

Brooklyn Defenders

TESTIMONY OF:

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BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council Committee on Criminal Justice

Oversight Hearing on Banning Solitary Confinement in New York City Jails

September 28, 2022

My name is Lucas Marquez and I am the Associate Director of Civil Rights and Law Reform at Brooklyn Defender Services (BDS). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Thousands of the people we represent are detained or incarcerated in the New York City jail system each year while fighting their cases in court or serving a sentence of a year or less upon conviction of a misdemeanor. We would like to thank the Committee on Criminal Justice and Chair Rivera for inviting us to testify about ending solitary confinement in the City's jails.

Each year, thousands of New Yorkers are subject to isolation and segregation inside Department of Correction (DOC) jails. The people we represent—along with their families, friends, and advocates—are all impacted by the serious trauma caused by DOC's restrictive housing practices. We commend the Council for taking steps to eliminate solitary confinement and urge you join with countless defenders, doctors, scholars, corrections experts, and human rights advocates by adopting rules that reject torture and move New York City towards abolishing all forms of restrictive housing inside its jails.

Solitary Confinement in the City's Jails Is Widespread

The level of crisis at Rikers Island cannot be overstated. The Department Correction has demonstrated a complete failure to protect the health and safety of people incarcerated in its custody.¹ This year thus far, sixteen people in DOC custody have died. Last year, sixteen people lost their lives, bringing the total to an unprecedented 32 deaths in under two years. The Council must take immediate action to call for decarceration and push stakeholders—including the mayor, district attorneys, and judges—to work together to release people and stop sending people into DOC custody. This is also important for people with mental health issues: by their nature, jails are environments that lack access to proper mental health treatment and are ill-equipped to address

¹ Jonah Bromwich and Jen Ransom, 10 Deaths, Exhausted Guards, Rampant Violence: Why Rikers Is in Crisis, *New York Times*, Nov. 8, 2021, <https://www.nytimes.com/2021/09/15/nyregion/rikers-island-jail.html>.

the behavior that is often concomitant with mental illness. Instead, officials and staff often respond with force and punitive measures, including solitary confinement, which in turn exacerbate underlying mental health concerns, trigger decompensation, and perpetuate the troubling cycle.² These obstacles also mean there is a higher likelihood of serious injury or even death in jails for people with mental health concerns.

While the entire jail system is in crisis, people held in solitary confinement are subject to a jail within a jail. Over the years, we have written extensively to the City Council and the Board of Correction documenting the detrimental impact isolation has on people, and how a lack of accountability by the Department only exacerbates the harm people face every day while in custody. As we are seeing the continued deterioration of conditions in DOC facilities, the inability of DOC to ensure the safety of people in its custody, and record-breaking loss of life—particularly by suicide—there is a dire urgency now for concrete change.

Around the world, there is a growing consensus that solitary confinement—or isolated confinement by any name—amounts to torture.³ And that it is not only cruel, but also counterproductive. The physical and mental health impacts of solitary confinement are significant and well documented.⁴ The connection between isolation and violence is also well-established.⁵

Despite these realities, DOC maintains a complex and sprawling network of solitary confinement units. These units, and those who condone them, are responsible for the suffering of countless people and the death of too many New Yorkers—perhaps most notoriously Kalief Browder and Layleen Polanco—and most recently, Brandon Rodriguez and Elijah Muhammad. Despite widespread outrage and repeated calls for reform and oversight, the end to “solitary confinement” in New York City remains a moving target.

Within the last five years alone, the Department has created a complex web of isolation units that have the potential to trap people indefinitely. Our City’s jails are now home to units described as Enhanced Supervision Housing, Involuntary Protective Custody, De-Escalation, Secure Unit, Restrictive Housing Unit, and others. Each of these units severely limit a person’s movement, drastically restrict time spent outside their cell and access to comprehensive programming, and completely separate them from any meaningful human contact. These units produce devastating

² The Center for Prisoner Health and Human Rights, *Incarceration and Mental Health*, <https://www.prisonerhealth.org/educational-resources/factsheets-2/incarceration-and-mental-health/>; Treatment Advocacy Center and National Sheriff’s Assoc., *The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey* (Apr. 8, 2014), <https://www.treatmentadvocacycenter.org/storage/documents/treatment-behind-bars/treatment-behind-bars.pdf>.

³ See, e.g., The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F70%2F175&Language=E&DeviceType=Desktop&LangRequested=False>; Sarah Childress, *Craig Haney: Solitary Confinement is a “Tried-and-True” Torture Device*, Frontline (Apr. 22, 2014), <https://www.pbs.org/wgbh/frontline/article/craig-haney-solitary-confinement-is-a-tried-and-true-torture-device>.

