

Testimony to the Board of Corrections

December 2, 2019

By Brandon Holmes, New York City Campaign Coordinator, JustLeadershipUSA

I'm testifying today on behalf of JustLeadershipUSA and specifically the #CLOSErikers campaign. The #CLOSErikers campaign counted a substantial victory two weeks ago when the City Council voted to shrink the jail system by 75%, improve conditions for anyone still detained in City jails, and make parallel investments in community resources. But the jail population has been shrinking for years, and it has been your responsibility to improve conditions day to day.

Our leaders who have lived the hell of Rikers and other City jails - and many other advocates in this room - have always said that new buildings will not be sufficient to achieve the massive culture transformation that is urgently needed in New York City jails, nor will they come soon enough to save tens of thousands more people from abuse at the hands of the Department of Corrections.

This Board's role as a strong and independent oversight body is and will be essential to achieve actual transformation. It will require each of you to have the courage to break old patterns, because those patterns have resulted in countless trauma, injury, and loss of lives at the hands of the Department of Corrections for decades.

Today, we demand that the Board of Corrections take this oversight role seriously, and implement the Blueprint to End Solitary Confinement.

The question should not be whether or not we must end solitary confinement. This form of torture clearly has no place in our City. The question should be why the Board has allowed it to continue for so long. Why was swift action not taken after the death of Jason Echevarria, or Kalief Browder, or Bradley Ballard? If that action had been taken, would Layleen Polanco have lost her life? I believe we all know the answer.

This is also NOT an argument about whether or not safety matters. Of course it does. We care about the safety of everyone behind those walls. But solitary confinement does not create safety, because it does not address the root cause of violence, and in fact creates more violence, a form of torture through the mental and physical damage it inflicts. People who have endured solitary and their families, mental health, legal, and human rights experts, and advocates with the New York City Jails Action Coalition & HALTsolitary campaign have developed a detailed plan to create safety through the type of deep engagement that can actually prevent violence.

The Blueprint asks this Board to do five things:

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.

We believe that everyone of these things are reforms that New York City can, and must, implement.

This conversation about Restrictive Housing Rulemaking must also be put in the context of the ongoing and well-documented failures of the Department of Corrections to address a deep-seeded culture of abuse, violence, and corruption within New York City jails. The Eighth Report of the Nunez Independent

Monitor was filed on Monday October 28th. Some of the findings of this report that are most concerning to us and should be to this Board --

- On page 7, the report states that “...the Department has not shown itself capable of devising and implementing effective strategies to fully institutionalize the use of force reforms required by the Consent Judgment.” p. 7
- On page 10, the report states that “the Department remains in Non-Compliance with four of the most consequential provisions of the Consent Judgment: (1) implementation of the Use of Force Policy; (2) timely and quality investigations; (3) meaningful and adequate discipline and (4) reducing violence among Young [People]
- On page 11, the report states that “The Department has not been able to keep pace with timely investigation of Staff misconduct and there is a backlog of approximately 6,815 investigations”
- And on page 22, the report states that “Compared to the [Use of Force] rate when the Consent Judgment first went into effect (3.75), which was concerning enough on its own, the average UOF rate for the Eighth Monitoring Period was 7.41, a 98% increase since 2016.”

This last point is especially important, because Commissioner Brann has stated that this is not the same Department as it was five years. What does she mean by that, when it is, by this report, a Department in which officers use force TWICE as often as they did 3 years ago?

I want to ask this Board, as you consider changes to restrictive housing rules -- is this a Department that you really believe can and will exercise good judgement to determine if someone should be kept in isolation -- knowing the deadly consequences that can come from doing that? If you take your role seriously, the answer must be “no”.

Lastly, within the rule proposed by the Board, there are some reforms we support:

- Requires individualized plan and placement reviews for people in restrictive housing (6-14, 6-15, 6-21, 6-22) and a presumption of advancement to less restrictive levels/housing units (6-15(1)(3), 6-22(f))
- Requires DOC to notify the public when emergency lockdowns result in visits being canceled or delayed (6-06(c))
- Requires that a person’s criminal defense attorney be notified when charged with an infraction that could result in punitive segregation time (6-30(b)(7))
- Prohibits mental health and other health encounters from taking place at a person’s cell and requires that individuals in restrictive housing be taken to the clinic for scheduled appointments (6-27)
- Ends the automatic \$25 fine imposed for every disciplinary infraction (6-07(c))
- Eliminates exceptions to rules regarding correspondence for people in ESH so that they have the same protections as others in custody (1-11(c)(6) and (d)(1))
- Prevents DOC from creating new restrictive housing units without informing the Board (6-39)
- Requires reporting on all parts of the rules regarding restrictive housing

Thank you for your work.

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