

January 31, 2020

Jacqueline Sherman, Interim Chair  
Members of the Board  
NYC Board of Correction  
1 Centre Street, Room 2213  
New York, NY 10007

**Re: Restrictive Housing Rulemaking**

Dear Interim Chair Sherman and Members of the Board:

The following individuals and organizations endorse the attached "[Blueprint for Ending Solitary Confinement in NYC Jails](#)." We urge the Board to finally and fully eliminate solitary confinement.

**Organizational Endorsements**

A Little Piece of Light  
Amnesty International Brooklyn Local Group 27  
Amnesty International USA  
Anti Torture International Council  
Black and Pink NYC  
Brooklyn Community Bail Fund  
Center for Community Alternatives  
Center for Disability Rights  
Children's Defense Fund-NY  
Defy Expectations Filmworks  
Durga Foundation  
Elsie K. Powell House, Inc.  
First Presbyterian Church of Brooklyn  
Gangstas Making Astronomical Community Changes Inc. (G-MACC)  
Granny Peace Brigade  
Greater New York Labor Religion Coalition  
Hour Children  
Housing Works  
Incarcerated Nation Network  
Indivisible Brooklyn

Jim Owles Liberal Democratic Club  
Just Faith LLC | Church of the Covenant  
JustLeadershipUSA  
Katal Center for Health, Equity, and Justice  
Legal Action Center  
Middle Collegiate Church  
Mott Haven Reformed Church & Children's Haven: A Place of Healing & Hope, Inc.  
NAMI Huntington  
NAMI Queens/Nassau  
National Action Network NYC Chapter Second Chance Committee  
National Religious Campaign Against Torture  
New York Association of Psychiatric Rehabilitation Services  
New York City Jericho Movement  
New York County Defender Services  
New York Lawyers for the Public Interest  
NYC Jails Action Coalition  
NYC Jericho Movement  
NYCAIC #HALTsolitary Campaign  
ON THE COUNT Radio  
Parole Preparation Project  
Presbytery of New York City  
Prisoners Are People Too, Inc.  
Public Interest Resource Center, Fordham Law School  
Release Aging People in Prison/RAPP  
Religious Society of Friends, New York Yearly Meeting  
Robert F. Kennedy Human Rights  
Scientist Action and Advocacy Network (ScAAN)  
ShanDar Prison Reform  
Social Justice Action of St. Boniface  
Social Workers Against Solitary Confinement  
T'ruah: The Rabbinic Call for Human Rights  
The Bronx Defenders  
The Bronx Freedom Fund

The Concord Baptist Church of Christ  
The Osborne Association  
The P.A.S.S. A Positive Aggression Support System  
Uptown Progressive Action  
Urban Justice Center  
Urban Youth Alliance International, Inc./BronxConnect  
Visionary V  
Witness to Mass Incarceration  
Women's Community Justice Association  
Youth Represent

**Individual Endorsements**

Alexandra Smith  
Elizabeth York  
Jamie Uhrig  
Jane Ehlke  
Kim Eliano  
Marti Zlatchin, PhD  
Maira Meltzer-Cohen, Attorney at Law  
New York City Comptroller Scott M. Stringer  
New York City Public Advocate Jumaane Williams  
NYC Council Speaker Corey Johnson  
NYC Councilmember Antonio Reynoso  
NYC Councilmember Bill Perkins  
NYC Councilmember Brad Lander  
NYC Councilmember Carlina Rivera  
NYC Councilmember Helen Rosenthal  
New York State Senator Julia Salazar  
Pamela Drayton  
Rev Amanda Hambrick Ashcraft  
Sarah Mullins  
Yan Snead

The NYC Jails Action Coalition & the #HALTsolitary Campaign present

# A Blueprint for Ending Solitary Confinement in NYC Jails

October 2019

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## Introduction

This document contains a blueprint for how New York City can and must end solitary confinement in all its forms throughout its jails. This blueprint reflects the experiences and expertise of people who have endured solitary, family members of people incarcerated, mental health, legal, and human rights experts, and other members of the Jails Action Coalition and the #HALTsolitary campaign. It is written in the context of growing calls to fully ban solitary confinement (including from the Progressive Caucus and Women’s Caucus of the New York City Council, as well as leading U.S. Presidential candidates). As such, the overall purpose of this blueprint is to provide key mechanisms for how New York City—the Mayor, City Council, Board of Correction, Department of Corrections—can effectuate the complete elimination of solitary confinement in the city jails, and instead promote alternatives that take an opposite approach to the isolation and deprivation of solitary and are actually effective for promoting safety and reducing violence, both inside jails and when people return to the outside community.

