

Testimony of the Children's Defense Fund – New York
Before the New York City Board of Correction

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N E W Y O R K

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The Children's Defense Fund's (CDF) Leave No Child Behind® mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective and independent voice for all the children of America who cannot vote, lobby or speak for themselves. We pay particular attention to the needs of poor children, children of color and those with disabilities. CDF-New York's unique approach to improving conditions for children combines research, public education, policy development, community organizing and statewide advocacy activities, making us an innovating leader for New York's children, particularly in the areas of health, education, early childhood and juvenile justice.

We would like to thank the Board of Correction for this opportunity to testify on the proposed rules to amend the Department of Correction's (DOC) visitation and packages policies, as well as reduce certain due process requirements for Enhanced Supervision Housing (ESH) and allow certain exceptions to current limitations on the use of punitive segregation.

Overview

Nearly two years ago CDF-NY, along with other advocates for youth, met with the Adolescent Committee of the Board of Correction to discuss the harms of isolated confinement and propose age appropriate alternative interventions for confined youth. In December 2014, during the public hearing on the proposed rule to establish the Enhanced Supervision Housing Units (ESHU) we stated our support for limiting the harmful practice of punitive segregation for 16 and 17 year olds, and urged the Board to require the DOC to make similar restrictions for other vulnerable populations, particularly older adolescents 18-24 years old. We have been greatly encouraged by the DOC's acknowledgement of the unique needs of older adolescents and young adults and the commitment to end the practice of punitive segregation for 18 to 21 year olds by February 2016.

While we recognize that the present-day proposal to amend the Board's Minimum Standards was designed as part of the administration's multi-point plan to reduce violence, we are concerned that these rules impede upon the widely applauded Minimum Standards mutually agreed to earlier this year, and distract from and weaken efforts to utilize alternative tools to limit violence in NYC jails.

Visitation and Packages Policies

CDF-NY understands that family engagement and the maintenance of social supports is an important element of appropriate rehabilitative services. In our December testimony before the Board, we expressed our concerns with the limitations ESHU would place on contact visits and the impact of this policy on adolescents and young adults.¹ When the rule was redrafted by the Board in January, specific provisions were removed including a blanket rule that inmates in ESHU could only: have booth visits; have visits with a pre-approved list of visitors; and receive packages only if they were bought directly from a seller. Since the Department's request letter was first published in May, advocates have argued that there is no reason to revisit those rejected proposals. The Minimum Standards already contain provisions permitting the Department to look specifically at an individual or visitor and determine whether there is a security risk requiring that their visit be limited. In the time that has elapsed since May, the Department has not provided any detailed evidence that would support the proposed change to policy.

The DOC has shared that as of July 2015 (in FY15) 284 visitors were arrested across the Department: 171 for attempting to introduce drugs, 29 for weapons, 46 for tobacco, and 38 for other violations like assault or currency contraband. The DOC acknowledged that there were approximately 2,000 visitors per day, signifying that the proportion of weapons arrests to visitors is slight. In addition, members of the Board have pointed out that the overwhelming majority of

¹ Powers, B. (December 2014). Testimony of the Children's Defense Fund – New York Before the Board of Correction. Available at <http://www.cdfny.org/research-library/publications/2014/public-hearing-on-proposed.pdf>.

weapons found in jails are improvised from materials already inside. In the BOC report “Violence in New York City Jails: Slashing and Stabbing Incidents,” the BOC writes:

Most of the 2,100 weapons found in 2014 were inmate-made or improvised using materials commonly found in the jail environment, such as metal from radiators, plastic from light fixtures, and wood from broomsticks. About 79.0% were shanks, shivs, or weapons fashioned from materials that are authorized for use in the jails, including facility-authorized shaving razor blades.²

The Department has yet to clearly demonstrate a connection between either visiting or packages and instances of violence. In regard to the rule to limit packages, the Department’s written justification for the request was, “if inmates can only receive items from approved vendors, the potential for receipt of contraband concealed in such items is all but eliminated.” Advocates have not supported this rule and have noted that this measure places an unnecessary financial burden on families. In addition to the loss of income that can result when a family member is detained, families face the additional financial burden of visiting and maintaining contact, including package restrictions that do not offer the option of economizing.

