



New York City Jails Action Coalition

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New York State Assembly Standing Committee on Correction & Assembly Standing Committee on Mental Health

Mental Illness in Correctional Settings Hearing November 13, 2014

The New York City Jails Action Coalition would like to thank Assembly Member Daniel J. O'Donnell and Assembly Member Aileen M. Gunther for holding this hearing and for the opportunity to testify on this critical issue.

The New York City Jails Action Coalition (JAC) is a collective of activists that includes formerly and currently incarcerated individuals, family members and other community members working to promote human rights, dignity and safety for people in New York City jails. Our goals include increasing transparency in Department of Correction (DOC) policies in NYC jails and accountability for DOC practices and abuses; ending the use of solitary confinement (commonly referred to as SHU, the Box, the Bing, or punitive segregation) in NYC jails; addressing the physical and mental health needs of people in NYC jails and ensuring access to continued care in the community upon release; advocating for increased rehabilitative services in NYC jails to promote reintegration; and fighting the racist and discriminatory policies leading to mass incarceration. We exist because the treatment of people in New York City jails is fundamentally inhumane, and the experiences of people with mental illness are particularly abhorrent.

JAC was formed in December 2011 to address the fact that the members of one of New York City's largest communities – the roughly 12,300 individuals incarcerated at Rikers Island and other City jails on any given day (81,758 individuals in total over the course of FY 2013) – are far too often neglected and abused by the very agencies designed to protect them. Mental health services are devastatingly inadequate and in many cases people are being punished with solitary confinement in lieu of mental health care. We urge the New York State Assembly to take steps to protect the rights of people with mental illness while they are incarcerated; to invest in quality mental health care in the community; and to implement other prevention, diversion and reentry services to keep people out of the jail and prison system entirely.

Solitary Confinement in New York City

New York City currently holds roughly 700 individuals in solitary confinement, many of whom are living with mental illness. At the time of JAC's formation in 2011, there were no limits on the use of solitary confinement in NYC jails, including for people with serious mental illness –

the SHU Exclusion Law has no jurisdiction on county jails. Despite the research and growing wisdom on the negative impact of extreme isolation, the NYC DOC expanded its solitary capacity in 2011 to well over 1000 beds, that is, a capacity to hold up to 10% of the entire jail population in punitive segregation.

In April 2013, JAC petitioned the New York City Board of Correction (BOC) to adopt minimum standards regarding the use of isolated confinement in city jails. Our call to the BOC to dramatically limit the use of solitary confinement was joined by more than 35 organizations, 11 New York City Council Members, and the New York City Bar Association Committees on International Human Rights and on Corrections and Community Reentry. In September 2013, the BOC agreed to initiate the process of rule-making, with the understanding that minimum standards are needed to protect people in City jails from the harm of solitary confinement. Under pressure, the DOC and the Department of Health and Mental Hygiene announced that they would close the Mental Health Assessment Unit for Infracted Inmates (MHAUII) — solitary confinement for people with mental illness — and, by the end of 2013, develop two alternative models which they had already begun developing: Clinical Alternative to Punitive Segregation (CAPS) and Restrictive Housing Unit (RHU). CAPS appears to be a clinic model with promise for providing intensive treatment and reducing violence, yet far too few people are provided this resource. The RHU, which houses the majority of people who would previously have been sent to MHAUII, is not reducing violence, providing adequate mental health care or departing from the punitive model for persons diagnosed with mental illness.¹

On September 5, 2013, two mental health experts commissioned by the BOC issued a report determining that the City was not in compliance with the BOC's Mental Health Minimum Standards.² Doctors James Gilligan and Bandy Lee concluded that the DOC's "use of prolonged punitive segregation of the mentally ill violates" these standards. The report asserts that prolonged confinement is "one of the most severe forms of punishment that can be inflicted on human beings short of killing them." The report recommends that the Restrictive Housing Unit (RHU), which the Departments of Correction and Health and Mental Hygiene put forward as an improved approach for segregating people with mental illness, "be eliminated because it is a punitive rather than therapeutic setting for people with mental illness."³ However, people with mental illness continue to be housed in the RHU in the City jails.⁴

¹ See, "CRIPA Investigation of the NYC DOC Jails on Rikers Island," U.S. Department of Justice, August 4, 2014.

² For more information about the minimum standards, see: Mental Health Minimum Standards, available online at http://www.nyc.gov/html/boc/html/rules/mental_health.shtml.

³ "Report to the New York City Board of Corrections," Gilligan, James and Lee, Bandy, September 5, 2013.

⁴ See also, "Three Adolescents with Mental Illness in Punitive Segregation at Rikers Island," New York City Board of Correction Staff Report, October 2013. The adolescents featured in this report had been diagnosed with mental illness and were each sentenced to more than 200 days in solitary confinement at Rikers Island. The report documents the punitive nature of the RHU, the inadequacies in mental health care, and the failure to provide appropriate educational services to these young people. Although the DOC Commissioner has pledged to end the practice of placing 16 and 17 year olds in solitary confinement by the end of 2014, Jimmy, the 18 year old featured in the report, would not be affected by this change. JAC's proposed minimum standards call for individuals 24 years old and under to be excluded from the harsh conditions of isolated confinement, and where necessary be placed in alternative safety restrictions.

