

NEW YORK CITY
BOARD OF CORRECTION

Statement before the New York City Council

Oversight Hearing: Safety and Security in DOC Facilities
Committee on Criminal Justice
Keith Powers, Chair

April 23, 2018

By Martha W. King, Executive Director
New York City Board of Correction

Good morning Chair Powers and Members of the Committee on Criminal Justice. My name is Martha King and I am the Executive Director of the New York City Board of Correction. Today, I am joined by two of our Board members who were appointed by the City Council, Dr. Robert Cohen and Stanley Richards. I am also joined by the Board's Deputy Executive Director of Research, Emily Turner. Thank you for inviting us to testify today on safety and security in DOC facilities.

The Board of Correction is an independent oversight agency. The City Council enshrined the Board in local law in the 1950's and the City's voters gave the Board greater independence and powers in the Charter revisions of the 1970's. Our role is to regulate, monitor, and inspect the City's jails in support of safer, fairer, smaller, and more humane jails.

The Board's Minimum Standards govern basic conditions necessary for safe and humane incarceration including access to health and mental health care, showers, mattresses, recreation, defense counsel, and community connections via visiting, telephone, and letters. Today, I will focus on changes in the use of punitive segregation and the simultaneous development of new forms of restrictive housing in the jails. We are here today because the levels of violence in the jails is unacceptable and a fair and effective restrictive housing system is a critical part of keeping people safe. The restrictive housing system serves two purposes: to hold perpetrators of wrongdoing accountable and to take security precautions to prevent future violence.

In 2015, the Board — with the full support of the Mayor, many Council Members, and other elected officials, the Department of Correction, Correctional Health, and many advocacy groups — amended the Minimum Standards to create safe limits on the use of punitive segregation to minimize its harm to individuals and communities. These reforms went through a transparent and publicly informed rulemaking process: over 80 people testified at the public hearing and many more submitted written comment to the Board.

Today, the Minimum Standards prohibit punitive segregation for young people ages 16 through 21, and those with serious mental illness or serious physical disabilities. The reforms further established safeguards on how long someone can be held in segregation and for what reasons. They also permit the Department to impose longer sentences for serious assaults on staff and the flexibility to override sentence limits when someone engages in serious violence. For example, in

the first sixteen months post-reform, the Department used overrides 164 times to return people to segregation after they had committed assaults causing serious injury to others.

When the Board created limits on segregation, it based its decisions on numerous evidence-based studies showing that misused and overused segregation is not an effective behavioral management tool, and that isolation of an individual for extended periods of time results in a distinct set of emotional, cognitive, social, and physical pathologies, particularly for young people and those with serious mental illness.

Before the reforms, close to 20% of adolescents in custody were in 23-hour lock in and the number of people in isolation had grown 225% in ten years. At the peak of its use in 2012, over 850 people were held in punitive segregation on any given day. New York City had one of the highest rates of isolation in the nation and was overusing punitive segregation for low-level misconduct.

It is not only well-established that punitive segregation causes significant psychological harm to those who are placed in it for extended periods, but there is also no evidence that it results in safer jails. In fact, during the period when DOC increased the number of people in punitive segregation, violence indicators continued to rise. For example:

- Slashings more than doubled from 35 to 72 from 2011 to 2012.
- The monthly rate of use of force per 1,000 incarcerated persons grew from 13.5 to 20.6 from 2011 to 2012.
- The monthly rate of serious injury to staff per 1,000 incarcerated persons was .27 in 2012 or just above what it was in 2017 (.24).
- And, the number of lockdowns in 2012 was about the same as in 2017.

As the approach to incarceration changes around the country, correctional systems are joining New York City in reforming their use of punitive segregation — this includes jails and prisons in Cook County, Texas, Washington, Colorado, the Federal Bureau of Prisons, and elsewhere. Today, the segregation population in our jails is just a fifth of what it was the year before enactment of the 2015 reforms and a tenth of what it was in 2012 when the segregation population peaked.

As part of punitive segregation reform, the Department created Enhanced Supervision Housing, or ESH, which the Board also included in its 2015 amendments to the Minimum Standards. ESH was created as an alternative to long-term segregation to prevent and respond to violence. Adults with a history of jail violence are placed in ESH while young adults are placed there immediately after commitment of a slashing or other act of violence leading to serious injury. There are three levels of ESH — at its most restrictive level, when people are out of their cell, they are restrained to desks via leg irons. They receive seven hours out of cell per day or half the hours in general population. They can also be subject to restrictions on their visits, correspondence, commissary, recreation, and access to law library. There are currently 129 people in ESH, including 19 young adults. A third of the people in ESH are in restraint desks, including nine young adults.

Since the reform of punitive segregation, the Department has created other restrictive housing options, particularly for young people. When the Department sought to establish alternative housing that conflicted with Minimum Standards, the Board granted variances upon conditions for

oversight and reporting. In just the past two years, the Department has requested, and the Board has approved, 19 separate variances related to restrictive housing.

There are now 47 restrictive housing units in the jail system, reflecting 16 unique types of restrictive housing. This includes the Transitional Restorative Unit, Second Chance Housing, ESH, Secure, Clinical Alternative to Punitive Segregation, and others. There are just over 450 people housed in these units who may be subject to restrictions on out-of-cell time, co-mingling, movement, visits, recreation, law library, commissary, television, showers, packages, mail, and/or personal property.

The Department also still uses punitive segregation as part of its response to violence. There are currently 124 people in punitive segregation, about 1.5% of the DOC population. Recent studies by the Board, the Vera Institute of Justice, COBA, and the SCOC suggest there is still work to do to maintain a disciplinary system that is effective at promoting safety and accountability. For years on any given day in the jails, there are hundreds of incarcerated people who have been sentenced to segregation for an infraction, but have not yet served their punishment. Nearly half of these people may never be disciplined for their offense. The Department says that space constraints, not the Minimum Standards, are the reason for this backlog.

When a person does serve his punitive segregation sentence, he will wait on average 13 days between the incident and punishment. The Board will continue to study these problems and urge the Department to adopt an effective disciplinary system that ensures that consequences for wrongdoing are swift, certain, and fair.

Most misconduct in the jails is not violent or chronic. This includes acts like insubordination that do not cause injury. While such behavior does not warrant placement in 23-hour lock-in or ESH, it does warrant a response. The Board — along with the Nunez Monitor in its report last week and the Vera Institute in its 2017 report — has recommended that the Department institute a formal system of additional disciplinary options. The Department already has the power to utilize a range of sanctions, but it needs to create a formal system to do so. The Board also recommends that the Department structure this system so that its impact on violence can be evaluated at both the individual and system level.

The Board will continue to monitor, report, and make recommendations on the Department's work in these areas. Last year, we published two reports on ESH. In these reports, the Board found grounds for optimism, including a structured approach to programming and multidisciplinary management. The Board also found several areas where DOC could improve ESH, including policies related to level progression, access to medical care, lock-out, and steady staffing. In recent months, the Department has embraced a number of our recommendations.

Ultimately, 76% of the people who enter the City's jail system are released directly back to the community. This fact highlights the rationale for punitive segregation reform as well as the urgent need for ongoing work to better prevent and respond to violence in the jails. This work includes the Board's restrictive housing rulemaking to ensure restrictive housing reflects the best available evidence to address violence in custody and promote rehabilitation for successful reintegration into our communities. We look forward to working with the Council, our partners in the

Administration, and the many community stakeholders in tackling these challenging issues and improving safety in the jails.

Thank you again for this opportunity to testify and we welcome your questions.