Over the course of many months advocates have testified that the current visiting process is demanding, difficult and discourages visitors from returning, and have requested that the DOC create rules recognizing that visits sustain family and community ties. Instead, the proposed change has the potential to further isolate people from their community. Revising visitation policies to make them more visitor-friendly has the capacity to yield public safety benefits by helping people establish a continuum of social support from jail to community, including reducing the consequences that fall on children with parents in prison.³ Clarifying and standardizing policies, increasing collaborative efforts, developing specialized training for correction officers, and improving methods of disseminating information to visitors will help lessen some of the problems administrators normally associate with visitation.⁴

Punitive Segregation – Assaults on Staff

The Board made significant progress in January through the adoption of a 30-day maximum sentence to punitive segregation. The requested rule for exceptions to the limitations on punitive segregation would permit an inmate sentenced for an assault on staff to receive a punitive segregation sentence of up to sixty days for that single infraction. In the DOC’s request letter, published May 2015, the justification for this rule was that a higher maximum sentence would “send a clear message to staff that the Department supports them, and to inmates that there are meaningful consequences for seriously assaulting a staff member.” In the BOC report on the status of punitive segregation reform, released in May 2015, the Board recommended, instead:

Given the demonstrated negative effects on mental health associated with lengthy isolation, perhaps DOC should consider setting the maximum sentence for this offense at 30 days and scaling back sentences for all other infraction convictions.⁵

There are alternative ways to make corrections officers feel supported that do not rely on retaliation or practices that have been shown to cause harm. Subjecting people to additional days

² Park, C. (2015) Violence in New York City Jails: Slashing and Stabbing Incidents. New York, NY: The City of New York Board of Correction. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/reports/Slashings_stabbings_CRP_2015_04_27_FINAL.pdf.

³ Human Rights Watch (2002). Collateral Casualties: Children of Incarcerated Drug Offenders in New York. Retrieved from <http://hrw.org/reports/2002/usany/USA0602.pdf>.

⁴ Sturges, J., and Hardesty, K. (2005). Survey of Pennsylvania jail wardens: An examination of visitation policies within the context of ecosystem theory. *Criminal Justice Review*, 30: 141-154.

⁵ D’Inverno, A. (2015). Report on the status of punitive segregation reform. New York, NY: The City of New York Board of Correction. Retrieved from <http://www.nyc.gov/html/boc/downloads/pdf/reports/Punitive%20Segregation%20Report.050815.pdf>.

of punitive segregation is not a practice that aligns with an anti-violence agenda. A recent report issued by the New York Advisory Committee to the U.S. Commission on Civil Rights details the detrimental effects of solitary confinement on young people in New York jails and prisons.⁶ The report recommends the elimination of solitary confinement for adolescents and young people up to age 25. We encourage the Board to continue to enforce the maximum time restrictions made to the use of punitive segregation, and recommend that the Department explore alternative reactions to instances of misconduct.

Punitive Segregation – Exception to 7 day Release Period

The second requested exception to the limitations on the use of punitive segregation seeks to bypass the 7-day release period between stays in punitive segregation. The DOCs justification for this request, as written in the May 2015 request letter, was:

The current override permitted in the case of the rule establishing 60-day maximum within 6 months allows for an extension of an inmate's punitive segregation stay, and acknowledges that there will be inmates who pose sufficient threat as to require punitive segregation beyond that time frame. In keeping with that logic, the Department asks that an override option be implemented to allow inmates to remain in punitive segregation beyond 30 consecutive days based on similar safety concerns.

The 60-day override mentioned in the Minimum Standards did not override the need for a 7-day respite. The 7-day release from solitary confinement was implemented to reduce the devastating impact of 23-hour isolation, as the Board determined in January that segregation beyond 30 days was harmful. Additionally, the January amendments to the Minimum Standards sought to provide the DOC with the means to reasonably control the activities of its most violent inmates, through the creation of ESHU.⁷ In November 2014, while introducing ESHU to the Board, Commissioner Ponte said, "It will allow us the space to put our real dangerous inmates quickly to get them out of population, enhanced housing allows us the continuation of enhanced supervision for those inmates that are truly dangerous in our population."⁸ Those who would be placed on the list for ESHU included people who have committed violent acts, including serious assault or attempted assault, those who have a 'propensity for violence,' those who may have 'acted out' in the community, those who may have gotten to the point of not actually committing the violent act but have the likelihood that they may. More recently, in the emergency variance request letter dated June 2015, the DOC wrote, "ESH is not intended as a reactionary unit for the short-term placement of an inmate who has recently engaged in violent behavior, and it is deliberately not a substitute for punitive segregation."⁹ This is inconsistent with the public conversation around ESHU during the previous rulemaking process.

