



## **10 Key Flaws & Recommendations for BOC Rules to End Solitary Confinement in NYC**

The Board of Correction proposed rules to purportedly end solitary confinement in New York City jails. However, the Board of Correction's proposed rules simply create a new system of inhumane and abhorrent treatment that amounts to solitary confinement by another name. The Board must amend its rules to actually end solitary confinement in a real and meaningful way.

### **1. The Proposed Rules Create Extremely Restrictive Environments that Amount to Solitary Confinement by Another Name**

The so-called Risk Management and Accountability System ("RMAS") allows people to be held in conditions that are extremely restrictive and isolating, and effectively amount to solitary confinement by another name. According to the proposed rule, when people in Level 1 in RMAS have "out-of-cell" time, they are placed alone in another, slightly larger, cage. The rules only allow for there to be one other person, also alone, in a separate somewhat nearby cage. Similarly, when people in Level 2 in RMAS have "out-of-cell" time, they are in another, slightly larger, cage potentially alone, with three other people in separate nearby cages, or potentially with three other people in the same cage.

For both Level 1 and Level 2, the rules only require that people be able to engage "both visually and aurally" and "in a setting where people can converse without needing to raise their voices to be heard." These rules clearly allow, and indeed envision, that people will be in separate cages from one another during their "out-of-cell" time and will be at a distance from each other.

For Level 1, and for the more restrictive version of Level 2, since people can be in separate cages apart from each other, this type of so-called "out-of-cell" time does not actually amount to out-of-cell time. It still involves being placed in a small cage without meaningful human engagement. Even if in the same cell with just one other person - which the rules do not even currently provide for - psychological experts have found that [isolation in a double-occupancy cell](#) does not allow for regular social interaction, can be as devastating psychologically as other forms of solitary, and can lead to paranoia, hostility, and potential violence.

People who have been incarcerated in the structurally restrictive housing units at North Infirmery Command (NIC) and the Secure Unit at George R. Vierno Center (GRVC), which are the models for the RMAS units, have faced serious harm and raised significant complaints about the conditions in which they are held.

**Recommendation:** “Out-of-cell” time must require access to meaningful congregate interactions with at least several people at a time in the same open space that is conducive for healthy human interaction and engagement. People must be treated as human beings, have opportunities for regular activities with other human beings, in spaces that are conducive for human beings to interact meaningfully.

## **2. The Proposed Rules Allow People to Be Held in Such Isolation *Indefinitely***

People may be held in RMAS *indefinitely*. While the rules provide that people may be able to progress from Level 1 to Level 2 in the RMAS at 30 days, 45 days, or 60 days, the rules allow people to be held indefinitely in Level 1 based on a broad and vague “documented intelligence” that the person would engage in violence in Level 2. Under this rule, it would appear that any staff person could document that a person would engage in violence and use that as a basis for continuing to hold a person in these solitary-by-another-name conditions. Similarly, while a person may move from Level 2 to Level 3 in the RMAS after 15 days, the Department can hold a person at Level 2 based on the same type of vague “documented intelligence” that a person would engage in violence or that a person refused to participate in programming.

This provision is a step backward from the current rules. Under current rules, there is a general limit of 30 days on people being held in punitive segregation and a 60-day limit for assault on staff charges. Under the proposed rule, the shortest time that a person could spend in the RMAS is between 60 days and 120 days, and a person could be held indefinitely at any or all of the three levels, potentially spending months or even years in these extremely restrictive environments, based solely on a vague claim that there is documented intelligence that a person would act violently.

**Recommendation:** There must be absolute limits on the length of time that people spend in RMAS. The length of any time limit is dependent upon the provision of meaningful programs and activities. If in fact there are such programs and activities in each level, the time limits listed should be actual hard limits, meaning that people should move through level one in 30, 45, or at most 60 days, and should move through levels two and three after 15 days. However, if there are not meaningful programs and activities and instead highly restrictive environments, there should be much shorter absolute limits, such as a total maximum time limit of 15 days in the RMAS.

## **3. The Proposed Rules Envision the Construction of *Additional* Inhumane Units**

The rules anticipate the construction and expansion of the use of inhumane and counterproductive units. No human being should be locked in the types of units envisioned under the rule. The rules take some of the most punitive and isolative units in the system - NIC structurally restrictive housing and GRVC Secure Unit, makes them the basis and model of this new regime, and envisions that the City is going to spend precious resources to construct more of these units that are abhorrent to humanity. Putting people in small cages with potentially one other person in the

same cage or potentially a separate nearby cage, and holding people in those conditions for months and even indefinitely, is not how any human being should be treated.

