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December 20, 2019

Submitted via rules.cityofnewyork.us

Board of Correction
City of New York
Attn: Michele M. Ovesey
1 Centre Street, Room 2213
New York, NY 10013

Re: Amendment of Minimum Standards Concerning Restrictive Housing

**All persons deprived of their liberty shall be treated with humanity and with respect
for the inherent dignity of the human person.**

— *International Covenant on Civil and Political Rights*¹

Robert F. Kennedy Human Rights submits this comment to the Board of Correction's (Board) regarding the Board's proposed new and amended rules concerning restrictive housing in New York City's correctional facilities.

Robert F. Kennedy Human Rights is an international human rights organization dedicated to realizing Robert Kennedy's vision of a more just and peaceful world, inclusive of advocating for an end to the United States' over reliance on incarceration and the elimination of unjust pretrial detention policies that disproportionately affect the poor and communities of color. As this Board prepares to revise the rules on restrictive housing, we submit this comment in solidarity with survivors of solitary and their families, community activists, faith leaders, and elected officials. We urge you to completely abolish punitive segregation (PSEG) and prolonged solitary confinement in New York City jails by adopting the Blueprint put forward by the NYC Jails Action Coalition and the #HALTsolitary Campaign.

¹ International Covenant on Civil and Political Rights art. 10(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

The Board of Correction bears the responsibility of ensuring that all people in Department of Corrections' (DOC) custody are treated with dignity and respect. Punitive and prolonged solitary confinement are cruel, ineffective practices that harm the immediate and long-term wellbeing of incarcerated individuals, corrections staff, and communities, at great cost to New York City.² In many circumstances, solitary confinement constitutes cruel, inhuman, or degrading treatment, and can rise to the level of torture, in violation of international human rights law and the tenets of basic human dignity.

The absolute prohibition on torture and “cruel, inhuman, or degrading treatment or punishment” (CIDT) is enshrined in a number of regional and international human rights treaties.³ Under international law, torture is defined as the intentional infliction of severe physical or mental pain or suffering upon a person by a public official for the purpose of, among other things, punishment or intimidation.⁴ Importantly, an act that falls short of torture may be still amount to CIDT and therefore also result in a violation of human rights law.⁵

The devastating, often long-lasting harm caused by physical and social isolation is well-documented and goes beyond any pain or suffering “inherent in or incidental to” incarceration.⁶ Specifically, the severe mental pain or suffering caused by solitary confinement amounts to torture or cruel, inhuman or degrading treatment when used:

- as a punishment;
- indefinitely or for a prolonged period; or

² Housing an individual in solitary confinement costs an estimated two to three times more than housing them in the general population. See American Civil Liberties Union [ACLU], *Paying the Price for Solitary Confinement* (2015), <https://www.prisonlegalnews.org/media/publications/Paying%20the%20Price%20for%20Solitary%20Confinement.%20ACLU%20Factsheet,%202015.pdf>.

³ ICCPR art. 7; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment arts. 1, 16, Dec. 16, 1984, 1465 U.N.T.S. 85 [hereinafter CAT]. The prohibition is non-derogable “even in situations of public emergency” and “no justification or extenuating circumstances may be invoked to excuse [its] violation.” ICCPR art. 4(2); Human Rights Comm., 44th Sess., General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), ¶ 3, <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/6924291970754969c12563ed004c8ae5?Opendocument>.

⁴ CAT art. 1; Manfred Nowak (Special Rapporteur on the Question of Torture), Civil and Political Rights Including the Questions of Torture and Detention, ¶ 35, U.N. Doc. E/CN.4/2006/6 (Dec. 23, 2005).

⁵ Manfred Nowak (Special Rapporteur on the Question of Torture), Civil and Political Rights Including the Questions of Torture and Detention, ¶ 35, U.N. Doc. E/CN.4/2006/6 (Dec. 23, 2005).

⁶ CAT art. 1.

- for persons with mental disabilities or juveniles.⁷

While an improvement over current practice, the Board's proposed rule changes fail to eliminate solitary confinement in all of these circumstances and would result in ongoing human rights violations if implemented in its current form.

According to the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, “[s]olitary confinement, when used for the purpose of punishment, cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behaviour.”⁸ Other international human rights bodies such as the U.N. Human Rights Committee have expressed concern with disciplinary or administrative housing conditions that rely on isolation and “strict regimentation in a depersonalized environment” and have warned that such treatment is incompatible with the “reformation and social rehabilitation” that should be the goals of any correctional facility.⁹ In line with this principle, the Blueprint for Ending Solitary Confinement in NYC Jails proposed by NYC Jails Action Coalition and the #HALTsolitary Campaign (Blueprint), calls for the elimination of all forms of punitive segregation in New York City jails and strictly limits the use of any other form of segregation, such as Enhanced Supervision Housing (ESH).¹⁰ However, the Board's proposed rule continues the practice of keeping individuals “separate and apart from the general population” in “punitive segregation” (PSEG I and PSEG II) with limited out-of-cell time as a form of punishment for some disciplinary infractions and does not sufficiently protect against the significant isolative harms of ESH.