Further, there is no evidence to suggest that an expansion in the use of punitive segregation will result in a reduction of violence. In May 2015, the Vera Institute of Justice reported that solitary confinement does not help keep prisons and jails safer, and does not deter misbehavior and

⁶ New York Advisory Committee to the U.S. Commission on Civil Rights. (December 2014). The Solitary Confinement of Youth in New York: a Civil Rights Violation. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/Variance_Comments/RuleMaking_201412/NYSAC%20Solitary%20Confinement%20Report%20without%20Cover.pdf.

⁷ New York City Board of Correction. (2015). Notice of Adoption of Rules. New York, NY: Author. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/BOCRulesAmendment_20150113.pdf.

⁸ New York City Board of Correction, "Board of Corrections Meeting 11-18-2014." YouTube. Online Video clip, (36:10), <https://www.youtube.com/watch?v=ys1jwPyZ3C8&feature=youtu.be>.

⁹ NYCDOC (June 2015). Re: Request for Emergency Variance to BOC Minimum Standards § 1-17(d)(2) Punitive Segregation. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20150612/DOC%20Emergency%20Variance%20Request%20-%207-Day%20Out%20Punitive%20Segregation%20-%202015.06.15.pdf.

violence.¹⁰ The Department has not demonstrated any changed circumstances that would warrant the revision of very recently adopted punitive segregation rules, and the Board has raised concerns that the DOC has not disclosed what has been done to reintegrate people leaving punitive segregation or otherwise deter infractions. The DOC requested and was granted an emergency variance in July, and should be held accountable for reporting on its use before any revisions are made to the Minimum Standards.

Enhanced Supervision Housing Due Process

The proposed rule change to reduce certain due process requirements for ESH remains unclear. During the July Board meeting, the concern was raised by the Board that this rule would allow a revolving door, to which the Commissioner responded, "I think there are probably other options that we could work on that would be equally effective." This response raises questions as to the necessity of this rule, especially when considered alongside the published report of the Board which illustrates problems with existing ESH due process procedures. In the March preliminary report on DOC's implementation of Enhanced Supervision Housing, the Board concluded:

Inmates should have a better understanding of why they were selected for the unit, what restrictions they have, and what programs will be offered. Many of the inmates are confused as to why they are in ESH, especially when some of the inmates have infractions that occurred years ago. DOC's lack of communication to BOC and the inmates regarding due process hearings is particularly concerning.¹¹

In the second report on ESH, released May 2015, the Board wrote that several inmates have expressed to Board staff that they prefer being confined in punitive segregation than being housing in ESH, and "they know that a punitive segregation is for a fixed period of time; the duration of a stay in ESH is uncertain."¹²

In January, the rule for ESHU was revised to include that within 24 hours of being placed in ESHU, inmates must receive a detailed notice explaining why they are there and offering them an opportunity to look at the evidence against them so they may prepare for a due process hearing. The Board's reports indicate that the DOC needs to improve upon the existing ESH due process hearings, a finding that would support greater supervision and monitoring of ESH due process hearings, rather than a reduction in the requirements as adopted in January.

Conclusion

The Board's Minimum Standards are intended to promote safe, secure and humane jail environments, as well as ensure the non-discriminatory treatment of those residing in NYC jails. It is our hope that the Board will not support the proposed changes regarding visiting, packages, punitive segregation, and due process and instead will continue to work collaboratively to find effective solutions to the violence on Rikers Island.

Thank you for the opportunity to testify.

¹⁰ Shames, A., Wilcox, J., and Subramanian, R. (May 2015). Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives. Retrieved from http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf.

¹¹ D'Inverno, A. (2015). Preliminary report on DOC's implementation of Enhanced Supervision Housing as of March 3, 2015. New York, NY: The City of New York Board of Correction. Retrieved from <http://www.nyc.gov/html/boc/downloads/pdf/reports/ESH%20Preliminary%20report.pdf>.

¹² D'Inverno, A. (2015). Follow-up report on Enhanced Supervision Housing as of April 30, 2015. New York, NY: The City of New York Board of Correction. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/reports/ESH_2nd_report_final.pdf.