April 20, 2021

Ms. Jennifer Jones Austin, Chair

New York City Board of Corrections

One Centre Street

New York, NY 10007

**Re: Proposed Rule on Restrictive Housing in Correctional Facilities**

Dear Chair Jones Austin and Board:

 I am writing to you as a City and Regional Planning graduate student at Pratt institute regarding the proposed rule by the Board of Corrections on restrictive housing and the proposed Risk Management Accountability System (RMAS). It is encouraging to see that reform for solitary confinement is being thought upon, since this type of punitive measure is unnecessary, unethical, and useless, as many have explained in their own commentaries. This new rule is a progressive step in realizing the needs of justice communities and is a step toward more effective rehabilitation. However, the idea of continuing usage of solitary confinement as a system of punishment is not only outdated but will not lead to effective rehabilitation nor gives the person in custody the tools to live outside of the prison system. In fact, it is quite the opposite.3 Additionally, this proposal does not go far enough in its scope to specify accountability for prison staff and their oversight measures, specifically. Throughout this public comment I would like to bring attention to research on positive rehabilitation, reasons for outright abolition of punitive segregation (rather than this reform), and specific parts of the proposal that should be tweaked, reformed, or specified upon in order to increase accountability and safety for those within the justice system.

**Science of Positive Reinforcement**

 A large body of research today reinforces the idea that punitive measures and fear-based tactics for punishment (reactive) are not as effective or long-lasting as positive reinforcement tactics (proactive). According to criminal justice expert Joel Dvoskin, PhD, “the current design of prison systems doesn’t work. Overly punitive approaches used on violent, angry criminals only provide a breeding ground for more anger and more violence.”1 This is especially true for solitary confinement, where the prison system is prioritizing treating violence with torture (more violence), instead of finding the root cause of the problem. As an example, systematic reinforcement of positive social behaviors in all areas of the prison system could be a powerful tool to change behavior and the way that inmates interact with one another, therefore helping to alleviate the problem before it occurs.1 This has never been a main tactic utilized in correctional facilities and it should be. Another study conducted by Burdon, Lore and Prendergast, where they studied the development and implementation of a positive behavioral reinforcement-based drug treatment program, found that “the active involvement of institutional staff, treatment staff, and inmates enrolled in the treatment programs in the development of the intervention along with the successful branding of the intervention were effective and promoting support and participation.”2

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1 From “Psychologists offer ways to improve prison environment, reduce violent crime,” (n.a.) (2009). <https://medicalxpress.com/news/2009-08-psychologists-ways-prison-environment-violent.html>

2 From Burdon, W. M., St De Lore, J., & Prendergast, M. L. (2011). Developing and implementing a positive behavioral reinforcement intervention in prison-based drug treatment: Project BRITE. Journal of psychoactive drugs, Suppl 7, 40–50. <https://doi.org/10.1080/02791072.2011.601990>

 Ultimately, rewarding positive behavior consistently (rather than authoritative punitive measures) were more effective in the treatment of drug abuse and longer lasting support and voluntary participation in the program. This, among other studies about the psychological effects of solitary confinement, should be the basis of new reform, as many other people have also mentioned in their comments.

**Abolishing Solitary Confinement**

Abolishing solitary confinement all together, instead of trying to reform it, would be a positive institutional rule for everyone involved. Inmates would not be punished by torture3 and instead could receive the institutional care and rehabilitation that they need more, as previously mentioned. Moreover, prisons would also be able to put the money and resources needed to upkeep the solitary confinement program into other, more positive rehabilitation techniques and staffing or to increase safety measures.4 Long-term isolation especially is extremely expensive due to the facilities needed to be constructed and full-time staffing required. In Connecticut, “housing a prisoner in solitary confinement costs and average of twice as much as housing a prisoner in the general population” 5 and in California, “inmates in isolation at Pelican Bay State Prison’s Administrative Segregation Unit cost $77,740 annually, which inmates in general population cost

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3 From Wesley Boyd, J. “Solitary Confinement: Torture, Pure and Simple.” (2018). *Psychology Today*. https://www.psychologytoday.com/us/blog/almost-addicted/201801/solitary-confinement-torture-pure-and-simple.

4 From “What Can Reforming Solitary Confinement Teach Us About Reducing Mass Incarceration?” (2015). *The Marshall Project*. https://www.themarshallproject.org/2015/10/13/what-can-reforming-solitary-confinement-teach-us-about-reducing-mass-incarceration

5 From American Civil Liberties Union. (n.d.). *Paying the Price for Solitary Confinement*. [https://www.prisonlegalnews.org/media/publications/Paying%20the%20Price%20for%20Solitary%20Confinement,%20ACLU%20Factsheet,%202015.pdf](https://www.prisonlegalnews.org/media/publications/Paying%20the%20Price%20for%20Solitary%20Confinement%2C%20ACLU%20Factsheet%2C%202015.pdf)

$58,324” in 2010-2011.5 Arizona, Maryland, Ohio, and Texas all had similar numbers. So why are we paying twice as much for a system that does not work?