Additionally, the U.N. Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules, explicitly prohibit indefinite and prolonged solitary

⁷ U.N.G.A., 66th Sess., Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Punishment, ¶¶ 72, 76–78, 81, 84, 86, 88, U.N. Doc. A/66/268 (Aug. 5, 2011), <https://undocs.org/A/66/268>; G.A. Res. 70/175: United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rules 43, 45(2), U.N. Doc. A/RES/70/175, (Jan. 8, 2016), <https://undocs.org/A/RES/70/175>. See also, Human Rights Comm., 44th Sess., General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), ¶ 6, <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/6924291970754969c12563ed004c8ae5?Opendocument>.

⁸ U.N.G.A., 66th Sess., Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Punishment, ¶ 81, U.N. Doc. A/66/268 (Aug. 5, 2011), <https://undocs.org/A/66/268>.

⁹ Human Rights Comm., 87th Sess., Concluding Observations of the Human Rights Committee: United States of America, ¶ 32, U.N. Doc. CCPR/C/USA/CO/3/Rev. 1 (Dec. 18, 2006), <http://www1.umn.edu/humanrts/usdocs/hruscomments2.html>.

¹⁰ NYC Jails Action Coalition & #HALTsolitary Campaign, *A Blueprint for Ending Solitary Confinement in NYC Jails* (October 2019), <http://nycaic.org/wp-content/uploads/2019/10/Blueprint-for-Ending-Solitary-Confinement-in-NYC-Oct-2019.pdf>.

confinement - defining prolonged solitary confinement as anything longer than 15 days.¹¹ While the U.N. Special Rapporteur noted that there is an “arbitrary nature” in “establish[ing] a moment in time which an already harmful regime becomes prolonged and therefore unacceptably painful,” he too concluded that 15 days should mark the threshold when solitary confinement rises to the level of CIDT or torture “because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible.”¹² The Blueprint fully adheres to this universally accepted standard but carve-outs and exceptions in the Board’s proposed rule, including a provision that would allow for persons to be held in solitary confinement for 60 days (four times longer than the Mandela Rules allow), remain out of step with international law and in violation of basic human rights.

When considering the elimination of punitive segregation and prolonged solitary confinement, the Board should give particular attention to the fact that 75% of people detained in New York City’s jails are awaiting trial.¹³ There are additional harms and dangers associated with solitary confinement in the pretrial context. According to the U.N. Special Rapporteur, “[t]he practice of solitary confinement during pretrial detention creates a de facto situation of psychological pressure.”¹⁴ This can influence individuals to plead guilty to an offense that they did not commit simply to end the suffering of solitary confinement.¹⁵ It is not in the interest of justice in New York City to subject people held in pretrial detention to the harsh conditions of solitary confinement.

Robert F. Kennedy Human Rights commends the Board of Corrections on its previous work to reduce the frequency and duration of punitive segregation and its elimination of solitary confinement for juveniles. We also applaud the Board’s acknowledgment of the need for further change to restrictive housing policies in New York City jails. We encourage the Board to not squander this opportunity for New York City to again take the lead on meaningful criminal justice reform by adopting the Blueprint.

¹¹ G.A. Res. 70/175: United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rules 43–44, U.N. Doc. A/RES/70/175, (Jan. 8, 2016), <https://undocs.org/A/RES/70/175>.

¹² U.N.G.A., 66th Sess., Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Punishment, ¶ 26, U.N. Doc. A/66/268 (Aug. 5, 2011), <https://undocs.org/A/66/268>.

¹³ Mayor’s Office of Criminal Justice (MOCJ), *Breaking the Frame? Rethinking the Criminal Justice System in New York City* (July 2019), http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/11/Breaking-the-Frame____.pdf.

¹⁴ U.N.G.A., 66th Sess., Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Punishment, ¶ 73, U.N. Doc. A/66/268 (Aug. 5, 2011), <https://undocs.org/A/66/268>.

¹⁵ Lindsey Devers, CSR Incorporated, *Plea and Charge Bargaining: Research Summary*, U.S. Dep’t of Justice Bureau of Justice Assistance (Jan. 24, 2011), <https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf>.

To protect the basic dignity and human rights of individuals in DOC custody and decrease trauma and violence in New York City jails, all punitive segregation and prolonged solitary confinement must be eliminated; ESH must be reimaged to provide actual therapeutic, restorative programming; and DOC's use of lock-ins and lockdowns must be monitored by the courts and curtailed to allow necessary programming to continue. Therefore, instead of the Board's current proposal, we urge adoption of the Blueprint for Ending Solitary Confinement in New York City Jails drafted by the NYC Jails Action Coalition and the #HALTsolitary campaign. Thank you for your time and consideration.

Sincerely,

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Program Officer

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