, 2014

Gordon J. Campbell, Chair  
Members of the Board  
NYC Board of Correction  
51 Chambers Street, Room 923  
New York, NY 10007

**Re: Comments on the Board of Correction Proposed Rule for Enhanced Supervision Housing**

Dear Mr. Campbell and Members of the Board:

The Public Advocate of the City of New York submits these comments to the Board's proposed rule on Enhanced Supervision Housing. While it is obvious that serious measures need to be taken to address the "culture of violence" on Rikers Island, I have serious concerns about enacting the proposed rule before putting in place broader reforms to segregation policies that have been contemplated by this Board for more than a year. In response to ample evidence that isolation has detrimental psychological effects on inmates, particularly the mentally ill,<sup>1</sup> the Board announced in September, 2013 that it would engage in a rule-making process to apply more comprehensive standards to punitive segregation. The Board now seeks to create a more restrictive environment within Rikers without incorporating the contemplated reforms. The additional restrictions in the Enhanced Supervision Housing rules should not be enacted except in the context of reforms to segregation standards.

Reforms to the Minimum Standards are necessary to address real concerns about punitive segregation. In a report written for the Board of Correction, Doctors James Gilligan and Bandy Lee asserted, "[t]he use of 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 ... From a medical/psychiatric standpoint, no one should be placed in prolonged solitary confinement, as it is inherently pathogenic—it is a form of causing mental illness."<sup>2</sup> Or, as stated by one of the inmates we interviewed: "[t]he only thing seventeen hours in solitary will do is turn you into a monster."

The proposed rule on Enhanced Supervision Housing is more restrictive, in many respects, than punitive segregation. The chart set forth below compares the Minimum

<sup>1</sup> See e.g., Kaba, Lewis, Glowa-Kollisch, Hadler, Lee, Alper, Selling, MacDonald, Solimo, Parisons and Venters, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, American Journal of Public Health 104, no. 3 (March 2014):442-447.

<sup>2</sup> James Gilligan and Bandy Lee, *Report to the New York City Board of Correction*, September 2013, p. 6.

Standards governing the General Population to those governing punitive segregation and the proposed rule on Enhanced Supervision Housing.

<b>Minimum Standard</b>	<b>General Population</b>	<b>Punitive Segregation</b>	<b>Proposed Rule</b>
§1-05 “Involuntary Lock-in”	Inmates are not confined to their cells for more than 8 hours at night and 2 hours during the day for a total of 10 hours.	This standard does not apply to those in punitive segregation, who can be locked-in for 15 hours/day and 8 hours/night for a total of 23 hours.	EHS inmates are confined to their cells for up to 9 hours/day and 8 at night for a total of 17 hours.
§1-06 “Recreation”	Inmates have the right to recreation for at least one hour per day in the recreation area, available outside 7 days/week, as well as recreation within the housing area. DOC is also required to provide equipment for recreation and outer gear. They also are required access to “recreation activities within cell corridors and tiers, dayrooms and individual housing units.”	Inmates in close custody or punitive segregation are subject to the provisions requiring at least one hour of recreation daily, but none of the other provisions concerning equipment and recreation within housing area apply.	Inmates in ESH, and those in punitive segregation or close custody, will “only” be subject to the provisions requiring one hour of recreation daily, the same as inmates in punitive segregation.
§1-07 “Religion”	Every prisoner has an “unrestricted right” to hold and exercise religious belief and to congregate for religious activities.	These rights also apply to those in punitive segregation or close custody. Provides for congregate religious activities “with appropriate security either	Inmates in ESH will have the same rights and restrictions as those in punitive segregation.

		with each other or with other prisoners.”	
§1-08 “Access to Courts and Legal Services”	Each facility must have a “properly equipped and staffed law library” open for at least five days/week and accessible to prisoners for at least two hours per day.	Access to the law library for those in punitive segregation “may be reduced or eliminated, provided that an alternative method of access to legal materials is instituted to permit effective legal research.”	The same limitations for punitive segregation would apply for ESH inmates.
§1-09 “Visiting”	Any “properly identified person” with inmate’s consent is permitted to visit the inmate. Physical contact is permitted between every inmate and any visitor, including “holding hands, holding young children, and kissing.” The right to contact visits can be denied, revoked, or limited for safety reasons but must be based on specific acts committed while in custody or based on verified information. These determinations must be made in writing and can be appealed to the Board.	No stated restriction.	Inmates assigned to ESH would only be allowed visits from an “approved list of visitors.” ESH inmates would not be permitted contact visits.
§1-11 “Correspondence”	No outgoing or incoming mail can be read or opened without a search warrant or warden’s written order providing a “reasonable	No stated restriction.	Inmates in ESH would be exempt from the requirement that they receive written notification of a determination by the

	basis” that the writing threatens safety.		warden to read or open incoming or outgoing mail.
§1-12 “Packages”	There are no restrictions on receiving and sending packages unless there is reasonable belief that limitation is needed for safety reasons.	No stated restriction.	ESH inmates are only allowed incoming packages “whose contents are purchased from and mailed to the prisoner by a company whose ordinary business includes the sale and shipping of such items” except for clothing needed for court dates.
§1-13 “Publications”	Inmates have the right to new or used publications from any source unless there is reasonable belief that there is limitation is needed for safety reasons.	No stated restriction.	The same restrictions regarding packages for ESH inmates apply to publications.

