



NYCLU

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**Public Comment of the New York Civil Liberties Union
Before the New York City Board of Correction on Proposed Restrictive Housing Rules**

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Testimony of Nicole Triplett

The New York Civil Liberties Union (NYCLU) respectfully submits the following public comment to urge the Board of Correction to make significant changes to its proposed rules on restrictive housing to end all harms of solitary confinement and isolation.

Solitary confinement use in New York City is an affront to civil liberties, New York values, and human rights standards. People are still dying in solitary,¹ despite existing restrictions like the 30-day time limit on punitive segregation, the ban on punitive segregation for juveniles (16 and 17-year-olds) and for young adults (18 to 21-year-olds), and the ban on punitive segregation for low-level infractions.² We are heartened that the Board acknowledges the irreparable harms the Department’s use of solitary confinement continues to cause people—despite the Board’s years-long efforts to restrict its use. However, the proposed rules still fail to close the many loopholes the Department continues to exploit to deny people due process, to subject individuals to months and years of isolation, and to deprive people of meaningful access to medical care.

For years, the Department has circumvented compliance with the restrictions that this Board has adopted through either variance requests or the use of alternative forms of isolation.³ The rules promulgated in 2015—although intended as a beneficial first step—permitted gross inconsistencies in enforcement and allowed abusive solitary practices to linger: abuses that the latest proposed rules still fail to prevent. In response to the Board’s regulation of “solitary confinement,” the Department has renamed forms of isolation to avoid restrictions—frustrating

¹ Michael Gold and Sean Piccoli, *After a Transgender Woman’s Death at Rikers, Calls for Justice and Answers*, N.Y. Times (Jun 11, 2019), <https://www.nytimes.com/2019/06/11/nyregion/layleen-polanco-xtravaganza-death-rikers-island.html>.

² NYC Board of Correction Minimum Standards, § 1-17, [http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/title40boardofcorrection/chapter1correctionalfacilities?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork_ny\\$anc=JD_T40C001](http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/title40boardofcorrection/chapter1correctionalfacilities?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$anc=JD_T40C001).

³ NYC Bd. of Corr’n Variances, <https://www1.nyc.gov/site/boc/jail-regulations/variances.page>.

this Board’s efforts at reform, like “administrative segregation,” “enhanced supervision housing” and “separation status.”

The Board has a duty to ensure that individuals in the custody of the Department of Correction are treated humanely. To allow current prolonged isolation practices to continue violates this duty regardless of the label that the Department chooses to apply to them. Therefore, the Board should issue holistic regulations that apply to all forms of isolation to ensure actual reform rather than another round of restrictions limited to semantic labels. Otherwise, the proposed rules would continue to permit the Department to circumvent the Board’s attempts to curtail the abuses of punitive isolation in two ways.

First, the proposed rules continue to allow people to be subject to isolation for months, if not years. Although the rules impose a 15-day time limit on punitive segregation, there are no time limits on other forms of isolation that are increasingly used, like Enhanced Supervision Housing (“ESH”) and Separation Status Housing. Under the proposed rules, people in ESH can still be subject to isolation for years at a time, often facing similar harms to those experienced by people in punitive segregation. We’ve already seen the problems with the Board’s response to the variance request for placement of 19- to 21-year-olds in ESH. Since the ESH ban for young adults was adopted, the Department has continuously requested and received variances from the Board, which has waived its compliance with this requirement at least five times. Nearly all young adults in ESH have no-contact visit restrictions imposed for the duration of their time in Department custody, and very few young adults have progressed to less restrictive housing assignments. Despite the Department’s steps to monitor ESH, in practice, most young adults in ESH are spending nearly all day locked in their cells rather than the minimum 7 hours out of cell provided under the ESH Standards. Individuals in Separation Status are subject to nearly 24 hours of isolation with limited protections and standards regulating its use. Since July 19 of this year, 35 individuals have been placed in a solitary holding cell that has been designated as “Separation Status Housing.”⁴

The proposed rules also allow the Department to issue sentences for punitive segregation to individuals accused of assaulting staff and causing injury or for a security override—and those sentences can reach lengths that are four times the 15-day time limit. For some people, this exception can easily swallow up the underlying 15-day restriction because it does not require alternatives to isolation to be used.

The second inconsistency is that the proposed rules would continue to allow the Department to isolate individuals whom the Board has deemed most vulnerable to the harms of solitary confinement. The proposed rules only exclude vulnerable populations from punitive segregation. The rules would still allow the Department to continue to place pregnant persons, persons within eight (8) weeks of pregnancy outcome, persons caring for a child in the Department

⁴ NYC Bd. of Corr’n, <https://www1.nyc.gov/site/boc/news/separation-status.page> (last checked Jan. 30, 2020).

nursery program, and people aged 55 and older, in other forms of isolation like ESH. Although the Board has restricted the use of ESH for young adults, the Department continues to use ESH for young adults.

The Board must take this opportunity to fully address the abusive practices of solitary and lay as a foundation a culture bent toward rehabilitation and restorative justice as opposed to one toward punishment and dehumanization. Given the well documented horrors and harms of solitary confinement, we propose the Board adopt the following changes, at minimum:

1. Eliminate the use of punitive segregation and impose a 15-day limit on all other forms of isolation, including ESH;
2. Ensure that everyone receives the same minimum out-of-cell time;
3. Eliminate the 2-year delay on banning the indiscriminate use of mechanical chair restraints;
4. Ban special populations (pregnant women and those in postpartum recovery, individuals 55 and older, individuals 21 and younger, and those with certain mental health issues) from other forms of isolation; and
5. Prevent DOC from creating new restrictive housing units without informing the Board.

The city cannot afford to once again grant the DOC leeway to continue to avoid restrictions on solitary confinement. The proposed rules may improve conditions for a number of individuals. But in the long run, the rules as drafted will continue to thwart more meaningful steps to address all the harms of solitary and isolation. We must work toward ending solitary confinement altogether and significantly limit our use of isolation. The culture of violence and isolation that has long caused a vicious succession of loss of life and irreparable harm to individuals' physical and psychological health for generations must end. The NYCLU urges the Board to strengthen its proposed rules and make the necessary steps toward eliminating the inconsistencies in the restrictions and end solitary confinement altogether in jails.