Particularly in the immediate wake of [Layleen Polanco’s tragic and preventable death](#), and in recognition of the countless other people who have [lost their lives](#) or suffered devastating psychological and physical harm, NYC must take immediate action to finally and fully end solitary confinement. This blueprint shows the way to reach that goal, drawing on proven, evidence-based approaches that are more humane, effective, and safe. Specifically, NYC must:

- 1. Ensure that the Board of Correction minimum standards for out-of-cell time apply to all people in city jails (other than in specified emergencies), by removing exceptions to those standards for punitive segregation and Enhanced Supervision Housing (ESH) units;**
- 2. Create minimum standards for emergency individual lock-ins and emergency lockdowns;**
- 3. End punitive segregation and make ESH and any other alternative units actually about safety, rehabilitation, and prevention of violence;**
- 4. Adopt specific mechanisms and time limits for getting out of ESH and any other alternatives units; and**
- 5. Dramatically limit use of restraints with a strong presumption against their use.**

While the details of the Blueprint are written specifically for New York City, its overall framework and concepts can apply anywhere. No person should be in solitary in pretrial detention, in jails anywhere, or for that matter in prisons anywhere in New York or across the country. We hope that survivors of solitary, impacted family members, and advocates across the country can use the blueprint to end this torture everywhere.

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## The Urgent Need to End Solitary

Solitary confinement is torture. It has long been demonstrated to cause devastating physical, psychological, and emotional harm. The sensory deprivation, lack of normal human interaction, and extreme idleness can lead to intense suffering and severe damage. A [study of NYC jails](#) found people in solitary were nearly seven times more likely to harm themselves and more than six times more likely to commit potentially fatal self-harm. A [new 2019 study](#) of hundreds of thousands of people released from prison over a 15 year period found that people who had spent time in solitary were significantly more likely to both die (including by suicide, homicide, and overdose) and be reincarcerated after release, with the risks increasing as the time in solitary increased. We know that some people spending even a short number of days in solitary can lead to tragic consequences and even death. As one of countless horrific examples, [Bradley Ballard](#) spent only six days in solitary, endured unconscionable torture and neglect while there, and died as a result. As early as 2011, the [United Nations Special Rapporteur on Torture](#) called for the complete abolition of solitary as a means of punishment or discipline and the complete abolition of solitary for, among others, all people in pretrial detention (as the vast majority of people in New York City's jails are held), because it amounts to torture.

Solitary is disproportionately inflicted on Black and Latinx people, as well as on young people and people with mental health needs. Research by the New York City Department of Health and Mental Hygiene further found that Black and Latinx people incarcerated on Rikers Island or in the City's borough-based jails were [less likely than their white counterparts to receive appropriate mental health diagnoses and more likely to experience solitary confinement](#).

Solitary is also disproportionately inflicted on queer, transgender and gender non-conforming people. A [national survey](#) of incarcerated LGBTQIA2S+ people conducted by Black & Pink found 85% of respondents had been in solitary confinement. Black, Latinx, and Native American/American Indian people were twice as likely as white people to be in solitary at the time of the survey.

Solitary is counterproductive to the purported safety justifications sometimes given for its use, as it can cause violence and make prisons, jails, and outside communities [less safe](#). Moreover, replacing solitary with more effective alternatives will ultimately [save money](#), while more importantly saving human lives and human potential.

After struggling to treat patients who are suffering the torture of solitary confinement, Dr. Homer Venters, the former head of Correctional Health Services for NYC jails, has said solitary units [should never have been built](#). This blueprint presents New York City with a way to *unbuild* these torture chambers.

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## The Blueprint for Ending Solitary in NYC Jails

### 1. Ensure that the Board of Correction minimum standards for out-of-cell time apply to all people in city jails (other than in emergencies), by removing exceptions to those standards for punitive segregation and ESH units

Other than in emergency situations (discussed below), the Board of Corrections minimum standards for out-of-cell time should apply to all people in the city jails. Section 1-05 of the Board's current standards require that no person should be involuntarily locked in other than for eight hours at night and two hours during the day. The current standards allow exceptions to those requirements for people in punitive segregation and in Enhanced Supervision Housing (ESH) units. Those exceptions should be removed and the basic minimum standards generally should apply to everyone in city jails, so that all people in the jails have a mandatory allowance of 14 hours out of cell per day. (The medical exception for contagious disease units can remain.)