While, on paper, the proposed rule allows inmates 6 more hours out of their cells than punitive segregation we know that, in practice, the Minimum Standards governing recreational time are currently being violated in punitive segregation. The Board’s own study this past July found that on average only 9.8% of inmates in the Central Punitive Segregation Unit (CPSU) actually took part in the mandated one hour of recreation.<sup>3</sup> The study identifies understaffing, inconsistent schedules, and difficulty in “signing up” for recreation due to the officer “canvassing process” as barriers to compliance.<sup>4</sup> Many of these same factors could continue in ESH, preventing inmates from using their mere 7 hours a day of lock-out time. Moreover, without mandated access to indoor recreation areas like dayrooms and activities, it appears very likely that inmates will spend much more time confined to their cell than mandated in the rule, compounding isolation time significantly. If abused by DOC, ESH could have the potential under this rule to amount to the equivalent of permanent isolation without due process.

As the above chart demonstrates, many of the conditions in ESH are the same as in punitive segregation; in respect to correspondence and visits, they are even more restrictive. When the proposed restrictions were discussed with inmates, they said the measures were “inhumane,” and amounted to “treating [them] like animals.” One inmate already in a high security classification called it “worse than solitary” because officers

<sup>3</sup> Chai Park, *Barriers to Recreation at Rikers Island’s Central Punitive Segregation Unit*, Staff Report to the New York City Board of Correction, July 2014, p. 9.

<sup>4</sup> *Ibid.*, pp. 10-17.

would write up minor infractions to exaggerate the appearance of order and to give the impression that security is necessary because “the animal is acting up.” Regarding access to the law library, one expressed, “Without [] being in the library, you know nothing, you won’t be able to fight your case....” The method for accessing legal materials while in punitive segregation (the same as in ESH), according to these inmates, does not meet their needs. Finally, the most visceral reaction was to the elimination of contact visits—one inmate said “It’s good to talk to family, to touch them. It reminds you you’re still alive.” Another noted, “People want to touch their family—people got newborn kids, want to see their wives. I don’t think it’s right.”

Also of concern is the lack of due process protections in the proposed rule. DOC can place anyone in Enhanced Supervision Housing who “presents a significant threat to the safety and security of the facility if housed in general population housing,”<sup>5</sup> meaning that even prisoners who have never committed a violent infraction, or even been incarcerated before, could be placed in high security conditions (as confirmed in the November 18<sup>th</sup> Board Meeting). In fact, the only population who would be excluded from ESH is adolescents age 16 or 17; there is no protection for the mentally ill or for 18-year olds.

Further, the Rule provides no guidelines for how many people would be included in ESH or whether they would be able to transfer to another facility. The Board’s Classification Standard §1-02 (e) requires that the Department’s security classification system “provide mechanisms for review of prisoners placed in the most restrictive security status at intervals not to exceed four weeks for detainees and eight weeks for sentenced prisoners” and “provide for involvement of the prisoner at every stage with adequate due process.” In its present form, proposed §1-16 appears to violate this standard.

Moreover, the rule’s omission of any kind of guidelines to exclude mentally ill individuals from ESH may be in violation of city standards, state and federal law. In the Board’s Mental Health Minimum Standards, §2-06(c)(3), “physical restraint or seclusion” can only be used on an inmate after being screened by a psychiatrist. While the definition of “seclusion” is defined as confinement during “a normal lock-out period when other inmates in the housing area are given the option to lock out of their cells,”<sup>6</sup> undoubtedly ESH—with its confinement period—violates the spirit of this standard by not requiring mental health screening.<sup>7</sup>

State Correctional law further requires that “the department, in consultation with mental health clinicians, shall divert or remove inmates with serious mental illness...from segregated confinement, where such confinement could potentially be for a period in excess of thirty days, to a residential mental health treatment unit.”<sup>8</sup> Since ESH conditions drastically differ from general population, it would arguably qualify as

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<sup>5</sup> Proposed rule §1-16(a)(5)

<sup>6</sup> Mental Health Minimum Standards, §2-06(b)(1).

<sup>7</sup> It is further alarming that in Commissioner Ponte’s October 24<sup>th</sup> letter to New York State Commission of Correction Chairman Thomas Beilien, he proposes to “eliminate the DOHMH clearance requirement” for punitive segregation, part of this standard as well.

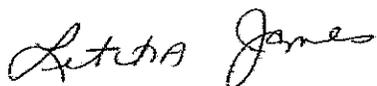
<sup>8</sup> NY Code §137(d)(i).

“segregated” confinement where the individual’s reasons for placement in ESH are a part of their mental illness.

Finally, under Title II of the Americans with Disabilities Act, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.”<sup>9</sup> <sup>10</sup> The proposed rule does not mention any provision for mental health services and support in ESH, nor does it require standard procedures to assure that the segregation of mentally ill inmates in ESH will not constitute discrimination based on their disability.

Undoubtedly, there are serious and deep-rooted problems that need to be addressed at Rikers Island but the proposed restrictions should not be imposed absent reforms to Minimum Standards governing segregation.

Sincerely,

A handwritten signature in cursive script that reads "Letitia James".

Letitia James  
Public Advocate for the City of New York

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<sup>9</sup> 42 U.S.C. §12132.

<sup>10</sup> Again, the Department of Justice has flagged this issue, stating, “The manner in which DOC uses segregation to punish adolescents and the conditions of that segregation raise constitutional concerns, as well as concerns under Title II of the Americans with Disabilities Act, which prohibits under certain circumstances isolating adolescents with mental impairments in punitive segregation due to disability-related behaviors, and thereby denying them the opportunity to participate in correctional services, programs, and activities,” (U.S. Attorney for the Southern District of New York Preet Bharara Letter to Mayor Bill de Blasio, Commissioner Joseph Ponte, and Zachary Carter, “Regarding CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island,” August 4, 2014, p. 46). The report also alludes to future investigation of the mental health services at Rikers for their compliance with CRIPA and the ADA (p. 2).