⁴ Justin Strong, et al., *The body in isolation: The physical health impacts of incarceration in solitary confinement*, PLOS ONE, October 2020, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0238510>.

⁵ See, e.g., *id.*; Fatos Kaba, et al, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, American Journal of Public Health, March 2014, <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742>.

physical and mental health outcomes, including death, for those subjected to them and only serve to compound the mental health crisis in the City’s jail system. Each time one of these units is shuttered or limited by Council or Board intervention, another version replaces it. That is why this bill—which contains functional definitions of solitary confinement—is so important.

Moreover, we have seen general population units being placed in extended “lockdowns” and treated like a restricted housing unit, where out of cell time, access to programming, medical care, and legal visits are severely restricted. At the most recent Board of Corrections meeting on September 13, the Department admitted that frequent lockdowns were part of a preemptive “violence reduction plan”, *i.e.*, a preemptive initiative rather than a response to something actionable.⁶ Such preemptive actions and their frequency of use must be weighed against the significant harm to the people in custody. We have seen that lockdowns are not temporary. Certain lockdowns this summer have been extended for multiple days in a row, some around a week or more. During this time, there was no access to showers, commissary, phones, or medical treatment. It is particularly troubling that use of lockdowns has increased over the course of the year and there is not always a correlation between incidents of violence and the timing, frequency, and length of lockdowns.⁷ This is yet another way in which the Board’s minimum standards are disregarded by DOC and the humanity of the people in custody is ignored.

Brandon Rodriguez and Elijah Muhammad, who recently died after being held in solitary confinement, were held in areas that DOC does not recognize as restrictive housing, but under this bill, would rightfully qualify as solitary confinement. In the days before Mr. Muhammad’s death, he spent more than 32 hours in isolation in a de-escalation unit, in violation of DOC rules.⁸ While in that isolation unit, he did not have a bed or access to necessary medication. Mr. Rodriguez died after being locked in a cage in a shower area for hours while suffering from a broken orbital bone.⁹ We urge City Council to pass this bill so that DOC cannot continue to evade restrictions on solitary confinement by locking people in areas they claim are not restrictive housing, such as de-escalation units or cages in shower areas.

Reducing Isolation Improves Health and Safety

The harms of solitary confinement are well-established, and the record in New York is replete with evidence of its human toll.¹⁰ No one should be subjected to the dangerous conditions of restrictive

⁶ Board of Correction meeting recordings and minutes are available online at <https://www1.nyc.gov/site/boc/meetings/2022-meetings.page>.

⁷ NY Daily News, *Rikers officials expand use of lockdowns as security tactic in NYC jail for young detainees — advocates claim overuse*, Sept. 5, 2022, <https://www.nydailynews.com/new-york/nyc-crime/ny-lockdown-spike-jail-younger-detainees-rikers-20220906-7b2odipd3zcuxgpnjbvvtcrmka-story.html>.

⁸ Jan Ransom, *In a Rikers Jail Cell, a Man Lay Dead for Hours Before He Was Discovered*, The New York Times, July 12, 2022, <https://www.nytimes.com/2022/07/12/nyregion/rikers-jail-man-dead.html>.

⁹ Matt Katz, *Man who died by suicide at Rikers had history of mental illness, lawsuit claims*, WNYC News, August 11, 2022, <https://www.wnyc.org/story/man-who-died-suicide-rikers-had-history-mental-illness-lawsuit-claims/>.

¹⁰ See, e.g., Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc A/66/268, ¶¶ 79 (Aug. 5, 2011); National Commission on Correctional Health Care (2016), Position Statement: Solitary Confinement (Isolation), <http://www.ncchc.org/solitary-confinement>; Jeffrey L.

housing. Yet the Department demonizes people in its custody to bully the Council, the Board, and the public into allowing the Department to ignore existing rules, laws, and basic standards of human decency. In the face of such pressure, the Board has granted—even if limiting—every one of DOC’s variance requests related to restrictive housing and implicitly condoned the Department’s decision to continue inhumanely isolating people despite the evidence that solitary confinement *exacerbates* the conditions in the jails.¹¹ Genuine out of cell time, regular programming and education, mental health services, regular access to needed medical care, and substance use programs will produce better outcomes for people in DOC custody and reduce violence. As will regular access to counsel and family visits.

The United Nations Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment described the danger of solitary confinement in a 2015 letter of support for New York’s Humane Alternatives to Long Term (HALT) Solitary Confinement legislation: “Research on the effects of isolation indicate that the practice can lead to the development of certain psychotic disorders, including a syndrome also known as ‘prison psychosis,’ the symptoms of which include anxiety, depression, anger, cognitive disorders, distortions of perception, paranoia, and psychosis and self-inflicted injuries. Furthermore, due to the lack of witnesses and the solitude in which such practices are carried out, solitary confinement may give rise to other acts of torture or ill-treatment.”