The reasons for eliminating these exceptions is both that solitary confinement is torture that causes devastating harm, and that limiting out-of-cell time does not in any way contribute to greater safety or reductions in violence. As discussed in more detail below, units that allow for separation from the general jail population without any restrictions on out-of-cell time have proven more effective at reducing violence and promoting safety. The [Clinical Alternatives to Punitive Segregation \(CAPS\)](#) unit on Rikers Island and the former Merle Cooper program in New York State prisons are two positive and successful examples of units designed to separate people from the general population but not restrict the amount of out-of-cell time provided, yielding better outcomes.

### 2. Create minimum standards for emergency individual lock-ins and emergency lockdowns

In order to address emergency situations that may arise, there should be the allowance, if necessary, for a) emergency short-term mandatory lock-in for individuals, as well as b) emergency short-term lockdowns of targeted portions of the jails, with specific and limited ways in which each can be implemented as follows.

#### *a. Emergency individual lock-in*

Drawing from the rules for room confinement in [NYC secure detention youth facilities](#) and from [other model](#) youth secure detention policies, such as those adopted in [Colorado](#), there should only be allowance for individuals to be involuntarily locked in for immediate de-escalation purposes, in emergency situations when absolutely necessary, as a last resort, when other mechanisms have failed, but never as punishment, and for the shortest duration possible, measured in hours (rather than days, weeks, months, or years). The purposes of these lock-ins are not punishment or isolation but instead to immediately and temporarily separate people to prevent immediate physical harm, provide brief time and

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space for de-escalation and cooling down, and quickly restore people back to the general jail population or if necessary to move them to another housing area to avoid further harm or conflict or to ESH to address underlying issues that are resulting in negative conduct.

- The presumption should be that such lock-ins should end within two hours, with the possibility that they could be extended for a second two hours if absolutely necessary.
- If the lock-in time is approaching four hours, the chief of department should be required to be involved to work toward ending the emergency lock-in.
- Because of the particularly devastating harm and risk of isolation to young people and elderly people, there should be a maximum for any lock-in of six hours for these groups.
- For all other people, because isolation can cause devastating harm to all people, there should be a maximum lock-in time of eight hours.
- In addition, to ensure that people are not repeatedly locked-in day after day (and thereby creating another form of extended solitary confinement), there should be a total time limit of eight hours in any two-day period and a total limit of 20 hours in any seven-day period.
- In extreme circumstances where the department believes it absolutely necessary to exceed the multiple-day time periods, the department must obtain a court order permitting a lock-in that exceeds the limit. For each day that the department seeks to extend the lock-in, it must obtain a new court order.
- In order to de-escalate the situation as soon as possible and to avoid people decompensating further or even harming themselves while isolated for even relatively shorter periods of time, staff should check on and check in with any person who is locked in at least every 15 minutes and mental health staff in particular should check on a person within an hour, and at least once every additional hour a person is in lock-in.

*b. Emergency Lock Down*

In situations where it is absolutely necessary to either investigate or de-escalate an emergency situation, the city jails should only be able to utilize lockdown procedures in as narrowly tailored ways and areas as possible. These lockdowns should never be used as punishment and should be used as a last resort, in response to clear violence or imminent threats of violence, when more limited interventions would not address the need (including individual lock-in above), and should be limited to as few people and as few jail areas as necessary and limited to the minimum time necessary. Currently, the department utilizes lockdowns [far too frequently](#): thousands of lockdowns per year, averaging over five lockdowns *per day*, with an average length of time of 11 hours but sometimes encompassing multiple days. The emergency lockdown procedures should allow lockdowns to be used only when absolutely necessary and should be also regulating lockdowns to ensure they are not used for punishment, administrative ease, or other reasons that are



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not intended to prevent imminent and serious harm. Lockdowns should also not be allowed to be a substitute for lock-ins (thereby holding more people in isolated conditions than necessary), a way to get around the time limits for lock-ins, another form of punitive segregation or solitary confinement, nor as any other way around the Board's other minimum standards. As such, the time limits on lockdowns, in particular, and other conditions, should mirror the limits on lock-ins.