The U.S. Department of Justice issued a report of their CRIPA Investigation on August 4, 2014, in which they concluded that adolescent inmates' constitutional rights were being fundamentally violated. Adolescents, including those with mental illness, were subjected to extreme violence and solitary confinement. "DOC relies far too heavily on punitive segregation as a disciplinary measure, placing adolescent inmates — many of whom are mentally ill — in what amounts to solitary confinement at an alarming rate and for excessive periods of time."⁵

A study published in March 2014 documented the harms of solitary confinement in the form of self injury. The study found that incarcerated individuals "punished by solitary confinement were approximately 6.9 times as likely to commit acts of self-harm."⁶ Furthermore, people in solitary confinement are more likely to have mental illness than the general population and are more likely to spend longer time in jail than people without mental illness.⁷ Despite the growing awareness of the need for reform, the BOC has yet to issue their minimum standards on the use of solitary confinement.⁸

It is time for the New York State legislature to take a stand against solitary confinement in all of our state's jails and prisons by passing the Humane Alternatives to Long Term (HALT) Solitary Confinement Act (A08588/S06466). The HALT Solitary Confinement Act provides a comprehensive approach to ending the torture of solitary confinement while creating alternatives and rehabilitation for people displaying unsafe behavior. This bill would limit solitary confinement for people with mental illness and other particularly vulnerable groups for any amount of time and limit the maximum amount of time that any person can spend in solitary confinement to fifteen consecutive days. The bill is guided by the conclusion of the UN Special Rapporteur on Torture that any length of time greater than fifteen days in solitary confinement constitutes torture, and any amount of time for certain populations, including people with mental illness, could result in permanent damage. It is critical that this bill include restrictions on the use of solitary in county jails; recent investigative reports⁹ exposed the multiple deaths in Rikers Island solitary confinement, and we can only imagine the devastating effects of solitary on

⁵ "CRIPA Investigation of the NYC DOC Jails on Rikers Island," U.S. Department of Justice, August 4, 2014.

⁶ Kaba, F., Lewis, A., Glowa-Kollisch, S., Hadler, J., Lee, D., Alper, H., Venters, H. (2014). September Death of Mentally Ill Rikers Island Inmate Ruled a Homicide. *The American Journal of Public Health*, 104(3).

⁷ Metzner, J., & Fellner, J. (2010). Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics. *Journal of the American Academy of Psychiatry and the Law*, 38(1), 104-108. Available online at <http://www.jaapl.org/content/38/1/104.full>

⁸ We hope that the minimum standards will be issued soon, and expect that they will apply to adults in the system as well as some focusing specifically on young people given the developmental needs of the brain in adolescence/young adulthood.

⁹ Pearson, J. (March 19, 2014). NYC Inmate 'baked to death' cell. *Associated Press*. Available online at <http://bigstory.ap.org/article/apnewsbreak-nyc-inmate-baked-death-cell>

Goldensohn, R. (August 18, 2014). Teen's Death in Solitary Cell Shows Health Failures at Rikers Island: Suit. Available online at <http://www.dnainfo.com/new-york/20140818/washington-heights/teens-death-solitary-cell-shows-health-failures-at-rikers-island-suit>

Weiser, B. and Winerip, M. (September 10, 2014). Family of Rikers Inmate Sues New York City Over His Death. *New York Times*. Available online at http://www.nytimes.com/2014/09/11/nyregion/family-of-mentally-ill-rikers-inmate-sues-new-york-city-over-his-death.html?_r=0

Schwartz, M. (March 24, 2014). U.S. Accuses Rikers Officer of Ignoring Dying Plea. *New York Times*. Available online at <http://www.nytimes.com/2014/03/25/nyregion/correction-officer-charged-with-indifference-in-death-of-rikers-island-inmate.html>

people in other county jails where there may be less media interest or public scrutiny than in New York City. We implore the Assembly leadership to support this legislation and take a stand against torture.

Mental Health Care in New York City Jails

For individuals confined in solitary, general population, or specialty mental health units, the mental health care is largely inadequate and often counterproductive. For many, mental health treatment consists solely of medication management. Family members of people who are currently incarcerated report that individuals needing mental health therapy rarely receive adequate treatment, as they may meet with a different therapist each visit, for just a few minutes per session. The son of one JAC member is currently incarcerated at Rikers Island, where he receives haphazard mental health treatment. The timing and dosage of his medication have been changed several times despite the negative and dangerous impact those changes have had on his mental and physical health. Whenever his mother has tried to contact the medical professionals overseeing his care, her questions and calls have been ignored. It is important that a message be sent from the state level that family members' involvement — in the assessment and treatment of their loved ones in correctional settings — is valued.

