



Testimony of

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Before the

Committee on Criminal Justice

Int. 549-2022 – Banning solitary confinement in city jails

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My name is Christopher Boyle and I am the Director of Data Research and Policy at New York County Defender Services (NYCDS), an indigent defense office that every year represents tens of thousands of New Yorkers in Manhattan’s criminal. Thank you to Public Advocate Williams, and all of the Council Members who have sponsored the bill for proposing significant reform to the practice of solitary confinement in our city jails. I have been representing clients accused of crimes in this city for twenty-five years and that perspective allows me to fully appreciate just how critical and long overdue this reform is.

Sometimes a moral imperative becomes crystal clear. New York City must end the state-sanctioned psychological torture that is solitary confinement. Imposing extreme isolation on a prisoner is inhumane and serves no rehabilitative purpose. The practice causes severe psychological trauma that can cause permanent damage to a person. It is never justified. But New York’s current approach is especially unjustifiable. We impose isolated confinement far too broadly and routinely. It can be imposed in response to non-violent conduct and it is imposed for far too long a period of time. In the state system, prisoners can be victimized by it for months, years, or even decades, with little recourse to due process or other acknowledgement of their basic human worth. Any reform that reduces the scope of this baleful practice is urgently welcome.

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## I. WHAT IS INT. 549-2022?

This local law would set new restrictions on the use of solitary confinement and restrictive housing in New York City jails. The proposed rule would replace the harmful practice of involuntarily locking people inside cages at DOC's discretion. DOC staff has full discretion to impose a lock-in, due to an incident, because they don't have enough staff to man the post, or simply because they feel like it. The proposed rule would prohibit this practice, which is simply another form of solitary confinement, with the requirement of deescalation units.

### *a. DEFINING SOLITARY CONFINEMENT*

Intro. No. 549 would ban the use of solitary confinement unless such confinement is necessary to de-escalate immediate conflict. Even in those instances, an incarcerated individual may be placed in such confinement for no longer than four hours immediately following such conflict.

The bill also requires that whenever solitary confinement is used, the department shall prepare an incident report that includes a detailed description of why isolation was necessary to de-escalate immediate conflict and also the length of time the incarcerated individual was placed in solitary confinement. Also, incarcerated individuals placed in solitary confinement shall have access to at least ten hours outside their cells.

The proposed rule would replace the harmful practice of involuntary locking people inside cages at DOC's discretion. DOC staff has full discretion to impose a lock-in: due to an incident, because they don't have enough staff to man the post, or simply because they feel like it. Some of the most egregious treatment of our clients takes place during these lock-ins. Medical and mental health emergencies go ignored. Food is not provided for hours, or sometimes days on end. Family members fear the worst, as without access to phones, contact with their incarcerated loved ones is suddenly interrupted without explanation. The proposed rule would prohibit this practice, which simply another form of solitary confinement.

### *b. ADEQUATE DUE PROCESS*

The bill also dictates that restrictive housing cannot be used unless a hearing on such placement is held pursuant to the rules of the board of correction. The placement of an incarcerated individual in restrictive housing shall be reviewed every fifteen days to determine whether the incarcerated person continues to present a significant threat to the safety and security of the facility if housed outside restrictive housing.

The most vital aspect of this legislation is the requirement of access to counsel during all disciplinary hearings in the jails. This requirement is long overdue, as the rule was supposed to go into effect in Decemer of 2021, and then again in January of 2022, and then again in July of 2022, but never came to fruition. Department of Correction practice in its current form results in many of our clients being unaware of the rational behind their placement in a restrictive housing setting or "Pre-Hearing Detention (PHD)." Even after their disciplinary takes place, they remain unclear of the charges brought against them, and of what they have been found guilty. It is as if the Department has decided that our clients are guilty before they have had the chance to defend themselves. Additionally, the lack of adequate due process can have harmful impacts on detainees' criminal cases, as jail disciplinary records are often used against our clients in the criminal

sentencing process, and often result in lengthier prison sentences. Our hope is that Intro. 549 will once and for all permit access to counsel during disciplinary hearings, and create a disciplinary process on Rikers Island that complies with the constitutional rights of people accused of crimes.

## II. THE PROPOSED RMAS RULE IS NOT AN ADEQUATE SOLUTION

While we support the passage of Intro. 549, we have concerns that the due process aspects of the bill will not be properly implemented, as was the case during the failed rollouts of the Board of Corrections' Risk Management Accountability System (RMAS).