Both prisons and prisoners are paying the price for solitary confinement that is unnecessary and unsustainable. This money could instead be used to hire more on-site medical staff, healthcare and caseworker professionals, and psychiatrists that could help to positively re-socialize the inmates committing violent crimes, instead of exacerbating their mental health issues.

**Regarding the Risk Management Accountability System (RMAS)**

Firstly, there is little to no specificity in this rule about the accountability of prison staff and their oversight measures. In an overtly racist society, especially within the prison system, there needs to be specific ways that guards and patrolmen and women will be held accountable in the case of neglect, fear-based treatment and aggression, or general rule-breaking.6 There are specifications for increased documentation and monitoring, but there is no specific rule about how these officers could be reprimanded if they do not comply with new rule. Will they also be placed in the RMAS program if they commit violent crimes against an inmate?

 The specificity in the wording should continue to the description of the RMAS program. As it stands, the rule says, “hold incarcerated individuals accountable for

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6 From “Holding Prison Guards Accountable.” (2017). *New York Times*. https://www.nytimes.com/2017/12/06/opinion/prison-guards-new-york.html

7 From page 83 of Full Rule Text, BOC Proposed Amendment of Minimum Standards Concerning Restrictive Housing Preliminarily Certified. BOC-Proposed-Amendment-of-Minimum-Standards-Concerning-Restrictive-Housing-Preliminarily-Certified-3.5.21-to-TG-w-certs-1.pdf

their misconduct through swift, certain, fair, and transparent processes.”7 Which fair and transparent processes? How will the board ensure it is fair? How will the board ensure transparency? How will the board address and minimize corruption within the prison system so that these fair and transparent processes can proceed?

The mention of air conditioning on page 32 should also be amended. Rather than saying just that all cells should be air conditioned, the text should say “temperature moderated between x and x degrees.”8 Similarly to extreme heat, extreme cold can also make the experience more torturous and would be unfair to those in custody. The facilities should also be held accountable for the health and welfare of those in the justice system, and even a small tweak such as this could make a difference.

Reformation of the timing of solitary confinement also needs to be addressed.9 Apart from this needing to be abolished in the first place, within this specific rule, 30 days until review of solitary is too long. The requirement should be at minimum of a few days until the person can see and speak with a medical professional and with peers about the incident. Again, rehabilitation should not be about punitive measures, the health and safety of inmates should be the first priority. Timing is of the essence and the sooner that the person can be rehabilitated in a

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8 From page 32 of Full Rule Text, BOC Proposed Amendment of Minimum Standards Concerning Restrictive Housing Preliminarily Certified. BOC-Proposed-Amendment-of-Minimum-Standards-Concerning-Restrictive-Housing-Preliminarily-Certified-3.5.21-to-TG-w-certs-1.pdf

9 From page 87 of Full Rule Text, BOC Proposed Amendment of Minimum Standards Concerning Restrictive Housing Preliminarily Certified. BOC-Proposed-Amendment-of-Minimum-Standards-Concerning-Restrictive-Housing-Preliminarily-Certified-3.5.21-to-TG-w-certs-1.pdf

10 From “PTSD Treatment Basics.” (n.d.) U.S. Department of Veteran’s Affairs. <https://www.ptsd.va.gov/understand_tx/tx_basics.asp>

safe way, the better, especially people who may experience PTSD.10 This person should be allowed to see and speak to several people (not just maybe one other person in a cage next to them) from a safe distance. Having time to think about the incident is one thing, having time to talk and interact with others about it, including mental health professionals, is needed in a fast time frame, in order to identify the underlying causes of the violent behavior. 30 days is too much of a delay for this purpose.

Lastly, leaving the monitoring and disseminating of medical information to

patrol officers is irresponsible and unfair to the person in custody. “As described further in § 6-21(a), the Board’s proposed rule seeks to codify this recommendation to create a process whereby people in custody with certain enumerated medical conditions are identified by CHS on a list that is accessible to DOC. The Department is then responsible for ensuring that housing area staff are aware when someone in their custody has a serious medical condition.”11 This is not sufficient. All medical information should be disseminated to staff by a medical professional, who should be on call in the case of a medical emergency.

The reformation of these rules are important ones, and they need to be taken seriously. The mental and physical health of those in the justice system need to be held in a regard of sincerity, patience and proactivity rather than with fear-based and reactive response. This rule change proposal, though a step in the right direction,

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11 From page 30 of Full Rule Text, BOC Proposed Amendment of Minimum Standards Concerning Restrictive Housing Preliminarily Certified. BOC-Proposed-Amendment-of-Minimum-Standards-Concerning-Restrictive-Housing-Preliminarily-Certified-3.5.21-to-TG-w-certs-1.pdf

needs to be modified to be more specific regarding the health and mental health of inmates and accountability of prison staff. We live in a racist society that is full of corruption. Mitigating this, in addition to abolishing solitary confinement, would be an especially large step for the rights of black and brown individuals that live and interact within the justice system.

Sincerely,

Leanna Molnar