Any use of restrictive housing poses serious, and lasting, dangers to people’s health and, in turn, their communities. Physiological conditions brought on by solitary confinement include gastrointestinal and urinary issues, deterioration of eyesight, lethargy, chronic exhaustion, headaches, and heart palpitations among others.¹² Psychological decompensation and trauma caused by solitary confinement includes severe depression, anxiety, insomnia, confusion, emotional deterioration, and fear of impending emotional breakdown.¹³ Studies have found that prolonged solitary confinement induces hallucinations and delusions, and bouts of irrational anger and diminished impulse control, leading to violent outbursts and invoking the very behavior it purports to manage.¹⁴

Metzner, MD, and Jamie Fellner, Esq., Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics, *Journal of the American Academy of Psychiatry and the Law*, <http://jaapl.org/content/jaapl/38/1/104.full.pdf> (noting that the Human Rights Committee, the Committee against Torture, and the Special Rapporteur on Torture, have concluded that solitary confinement can also amount to cruel, inhuman, or degrading treatment under the International Covenant on Civil and Political Rights).

¹¹ See, e.g., Vera Institute, *The Impacts of Solitary Confinement*, April 2021, <https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf>; Keri Blakinger, *What Happens When More Than 300,000 Prisoners Are Locked Down?*, The Marshall Project (Apr. 15, 2020), <https://www.themarshallproject.org/2020/04/15/what-happens-when-more-than-300-000-prisoners-are-locked-down>.

¹² Sharon Shalev, *A Sourcebook on Solitary Confinement*, 15 (London: Manheim Centre for Criminology, London School of Economics), http://solitaryconfinement.org/uploads/sourcebook_web.pdf.

¹³ Vera Institute, *The Impacts of Solitary Confinement*, April 2021, <https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf>.

¹⁴ See Craig Haney, *Mental health issues in long-term solitary and “Supermax” confinement*, *Crime & Delinquency*, 49(1):124-56, 133-36 (Jan. 2003); James Gilligan and Bandy Lee, Report to the New York City Board of Corrections, Sept. 5, 2013, <http://solitarywatch.com/wp-content/uploads/2013/11/Gilligan-Report-Final.pdf>.

Furthermore, not only does solitary confinement have a per se negative impact on people's health, but also it has served as an obstacle for people in custody to receive needed medical services. This too is another reason that this bill is important. For example, from June to July of this year, the number of scheduled clinic appointments remained roughly the same, but the number of missed appointments in July doubled due to lockdowns and increased from about 200 to 1,000 due to alarms.

Proponents of solitary claim—without support—that this form of inhumane treatment deters violent behavior and improves safety. This position laid out by the Department today—the idea that when things are going wrong in jails people should just be placed in more restrictive settings—is just a knee-jerk reaction to the problem, rather than an attempt to address the root of the issue. Time and again, studies find that the claim that isolation deters misbehavior and violence is one of the most common misconceptions about solitary confinement: “Subjecting incarcerated people to the severe conditions of segregated housing and treating them as the ‘worst of the worst’ can lead them to become more, not less, violent.”¹⁵ Indeed, the evidence clearly demonstrates that isolation, a practice purported by correctional staff to decrease violence, serves no legitimate purpose.

New York City is not immune to this phenomenon. Court records, investigations, and media reports demonstrate that our jails follow the same pattern of solitary confinement exacerbating violence. This is particularly true where a substantial portion of people who enter DOC custody are suffering from mental health and substance use issues. Although the City has begun to curb the use of isolation, we have a long way to go.

Solitary Confinement Does Not Make the Jails More Safe

Importantly, DOC staffing issues are a problem of its own making. Solitary confinement is not the answer, and the abuse of people in DOC custody cannot be acceptable collateral damage. It is well-documented that the Department has an extraordinarily large number of staff and budget to operate the jails, even with absenteeism.¹⁶ However, the Department struggles to effectively manage, deploy, and supervise staff and staff fail to adhere to basic security practices.¹⁷

¹⁵ Vera Institute, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, <https://www.vera.org/newsroom/solitary-confinement-new-report-highlights-misconceptions-and-alternatives#:~:text=A%20new%20report%20from%20the%20Vera%20Institute%20of,inmate%20safety%20witho,ut%20the%20detrimental%20effects%20of%20isolation>.