**Recommendation:** There is no need to construct any new units, and certainly the City should not construct more punitive and isolative units. People should have out-of-cell time in large spaces that are conducive to human beings interacting in a meaningful way.

#### **4. The Proposed Rules Do *Not* Provide Access to Meaningful Programming**

The proposed rules do not require meaningful out-of-cell congregate programming. While the proposed rules require access to five hours of programming a day, such programming can take place in-cell or out-of-cell, without any specified amount of out-of-cell programs. Under the rule, then, a person could have a few minutes of out-of-cell programming and the remaining five hours of programming in their cell. Also, there is no requirement for the programming to be congregate in nature, and the rule fails to describe how much and the nature of contact with other incarcerated people or program staff. Based on past experience, programming could simply involve program staff briefly speaking with a person at their cell door and then the participant being given a workbook (or less) and told to do programming while in their cell.

**Recommendation:** All people in City jails, including those separated from the general jail population, should have access to at least 14 hours out of cell per day, with access to at least 7 hours of congregate out-of-cell programming and activities. Programs like CAPS in NYC jails, Merle Cooper in a New York prison (now closed), and the RSVP program in San Francisco jails offer interventions that do not restrict out-of-cell time, focus on meaningful pro-social programming and engagement, and actually work to reduce violence and improve safety.

#### **5. The Proposed Rules Do *Not* Provide Access to Counsel**

The proposed rule does not provide people in custody with access to counsel at hearings that can result in placement in RMAS. As current practice indicates, the hearings, which do not have a neutral decision-maker and are overseen by Department staff, do not provide meaningful review of alleged incidents. At a minimum, providing access to counsel will provide some semblance of fairness and accountability for the operation of these hearings and the placement of people in highly restrictive and damaging environments. Access to counsel is also critical to ensuring that the periodic placement reviews are meaningful and that any decision to continue placement is supported by evidence that meets the standard set forth in the rules.

**Recommendation:** People should have access to their own counsel or legal advocate for such hearings, and have the right to present evidence and cross-examine witnesses. Both the person incarcerated and their attorney of record should be provided timely written notice of the reason for proposed placement in restrictive housing. This notice should include specific information regarding the allegations, which the proposed rule does not require. A failure to provide such notice

should constitute a due process violation warranting dismissal. Counsel should be provided adequate time to prepare for such hearings, including requests for adjournments. People should not be required to remain in isolated confinement for the duration of the disciplinary process. People should also have access to their own counsel to assist in the placement review.

#### **6. The Proposed Rules' Exclusions from Restrictive Housing Are Very Narrow and Do Not Protect Young People or People with Medical Conditions**

The proposed rules have very limited designations of people who are excluded from placement in the RMAS. The rules use a very narrow definition of people with mental health needs by focusing only on people with "Serious Mental Illness." The rules also do not exclude young people or elderly people at all, nor people who have physical disabilities or medical conditions.

**Recommendation:** The rules should prohibit from placement in the RMAS or other forms of restrictive housing all young people aged 25 and younger, elderly people aged 55 and over, people with mental health needs, people who have physical disabilities, and people with medical conditions.

#### **7. The Proposed Rules Fail to Provide Time Limits on Other Forms of Solitary, Again Allowing Indefinite Solitary Confinement**

While the rules allow for other forms of solitary confinement, they do not specify definitive time limits on them. For example, the rules do not provide for any time limits on emergency lock-ins, again allowing the use of widespread solitary confinement indefinitely. The rules also do not provide specific meaningful limits on the scope of emergency lock-ins or the situations that can result in lock-ins, offering only vague reference to being "no longer than necessary" and requiring reporting the reasons for the lock-ins without limiting what those reasons can be.

The rules also do not provide specific definitive time limits on so-called "deescalation" confinement. The rules purport to put a six-hour limit for each instance of deescalation confinement but do not do anything to prevent people from being repeatedly placed in deescalation confinement on the same day or repeated days.

**Recommendation:** There should be strict and precisely defined limits on the scope, reasons for, and lengths of time in emergency lock-ins and "deescalation confinement", if they are to be permitted at all. Emergency lock-ins and placement in deescalation should be reviewed at least every hour and should never last more than four hours in any 24-hour period nor more than 12 hours in any seven-day period.

