

November 10, 2014

Gordon Campbell
Chair
NYC Board of Correction
51 Chambers Street, Room 923
New York, NY 10017

Dear Mr. Campbell and Members of the Board of Correction,

I am writing to convey my organization's serious concerns regarding the Department of Correction's (DOC) request for variances from the Minimum Standards. While certain aspects of the Department's proposals to reduce violence at Rikers Island are promising, the establishment of Enhanced Supervision Housing (ESH) units – as currently described by the DOC – will expose individuals detained at Rikers to increased abuse. While controlled settings such as the Clinical Alternatives to Punitive Segregation (CAPS) program are critical for reducing violence at Rikers, the lack of adequate protections and programming for incarcerated people in ESH will cause this proposal to worsen the situation at Rikers rather than improve the conditions there. As the Department's use of solitary confinement has made clear, deprivation of social contact is unproductive toward both jail security and the rehabilitation of incarcerated people. Enclosed, please also find a copy of *Voices from the Box*, The Bronx Defenders' report on solitary confinement at Rikers Island.

Rule-Making Process

As an initial matter, The Bronx Defenders joins the Jails Action Coalition (JAC) in urging the Board of Correction to view the DOC's letter not as a request for variances to the Minimum Standards but rather as a petition for amendments to the Minimum Standards. Given the scope of the Department's request, the short notice given to interested parties to comment on the Department's proposal, and the Department's poor track record in its efforts to curb violence at Rikers, it is clear that the requirements of notice, comment, and a full public hearing are necessary for ensuring that the Department's plans moving forward reflect a genuine commitment to meaningful reform.

Punitive Segregation

The creation of any new housing units with increased lock-in time must correspond with an equal or greater decrease in solitary confinement units (referred to by the DOC as "punitive segregation"). While ESH has the potential to be a significant improvement upon solitary

confinement, this will only be true if at least one solitary confinement bed is removed from use for every ESH bed created. Similarly, the Department must clarify its plans for “punitive segregation lite” and the CAPS program before the Board can accurately assess the potential impact of ESH. The Board of Correction should push the DOC to invest in rehabilitative housing units such as CAPS and the new “Second Chance” unit as alternatives to solitary confinement instead of ESH. On account of the apparent absence of therapeutic and educational programming in ESH, I urge the Board to prohibit the DOC from placing individuals directly from solitary confinement into ESH. Incarcerated people who have experienced the trauma of solitary confinement should only be transferred to housing units where there is unimpeded access to mental health treatment as well as educational and therapeutic programming.

Criteria and Procedure for Entering ESH

The criteria for placement in ESH that the Department has listed are overbroad. In particular, the criterion describing “inmates who otherwise have either engaged in violence or demonstrated involvement in serious gang activity” threatens to unfairly expose individuals whom correction officers merely suspect are dangerous to the restrictions of ESH. Indeed, the criteria that the Department has listed are so overbroad and the standards for meeting them so low that there is every reason to expect that in practice this policy would allow the Department to place individuals in ESH simply because they have fallen out of the favor of correction officers.

The hearing process for placements in ESH is also unfairly stacked against incarcerated people. The Department has proposed to replicate the hearing process that it uses for placements in solitary confinement. As we have discovered through interviews with over 60 of our clients, these hearings serve little purpose beyond allowing the DOC to falsely claim that it respects due process. The “independent adjudication officers” who preside over hearings are correction officers who have every reason to side with their peers in disputes against incarcerated people. Although the DOC claims that incarcerated people are permitted to call witnesses and present evidence, correction officers often deny these rights in practice. Furthermore, the standard of evidence for these hearings is unacceptably low. The Board should require that the Department provide clear and convincing evidence for any placement in ESH or solitary confinement and that all hearings be held before an administrative law judge.

Most significantly, the Department does not allow independent attorneys or advocates to represent incarcerated people in these proceedings. These hearings cannot be considered fair until incarcerated people have advocates present to represent them. Finally, the Board of Correction should not permit the DOC to place individuals in ESH before the conclusion of

hearings. Otherwise, correction officers will be able to subject any individual on Rikers to ESH restrictions without providing justification.