- As with individual lock-ins, the presumption should be that any lockdown end within two hours, with the possibility that it could be extended for a second two hours if absolutely necessary. If the lockdown time is approaching four hours, the chief of department should be alerted to work toward ending the emergency lockdown. There should be a maximum time of six hours of lockdown in a single day, 8 hours total over two days, and 20 hours total over 7 days, unless a court order is obtained in any instance in which the department determines it is absolutely necessary to exceed these limits.
- Lockdowns should only be allowed—again if they are necessary for investigation or de-escalation and individual lock-in of the people involved would not achieve those purposes—in extremely serious situations, particularly instances where people caused or attempted to cause serious physical injury or death or an imminent substantiated threat of such violence or death, compelled or attempted to compel sexual acts by force or threats of force, led/organized/incited/attempted to cause a riot or violent insurrection, procured deadly weapons or other comparably dangerous contraband that poses a threat, escaped or attempted an escape, or other conduct of the same magnitude of harm.
- The scope of the lockdown—including which people and which physical areas of the jail are affected—should be limited to what is absolutely necessary to effectuate the purpose of the lockdown. *(From [BOC Lockdown report recommendations](#))*
- The department must ensure timely medical and mental health care—particularly for emergency or time-urgent medical and mental health care—during any lockdowns, and must provide for other delayed or missed services as quickly as possible following a lockdown. *(From [BOC Lockdown report recommendations](#))*
- The department must publicly report all lockdowns, including providing immediate information about any restrictions on visits or phone calls so that family members know, as well as report the reasons for any lockdown, which areas are affected and why, what medical and mental health services are affected, what programs are affected, activities taken during the lockdown to resolve/address the reasons for the lockdown, and the number of staff diverted for the lockdown. *(From [BOC Lockdown report recommendations](#))*

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### **3. End punitive segregation and make ESH and any other alternative units actually about safety, rehabilitation, and prevention of violence**

New York City should (a) end punitive segregation entirely and (b) ensure that Enhanced Supervision Housing (ESH) and (c) any other alternative units in the jails are actually about safety, rehabilitation, and prevention of violence. Punitive segregation causes devastating harm and actually increases violence rather than reducing violence or promoting safety. As renowned mental health jail administrator and expert Dr. James Gilligan has [written](#), "far from preventing violence, *punishment is the most powerful stimulus to violent behavior that we have yet discovered*" (emphasis in original). If people are engaging in conduct that poses a real and serious threat to others, then they can be separated from the general jail population. But if the City is truly serious about safety and violence reduction/prevention, then that separation should be the opposite of isolation and punishment. It should involve opportunities for more intensive human engagement and programs to address the reasons for the separation and prevent future violence or harm.

The City and the Board have many powerful examples to draw from in creating effective programs that are the opposite of isolation and actually are effective at promoting safety and reducing harm. One of the strongest examples and what the proposed policies herein attempt to use as a key model is the [Resolve to Stop the Violence Project \(RSVP\)](#) in San Francisco [jails](#). This well-studied and documented project immerses residents in an intensive program including most of the day out-of-cell, group discussions, classes, counseling, and meetings with victims of violence. During the time period reported on, RSVP resulted in a 25-fold reduction in violent incidents, five-fold reduction in rearrests for violent crimes, six-fold reduction in jail time, and cost savings. As a replacement for solitary confinement, if it is serious about increasing safety and reducing violence, New York City should implement a program akin to RSVP in the city jails.

There are also effective examples to draw from right in New York City and New York State itself. The [Clinical Alternatives to Punitive Segregation \(CAPS\)](#) unit in New York City is a much more program-intensive, treatment supported, and empowerment-based alternative to solitary confinement that does not restrict the amount of out-of-cell time provided, utilizes de-escalation of difficult situations, and has greatly reduced the amount of violence and self-harm.

The Merle Cooper program in New York State prisons—now closed purportedly due to resource constraints—also provided a successful program-intensive, empowerment-based unit that involved complete separation from the rest of the prison population but no isolation of individual people. For people deemed at high risk of recidivism, the Merle Cooper program provided group sessions, intensive programming, peer-led initiatives, increased autonomy and responsibility, most of the day out of cell, and the ability to earn unlocked cells. Even though Clinton Correctional Facility is considered one of the most violent prisons in NY, while it was open (1977 to 2013) Merle Cooper had high levels of

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reported safety, and near universal praise from correction officers, participants, and administrators.

Many [European](#) countries [rarely utilize solitary confinement](#), and if used only for very short periods, and instead have an intense focus on programming, connections to family and community, granting people autonomy and responsibility, creating conditions akin to life outside of incarceration, and preparation for returning home.

Again, if New York City actually wants to reduce violence and improve safety, it should stop using a method that is not only inhumane but counterproductive to those goals - solitary confinement - and instead utilize proven evidence-based mechanisms.

