

The City University of New York

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BY EMAIL

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

Re: The Board's Proposed Rule Regarding Enhanced Supervision Housing

Dear Mr. Campbell and Board Members:

I write to urge the Board to continue the evidence-based, deliberative rule-making process begun over a year ago, rather than to adopt a newly developed restrictive housing program, "enhanced supervision housing" (ESH), as a piecemeal, stopgap measure. A perfect storm of attention from federal, state, and city stakeholders has created an opportunity for real reform of a system that is universally recognized as broken. Reaching for a "quick fix," however, risks derailing this possibility. Moreover, given the recently filed federal complaint alleging constitutional violations in the NYC Department of Correction's (DOC) system of punitive segregation,¹ it makes no sense to launch a new program that is so similar to punitive segregation.

The Board and many others have made concerted efforts over the last year to examine, document, and reform the DOC's use of solitary confinement. As you know, at its September 9, 2013 meeting, based on the recommendation of a committee established to review the DOC's use of punitive segregation, the Board embarked on a rule-making process to update regulations governing solitary confinement. This process envisioned a fact-finding phase regarding policies and practices at the Rikers Island jails, as well as best practices nationally and internationally. Individual Board members have invested energy and effort in this process, for example, procuring a grant from the Open Society Foundation to support rule-making,² and touring the San Francisco jails to learn about their policies and practices. At its March 11, 2014 meeting, the Board announced its plan to hold a public forum in June to address the effects of reducing the

¹ See United States' Proposed Complaint-In-Intervention, *Nunez v. City of New York*, No. 11-Civ.-5845 (LTS) (JCF) (S.D.N.Y. Dec. 18, 2014).

² It appears that funding is available to work on the issue of solitary confinement. In December 2014, the Vera Institute of Justice, in partnership with the U.S. Department of Justice, issued an RFP for state and local departments of corrections seeking to reduce their reliance on solitary confinement.

use of punitive segregation on the safety and security of correctional facility staff and inmates. This forum was held at CUNY Law School on June 19, 2014. On August 28, 2014, the Mayor enacted a City Council law requiring the DOC to publish quarterly reports on, *inter alia*, the number of inmates in punitive segregation, and as recently as its September 9, 2014 meeting, the Board was continuing its work on rule-making. Indeed, the DOC itself hired the management consulting firm McKinsey & Company in September to work with CUNY's Institute of State and Local Governance on developing a plan for reforms.³

Adopting the proposed ESH rule would reinforce failed policies and practices, rather than move the DOC towards the evidence-based reforms that were being developed through the Board's rule-making process. As stated in the New York City Jails Action Coalition (JAC) comment letter, dated December 18, 2014, the ESH proposal is regressive and problematic in at least three ways: (1) its failure to adequately delineate those who may be confined in ESH, (2) its failure to require sufficient due process prior to confinement in ESH, and (3) its failure to exclude all vulnerable, at-risk populations from confinement in ESH. In proposed section 1-16 ("Enhanced Supervision Housing"), subsection (a) ("*Policy*"), the proposed rule describes categories of inmates who "may be confined" in ESH. Some of these categories, like "committed a slashing or stabbing" and "committed repeated assaults," appear to mirror disciplinary violations, but without the procedural protections required for placement in punitive segregation. Others appear to be overly broad and susceptible to abuse of discretion, such as "presents a significant threat to the safety and security of the facility." Subsection (b) ("*Procedure*") appears to be wholly inadequate to support placement in restrictive housing such as ESH. There is no requirement for an impartial decision-maker; there is no time limitation for confinement in ESH; and there is no mechanism for periodic review. Finally, although the proposed rule provides that adolescents who are 16 or 17 years old may not be confined in ESH, there is no similar exclusion for those with mental illness, developmental and intellectual disabilities, and those with physical disabilities.

For all these reasons, I urge the Board to reject the proposed ESH rule, and to work towards lasting reform through a process that would enhance the legitimacy and effectiveness of revised rules that could help to achieve safety and security for both inmates and staff at BOC facilities.

Very truly yours,



Donna H. Lee
Professor of Law

³ In addition, the New York Advisory Committee to the U.S. Commission on Civil Rights recently issued a report documenting procedural and substantive deficiencies in the DOC's use of punitive segregation. See *The Solitary Confinement of Youth in New York: A Civil Rights Violation* (Dec. 2014) (focusing on youth in state prisons and city jails, but also addressing generally applicable solitary confinement policies and practices).