

*Martin F. Horn  
Distinguished Lecturer  
Executive Director, New York State  
Sentencing Commission  
Department of Law, Police Science  
and Criminal Justice Administration*

*524 W 59 St 422T  
New York City, NY 10019  
T 646 557 4824  
mhornl@jjay.cuny.edu*

December 11, 2014

Mr. Gordon Campbell

Chairman

Board of Correction

51 Chambers St Rm 923

New York, NY 10007

By email to: [amasters@boc.nyc.gov](mailto:amasters@boc.nyc.gov)

Re: Proposed Rule Change to permit Enhanced Supervision Housing

Dear Mr. Campbell:

I write in support of the request by the Department of Correction for amendments to the rules of the Board that would permit the Department to operate Enhanced Supervision Housing. The Board's rules were first adopted in 1978 and have been relatively unchanged since that time, but for limited changes adopted in 2007. Since 1978 the times have changed, our understanding about what works and what doesn't and the challenges facing the Department have changed as well. The Rules of the Board should change to acknowledge new challenges and try new approaches to keeping prisoners and staff, as well as the public, safe.

When the Board first adopted its rules, it included Sec 1-02 (e) (v) that states, "Prisoners placed in the most restrictive security status shall only be denied those rights, privileges and opportunities that are directly related to their status and which cannot be provided to them at a different time or place than provided to other prisoners." It is clear that the Board acknowledged that there might well be a classification of prisoners whose management would require limitation of the rights, privileges and opportunities afforded general population prisoners.

Through the years administrators in the Department have been left with an “all or nothing” predicament in dealing with prisoners who misbehave or who are predatory and dangerous to others. The Department had only punitive segregation as a means of enforcing discipline and administrative segregation as a means of protecting prisoners and staff from predatory and dangerous prisoners. We all agree that approach has not served us well. This administration, under Commissioner Ponte, has acknowledged and rejected the excesses of recent years and is taking thoughtful and measured steps to improve the situation it inherited.

The Department today is faced with the need to find new ways to keep the jails safe and Enhanced Supervision Housing is a sensible approach to that challenge. It is consistent with the Board’s vision in §1-02 when the Rules were first adopted, that there be a higher level of security classification for prisoners who because of their behavior deserve it, in order to protect others, and that the prisoners so classified be afforded limited opportunities for access to others.

The City has a duty to protect prisoners from others who would harm them. This is as true with respect to harm from other prisoners as harm at the hands of staff. Both are to be avoided. The unfortunate reality of jails is that they house primarily young men, for long times, and with nothing to do all day. And these young men bring with them into the jail the same gang associations and bullying behaviors they experienced and participated in on the street. Ultimately, in the world of enforced scarcity that is the jail a “pecking order” emerges, prisoners extort other prisoners for that which is not available if it be cigarettes, drugs or commissary. They fight over who decides what to watch on TV and who gets to sit in the “good seats.” They fight over gambling debts and gang identification. Left to its own, the jail is an intimidating and dangerous place.

Staff in New York City jails is spread thin. In many housing units there is only a single officer and the prisoners are out of their cells all day. The officer has to respond to the demands of prisoners, keep an eye on the day room, shower and toilet areas, the front gate and keep records. It only works if the prisoners are cooperative and not taking the opportunity to beat up another prisoner or worse.

A single predatory bully can upset an entire housing unit. He can make it so dangerous, especially if he has confederates, that all the other prisoners must be on guard and be ready to defend himself. That is why prisoners often arm themselves with whatever they can get their hands on. It is why prisoners feel compelled to join gangs, to protect themselves from stronger more predatory prisoners.

I take a back seat to no one in my opposition to the use of solitary confinement. I have written, spoken and worked against it. I have publicly stated that solitary confinement is never justified in a correctional setting. Solitary confinement consists of sensory deprivation and extreme social isolation. That will not be the case in ESH. The Department has hired one legal coordinator, three chaplains, one social service counselor and one grievance coordinator specifically for the ESH units to ensure services are provided. They will be provided in the housing area where possible to avoid mingling ESH inmates with GP inmates but no service will

be denied or reduced. Half the prisoners will be out of their cells at one time. There will be opportunities for interaction.

In many jails throughout the U.S. and even within New York State, prisoners are not routinely out and about for more than an hour a day. New York City is an anomaly by providing that prisoners are allowed to “lock out” of their cell for up to 16 hours a day. The Minimum Standards of the State Commission on Corrections that govern the operation of the City’s jails and those of all other jails in the State nowhere require that length of “lock out” time. Only New York City affords that “privilege” to its prisoners. In many jails in New York State and elsewhere, a prisoner in general population is allowed out of cell for only an hour a day. We agree that is not a good policy but nevertheless, in most of the country a 7-hour lockout period as envisioned for Enhanced Supervision housing would be judged a substantial improvement.

The proposal for ESH is most definitely not solitary confinement and should not be seen as such. Those, like the Jail Action Coalition who conflate what the Department is proposing for ESH with solitary confinement do a disservice to the campaign against solitary confinement. They diminish the importance of our national conversation about solitary confinement by alleging that ESH is, and they misguidedly imperil the very prisoners they purport to care about by trying to deprive the Department of this sensible tool.

Nobody knows for sure the answer that is guaranteed to make the City’s jails safer. There is no silver bullet. It will take time and effort, and experimentation. Enhanced Supervision Housing is a sensible, experimental effort and the Department should be allowed to try it. Only time will tell if it works. The Board has the capacity and the authority to closely monitor it and you should.

I take pride in the fact that during my tenure as Commissioner from 2003-August 2009 the safety of prisoners in New York City custody improved. During that time we established a close custody housing unit at the Manhattan Detention Center based on my interpretation of §1-02. Although a State Court later judged that unit to be in violation of the Board’s rules, the fact remains, and the data demonstrates that separating out the prisoners who threatened and endangered other prisoners and staff make the jails safer. During my tenure we reduced stabbings and slashing’s to their lowest levels ever and substantially reduced serious injuries to inmates to levels not seen since.

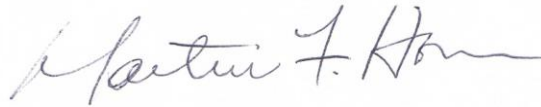
Close custody was more severe than what Commissioner Ponte proposes with Enhanced Supervision Housing. To his credit he is clearly trying to find a better solution for separating the few prisoners who endanger others with the least possible impact on their welfare. A small number of prisoners account for a disproportionate share of the violence in the jails and by allowing the Commissioner to restrict their activities, in a measured way, and deal with them without resort to punitive or administrative segregation you will be helping to make the jails more safe.

Your Board has an obligation that goes beyond concern for the prisoners. Your obligation to the citizens of our City is to insure a jail system that is safe both for the prisoners and for the staff who work there and that insures the safety of the public. A singular concern

for the prisoners fails to meet that obligation and I urge you to take a broad view of your mandate and your responsibilities. Please don't, in a misplaced concern for the few who are predatory and dangerous, endanger the prisoners who just want to do their time and be left alone, and the staff who wish to do their job properly and return home each day to their family by rejecting this well thought out request for amendment to your rules.

You can adopt this rule, monitor its implementation, adopt rules to insure the prisoners in Enhanced Supervision Housing receive the services and programs they truly need and if, perhaps two years from now, you decide it isn't working you can change the rule back to what it is today. But give the Commissioner the tools he needs to do the job you want him to do.

Very truly yours,

A handwritten signature in black ink, appearing to read "Martin F. Horn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Martin F. Horn

Cc: Joseph Ponte