Programming and Mental Health Treatment

Unless ESH involves increased access to educational and therapeutic programs compared to general population, as we understand is the case in CAPS, the potential of ESH to reduce violence at Rikers is exceedingly minimal. Given the repeated failures of the DOC to provide my organization's clients with adequate access to law library services and the total absence of programming in solitary confinement, I am extremely skeptical of the Department's claims that it will be able to provide these services to individuals in ESH. With the opening of the "Second Chance" unit at Rikers, the DOC has acknowledged the potential for positive programming to reduce violence at Rikers. The Department must drastically expand these types of programs if it hopes to implement restrictive housing units in a manner that will improve the conditions at Rikers.

The Department's request to omit mental health evaluations as a requirement for placements in ESH is shocking considering the abuses of mentally ill individuals at Rikers that have recently come to light. Restrictions of the type and degree that the Department is seeking to implement for ESH are only acceptable for individuals with mental illnesses if those restrictions are accompanied by comprehensive and therapeutic mental health treatment administered by competent mental health professionals. While the specific details of the CAPS program remain unclear, what little knowledge that Bronx Defenders advocates currently have of CAPS leads me to believe that the DOC should use this program or similar housing units as the only placement for individuals suffering from mental illness whom correction officers accuse of infractions.

Restrictions and Surveillance Related to Visitors, Packages, and Mail

The DOC's proposed restrictions for ESH relating to visitors, packages, and mail are unnecessary and will have broad and devastating consequences for individuals held at Rikers. The proposed "approved list of visitors" would give the Department the ability to prohibit visits from any individual with a criminal record. Given that most of the individuals detained at Rikers come from over-policed communities, this requirement would give the Department unfairly wide discretion to prohibit visits from family members and friends. Far from preventing violence at Rikers, depriving incarcerated people of visits would undoubtedly inflict serious psychological damage upon them and lead to increased tensions at Rikers as a result. As strong relationships with family and friends outside are crucial to successful reentry, this policy will also increase the likelihood of re-arrest upon release from jail. Likewise, there is no reason for the DOC to expand

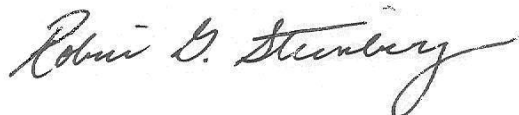
existing restrictions on contact visits, which already prohibit visits for “inmates who have either used or possessed a scalpel or like blade while in custody under the present charge.”

The Department’s request to have families send packages through approved vendors will expose the families of individuals held at Rikers to exorbitant fees that many family members will likely be unable to afford. I recognize that the Department needs to prevent individuals from smuggling weapons into Rikers via packages, but the Department – not the families of incarcerated people – must bear any costs related to this goal. As the DOC is aware, there is no fail-safe method for keeping contraband out of jail and attempts to do so must be balanced with protecting incarcerated people’s fundamental rights. If the recent Investigation Department inquiry is any indication, the DOC might be better served focusing on smuggling carried out by correction officers. Similarly, the DOC’s request to waive the requirement of warrants for reading incarcerated people’s mail is unnecessary, unfair, and likely unlawful. The Department has not articulated sufficient reasons to depart from its current policies regarding the surveillance of mail.

In conclusion, I urge the Board of Correction not to approve the DOC’s request for variances to the Minimum Standards. The Board should only allow the DOC to create new housing units with increased lock-in hours if these new units include increased access to educational and therapeutic programming. Moreover, these units should be used in place of solitary confinement; any increase in restrictive housing must accompany a corresponding decrease in solitary confinement cells. The Board of Correction should require the DOC to commit in writing to a comprehensive plan that involves increased programming for incarcerated people, therapeutic alternatives to solitary confinement, and improved care for individuals suffering from mental illness.

If you would like to speak with me regarding this matter, please do not hesitate to reach out to me at RobinS@bronxdefenders.org or at (718) 838-7852.

Sincerely,



Robin Steinberg
Executive Director
The Bronx Defenders