## **8. The Proposed Rules Carve Out a Second Class of People in City Jails, for Whom Inhumane Treatment is Allowed, Failing to Ensure that All People in the City Jails Have Access to at Least 14 Hours Out of Cell Per Day**

The proposed rules continue to perpetuate the idea that treating some people as less than other people in the jails (and indeed in this case less than any human being should be treated) is somehow acceptable and is somehow going to miraculously improve safety when all evidence indicates otherwise. Even if all of the other failings of the RMAS above were remedied, the proposed rule still limits people's out-of-cell time in the RMAS to 10 hours out of cell per day in Level 1 and 12 hours out of cell per day in Level 2.

The City should not create classes of people who are subject to more limits on out-of-cell time. Limiting people's out-of-cell time does not address safety or violence concerns, but it can cause devastating harm. We need an approach that is actually about addressing safety and protecting the health and well-being of people who are incarcerated. Even if the Department actually gave 10 hours of out-of-cell time, that means at least 14 hours locked in your cell per day, including six hours during the daytime. We also know that past practice shows that a 10-hour requirement does not actually mean 10 hours and people will be locked down even more. DOC currently often counts hours for things like showers or the possibility of a medical appointment even if someone does not have one.

**Recommendation:** All people in the City jails, regardless of what unit they are in or if they are separated from the general jail population, should have access to at least 14 hours out-of-cell per day, again with at least seven hours of out-of-cell congregate programming and activities.

## **9. The Proposed Rules Continue to Allow People to Be Chained and Shackled**

While the proposed rules purport to end the use of so-called restraint desks and other restraints during out-of-cell time, it does not place limitations on restraints until November 2021. It also continues to allow people to be chained to desks or placed in five point restraints or in other forms of restraints not in response to an immediate threat of harm but if a person "recently" engaged in serious violent conduct and there is a review every seven days.

**Recommendation:** Ban restraint desks and other forms of restraint during out of cell time entirely, or at the very least ensure that every use of restraints is in response to an immediate threat of imminent and serious harm.

## **10. The Proposed Rules Continue to Allow Isolation for Non-Violent Conduct Such as Drug Possession**

The proposed rules continue to allow people to be placed in RMAS Level 2 for non-violent conduct, including the possession of drugs or tobacco products.

**Recommendation:** The proposed rules should only allow placement in a more restrictive environment than the general jail population at most in response to contemporaneous grave and dangerous behavior that resulted in injury or presents a specific, significant, and imminent threat to the safety and security of people who live and work in the facility.

## **Conclusion**

In line with the Mayor's and the Board of Correction's promise, the Board must amend the proposed rule to actually end solitary confinement once and for all in New York City. Evidence shows that in addition to being more humane, what actually works to address violence are opportunities for real and meaningful human engagement and pro-social programming, as demonstrated in programs like CAPS, Merle Cooper and the RSVP program. By contrast, the proposed alternatives to solitary in this rule are essentially the exact opposite of these programs, and will allow people to be held in isolated conditions for months, possibly years, and indefinitely.

Everyday people in custody live in constant fear for their lives because of the abuse and torturous conditions in the city jails. Family members with loved ones inside Department custody testify at every BOC hearing about the abuse, and torture that their loved ones are surviving. The proposed rules must create real and fundamental change. It is also imperative that the Board enforce those changes. The Board often fails to act to enforce the existing Minimum Standards regulating conditions of confinement. There is no indication that the Department will change its abusive practices without being held accountable by the Board. The Board must commit to not only amend its proposed rules to actually end solitary confinement in a real and meaningful way, but also take action if the Department fails to comply with the rule's provisions.

Ultimately, the Board must enact and enforce rules that treat all people as human beings and allow them to engage with other people in spaces and in manners that are suitable for human beings.

## **Take Action**

### **Demand that the Board fully end the use of solitary confinement & create humane, effective alternatives:**

- Speak at the Board's public hearings on **Tuesday, April 13** at 9 a.m. or **Wednesday, April 14** at 6 p.m.
- Submit written comments on the proposed rules
- Sign on to comments: <http://bit.ly/EndSolitaryComments>
- Call the Board and leaving a comment via voicemail at 212-669-7900

To obtain a copy of the proposed rules or more information about how to submit comments or sign up to speak at a hearing, go to the Board's website: <https://www1.nyc.gov/site/boc/jail-regulations/restrictive-housing-rulemaking-2021.page>.