¹⁶ *Nunez v. DOC*, 11-cv-05845 (LTS) (SDNY March 16, 2022), ECF No. 438, Special Report of the *Nunez* Independent Monitor, at 11, <https://www1.nyc.gov/assets/doc/downloads/pdf/Special-Report-03-16-22-As-Filed.pdf>. “The Department’s staffing issues are perplexing and are driven by deeply ingrained patterns of mismanagement and dysfunction. In relation to the size of the incarcerated population it manages, the Department has more staff resources than any other correctional system with which the Monitoring Team has had experience. . . . A national comparison of the per capita costs of incarceration completed by the Vera Institute last year, when the Department’s spending per incarcerated individuals was \$438,000 (\$118,000 less than the current cost), found not only that the Department spends more per incarcerated individual than any city in the nation, but that it was at least three times higher than the next highest city and over 350% higher than the cost per incarcerated individual in Los Angeles, California and Cook County, Illinois.”; New York City Comptroller Brad Lander, Agency Watch List, Department of Correction (DOC) (FY 2023) (March 2022), https://comptroller.nyc.gov/wp-content/uploads/documents/Agency_Watch_List_DOC_FY2023.pdf (showing the Department spends half a million dollars a year per person in custody).

¹⁷ See generally *id.*

The Board of Correction recently released its report on 2021 suicides and drug-related deaths, showing chronic dysfunction, inhumanity, and indifference within DOC was at the root of deaths in City jails. The report detailed how correction officers' failure to conduct rounds of housing units, provide emergency first aid and bring people in custody to medical appointments played a role in at least six deaths by suicide and four drug-related deaths in 2021.¹⁸ Tragically, DOC's chronic dysfunction and indifference to the lives of the people in its custody is still evident. On August 25, 2022, video captured three uniformed DOC staff members watching as Michael Nieves slit his throat, doing nothing for at least ten minutes, as Mr. Nieves bled out on the floor.¹⁹

Moreover, this continued mismanagement is evident in the Department's inability to provide consistent access to medical care. Even after being ordered to do so by the court, the Supreme Court of the State of New York, County of Bronx, found DOC continues to fail to provide access to these necessary services such that, on May 17, 2022, the court held DOC in contempt and on August 10, 2022, found that DOC failed to show it was no longer in contempt.²⁰

Sixteen people died in NYC jails in 2021, and now 2022 has reached that number with still three months left in the year. At this point, this is no longer a problem attributable to the previous administration and DOC must take accountability for conditions at Rikers.

BDS Supports Int 549-2022

For these reasons, BDS supports Int 549-2022.

We respectfully offer the following recommendations to strengthen the legislation to meet the objective of ending solitary confinement:

Strengthen language to ensure DOC compliance with the spirit of the legislation

The current bill includes language to ensure people are not placed in solitary for "more than four hours total in any 24-hour period, nor more than 12 hours in any seven-day period." Such language creating further limits on daily and weekly maximum periods of isolation should be expanded to apply to the use of both lock downs and restraints to constrain repeated use outside the spirit of the legislation. Additionally, we recommend that the bill explicitly state that any reauthorization of the use of restraints beyond the initial seven-day period would be permitted only after another adversarial hearing.

Ensure oversight

We appreciate that this bill would require DOC to finally provide people access to counsel in hearings that involve placements in restrictive housing or restraints. To increase oversight, we also recommend that this bill require any refusals of out of cell time or services be recorded on body

¹⁸ Board of Correction, *Report and Recommendations on 2021 Suicides and Drug-Related Deaths in New York City Department of Correction Custody*, <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2021-suicides-and-drug-related-deaths-report-and-chs-response.pdf>.

¹⁹ Jan Ransom, *Man Held at Rikers Dies from Razor Wound After Guards Fail to Intervene*, New York Times, Aug. 30, 2022, <https://www.nytimes.com/2022/08/30/nyregion/rikers-island-death.html>.

²⁰ *Agnew et. al. v. DOC*, Index No. 813431/2021E, Decision and Order (Sup Ct, Bronx County) (May 17, 2022); *Agnew et. al. v. DOC*, Index No. 813431/2021E, Decision and Order (Sup Ct, Bronx County) (Aug. 10, 2022).

worn cameras and made available to defender organizations without a judicial subpoena. We frequently hear from clients that DOC has falsely claimed that they refused out of cell time or services. Currently, DOC requires that defenders obtain a judicial subpoena before they provide videos of any refusals, which in practice frequently means that defenders are not able to review these videos. To require DOC to provide out of cell time and access to services without requiring them to record any refusals and ensuring that defenders have access to the videos risks making the requirement ineffectual.

Conclusion

BDS is grateful to the Committee on Criminal Justice for hosting this important hearing and continuing to call attention to the horrifying realities of solitary confinement in New York City jails. Thank you for your time and consideration of our comments. We look forward to continuing to discuss these and other issues that impact people we represent.

If you have any additional questions, please feel free to contact me at slmarquez@bds.org.