The mental health observation units on Rikers are a source of chaos and neglect, as evidenced by the tragic death of Bradley Ballard. In September 2013, Mr. Ballard, a man with severe documented psychiatric challenges, was placed on a mental observation unit at one of the facilities on Rikers Island. In this unit, he was supposed to be monitored 24 hours a day and provided with intensive treatment and psychotropic medication. Instead, Mr. Ballard was locked in his cell for seven days, and denied his medication and medical attention. After seven days of horrific neglect, he was carried out of his cell covered in feces and blood due to self-mutilation, only to pass away a few hours later. His death was ruled a homicide at the hands of the corrections officers and medical providers who denied him the care he required.¹⁰ To date, nobody has been held accountable for Mr. Ballard's death.

Moreover, mental health care services across this state are greatly lacking and do not meet the minimum standards set forth by the BOC. Gilligan and Lee's report to the Board of Correction lays out the multiple violations of standards for adequate mental health care:

1. Group therapy is not provided confidentially, and is observed and interrupted by non-participants;
2. Punitive segregation diminishes and interferes with the mental health practitioners' opportunity to observe patients;
3. Other treatment modalities should be used by the mental health staff, other than Dialectical Behavior Therapy (DBT);
4. Many of the inmates with mental illness are housed in a stressful environment;

¹⁰ September Death of Mentally Ill Rikers Island Inmate Ruled a Homicide. (June 2, 2014). CBS New York. Available online at <http://newyork.cbslocal.com/2014/06/02/september-death-of-mentally-ill-rikers-island-inmate-ruled-a-homicide>

5. The physical environment is not conducive to facilitate care and treatment.¹¹

As the population of people with mental illness in NYC jails continues to grow to roughly 40% of the jail population, mental health care must be enhanced and made accountable to external oversight. Therapy must be provided in appropriate settings that protect the patients' privacy, instead of being administered at cell-side or in open corridors and communal spaces. DOHMH must employ psychiatrists who specialize in the treatment and care of their specific client populations, for example in adolescent brain development and traumatic brain injury. Mental health interventions must include awareness of the impact of trauma and PTSD on patients' health and must recognize how incarceration itself, as well as experiences such as solitary confinement, can be particularly traumatizing.

Keep People Out of Jails and Prisons

We, as a society, must stop locking up people with mental illness and instead invest in community-based services and interventions. JAC believes that more quality community-based mental health services are necessary to keep people healthy and in their homes, and to reduce the incidence of incarceration. People living with mental illness often decompensate in correctional settings and may experience irreparable harm from treatment such as solitary confinement. The implementation of better alternatives to incarceration and diversion programs that cater to people with mental illness could preserve the integrity of families and communities that often see their members getting lost in the criminal justice system. More permanent housing must be created for individuals suffering from mental illness as well as those with co-occurring mental illness and addiction issues.

Bail reform is needed so that people are not incarcerated simply because they are too poor to pay their bail. The death of Jerome Murdough provides a horrifying example of this crisis. Mr. Murdough was incarcerated in February of 2014 on trespassing charges. Mr. Murdough, who had served our country as a Marine, was arrested because he was seeking shelter on the roof of a public housing building. His bail was set at \$2,500, which neither he nor his family could afford, and he was consequently placed in a cell on a unit that had malfunctioning heating equipment; because of this, his cell reached over 100 degrees. It was reported that a variety of anti-psychotic and anti-seizure medication that he had been taking made him more susceptible to the heat, and after several hours of being ignored by corrections staff, he passed away from heat stroke.¹² Had he been provided services and housing instead of being incarcerated, he would not have died at Rikers.

¹¹ Gilligan, James and Lee, Bandy, (2013). *Report to the New York City Board of Corrections*. New York City.

¹² Pearson, J. (March 19, 2014). NYC Inmate 'baked to death' cell. *Associated Press*. Available online at <http://bigstory.ap.org/article/apnewsbreak-nyc-inmate-baked-death-cell>

Jorgensen, J. (October 31, 2014). Stringer Announces \$2.25 Million Rikers Island Wrongful Death Settlement. *New York Observer*. Available online at <http://observer.com/2014/10/stringer-announces-2-25-million-rikers-island-wrongful-death-settlement/>

Misguided as well as racist and discriminatory policing practices also contribute to the high incarceration of people with mental illness. We are encouraged by the State's commitment to develop a Crisis Intervention Team pilot program for police responding to people in psychiatric crises. We encourage the state legislature to take additional steps to ensure that community safety officers are equipped to respond in a safe way to people with mental illness and connect them with mental health care rather than shuttling them into the criminal justice system.

Conclusion

New York City jails are facing a crisis. The issues facing New York City are endemic of the prison system in general and we can only imagine how people in jails across New York State are faring, where there may be less public scrutiny. We urge the New York State Assembly Standing Committees on Correction and Mental Health to take action in the form of passing the HALT Solitary Confinement Act and mandate the improvement of mental health services for people living with mental illness in our state's jails and prisons. New York should be at the *forefront* of prison and jail reform, rather than continue to deny basic human rights and be a party to torture and death. Thank you.