- ESH and any other units should have comparable congregate human interaction, comparable amenities (TVs, etc.), and comparable congregate programming as in the general jail population, in settings that are conducive to congregate interactions and congregate programming with at least several people.
- These units should also have additional/alternative quality programming aimed at addressing the reasons for separation, including therapeutic/anti-violence programming, and restorative justice and [cure violence](#) health programs (BOC recommended [here](#) and [here](#)). The RSVP program mentioned above should serve as a model.
- The department must also ensure opportunities for mental health and substance use treatment (BOC recommended [here](#) and [here](#)).
- In total, people in ESH or any other alternative units should have access to at least seven hours of out-of-cell congregate programming per day (with, as described above total out-of-cell time of 14 hours in line with the Board's minimum standards for all people in the jails).
- There should be additional meaningful, substantial, and repeated training for staff working in ESH and other alternative units on topics including conflict resolution, mediation, de-escalation, restorative justice, and use of force ([BOC recs](#)).
- De-escalation and meaningful use of positive incentives, rather than the use of disciplinary sanctions, must be the primary methods for addressing issues that arise in the general jail population and in alternative units.
- The current criteria for placement into ESH should be narrowed and the department should no longer be able to utilize past conduct to justify placement in ESH or another alternative unit (currently the department can justify placement based on conduct that occurred five years prior if it occurred while the person was incarcerated anywhere, or two years prior if it occurred outside of incarceration). People should only be separated if actually necessary to address *current* serious harm/threats of harm and only as a response to a current act (as opposed to something a person committed in a different jail or prison, on a different time incarcerated, or while still in the outside community).

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- Before someone is placed in ESH or any other alternative units, the current procedural minimum standards should be improved, including that there should be a hearing with a *neutral decision-maker*, access to legal representation by a lawyer/paralegal/other incarcerated person, increased burden of proof on the department, and opportunities to appeal any placement decision to the Board with similar procedures as used for appeals to the Board in other contexts.
  - The Board's minimum standards should specify that there should not be other restrictive housing units apart from ESH (which itself should not be restrictive) and that any units that are in any way more restrictive than the general jail population should comport at least to all of the standards for ESH (in terms of programming, criteria, procedures, etc.).

#### **4. Adopt specific mechanisms and time limits for getting out of ESH and any other alternative units**

To help ensure that ESH and any other alternative units are as effective as they can be, that people are not warehoused in these units, and that these units do not become punitive, there must be clear mechanisms and processes for people to be discharged from these units, including completing programming, release at periodic reviews, and mandatory time limits. The mechanisms outlined in the [HALT Solitary Confinement Act](#) can serve as a basic framework to draw from and apply in the context of a jail setting, where people are held for shorter periods and primarily held pre-trial and presumed innocent (and others are there for low-level misdemeanor convictions).

- Upon entering ESH or any alternative unit, there should be an individual needs assessment and realistic and appropriate (in terms of a person's abilities and needs) program plan established, including a plan for discharge from the unit. If the person significantly completes the plan, they should be discharged.
- The periodic review process needs to be strengthened. Periodic reviews should take place at least every 15 days (rather than the current 45). A multidisciplinary team should be carrying out the reviews, including program staff and treatment staff, and should discharge a person if deemed appropriate for discharge. If not discharged, the person should be told what they need to do to be discharged and upon completion should be discharged.
- There should be a total maximum time limit of four months in ESH or alternative units.
- There should be a BOC appeals process available for decisions related to ESH or alternative unit placement and denial of discharge akin to other BOC appeals processes for other purposes.

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## 5. Dramatically limit use of restraints with a strong presumption against their use

There should be a strong presumption against the use of restraints, particularly during congregate activities and programming, with limited exceptions based only on individualized determinations of imminent risk of harm (drawing from [ABA standards](#) and [Mandela Rules](#)).

- The default should be that people are not placed in restraints, and that they are only used as a last resort if there is an individualized determination that they are absolutely necessary to prevent imminent and serious harm.
- The department must use only the least restrictive restraints necessary.
- If restraints are going to be used on more than one immediate occasion, then there needs to at least be a due process hearing with procedural protections and the possibility to appeal to the Board. Any decision to continue to use restraints should be renewed at least daily. Work should be done to de-escalate to move toward removing restraints, and a new full due process hearing should be held at least weekly.
- In order to avoid incidents where a restrained person could potentially be attacked or harmed by an unrestrained person, there should generally be a prohibition on commingling people in restraints and people not in restraints, which in practice could mean that congregate programming could take place among unrestrained people and separately among restrained people.

## Conclusion

As a city that aspires to be one of the most progressive in the country, New York City must lead the way in ending this cruel, inhumane, and counterproductive practice. At the same time, we recognize that ending solitary confinement is only one step. Fundamentally shifting away from isolation and deprivation—and from the entire racist and destructive punishment paradigm—is necessary to achieve safety and justice. We also believe that abolishing solitary confinement—often called a jail within a jail, or a prison within a prison—and replacing it with positive human engagement and supportive programming can light a path toward ending incarceration. Now is the time to act.