Troublingly, during the build up of the repeated purported rollouts of RMAS that never materialized, defenders were left in the dark about how DOC intended to implement infraction hearings to ensure that incarcerated people had meaningful access to legal representation during the process. We were not even provided DOC directives about disciplinary hearings, we were told that we would need to FOIL the data. We requested access to the DOC penalty grid, in which DOC infractions, their elements, and their potential consequences, are laid out. DOC has also refused to share this documentation with us, responding that this also is not public information. Again, these are straightforward documents that could easily be shared, and that we as defenders need in order to prepare for RMAS hearings. Preparing to conduct RMAS hearings without this documentation is like asking us to prepare to go to trial without access to the New York Penal Law. Indeed, we had many questions and concerns about the RMAS procedure that were never answered before RMAS rollout was inevitably and repeatedly cancelled.

We not only need a law that expressly states the right to counsel during disciplinary hearings, but also oversees the implementation of this process so that we can ensure this right is actually guaranteed.

## III. WHY WE MUST END SOLITARY

Right now, too many New Yorkers are suffering in solitary confinement in jails across New York City. Incredibly, 5.5 percent of people in jail or prison in our state are in isolated confinement, a rate even higher than the national average of 4.4 percent. In New York City, the numbers are even more staggering. According to the *New York Times*, 13 percent of the more than 7000 people incarcerated in city jails in the first half of 2020 were held in solitary confinement.<sup>1</sup> And the clear majority of them are people of color. For example, Black people comprise about sixteen percent of all New Yorkers, but they make up fifty percent of incarcerated people and sixty percent of people held in long-term solitary confinement units. These racial disparities are constitutionally problematic, to say the least, and only serve to further delegitimize an already shameful practice.

It is shameful because solitary confinement causes extreme psychological harm and trauma. Twenty-two percent of people in jails suffering with symptoms of serious psychological distress had spent time in solitary in the preceding twelve months.<sup>2</sup> Depriving incarcerated people of adequate human contact and sensory stimulation results in adverse consequences that continue post-

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<sup>1</sup> Jan Ransom, "As NYC Jails Become More Violent, Solitary Confinement Persists," *NY Times*, Oct. 12, 2020.

<sup>2</sup> Beck, A.J. (2015). Use of Restrictive Housing in U.S. Prisons and Jails, 2011-12. *Bureau of Justice Statistics*.

isolation and make adjusting to the general jail population, and ultimately to mainstream society, even more challenging than it already is.<sup>3</sup> Studies also show that solitary confinement creates powerfully deleterious effects with regards to mood symptoms, PTSD-related outcomes, psychotic experiences, hostility, self-injurious behavior, and mortality.<sup>4</sup> For example, people put in solitary confinement are more likely to harm themselves or to die by suicide than other incarcerated people. According to one study, people assigned to solitary confinement were 3.2 times more likely to commit an act of self-harm during their incarceration compared to those never assigned to solitary.<sup>5</sup> Incarcerated people who have been in solitary confinement also experience oversensitivity to stimuli, disturbed sleep, slowing of mental processing, chronic headaches, and increased heartbeat, all of which makes them more irritable and likely to overreact.<sup>6</sup>

Nor can it be persuasively argued that issues of safety somehow justify such cruel effects. Because evidence strongly suggests that solitary confinement is not an effective deterrent to antisocial behavior and may actually make those subjected to it more likely to later disobey the law or behave violently towards themselves and others.<sup>7</sup> So solitary confinement paradoxically makes everyone involved less safe.

Conversely, states that have taken steps to limit isolated confinement have found that doing so makes jails safer. In 2007, Mississippi instituted more objective criteria for admission to solitary and release from solitary, a mandated 90-day review of incarcerated people in solitary, and a written plan outlining how each person in solitary could secure release.<sup>8</sup> These reforms resulted in a decline in the number of prisoners in solitary confinement and a nearly 70 percent concurrent decline in the number of serious and violent incidents.<sup>9</sup> Colorado, following the appointment of Rick Raemisch as the Colorado prisons director in 2013, ended the practice of long-term solitary confinement that exceeded fifteen consecutive days and replaced solitary confinement units with de-escalation rooms for people with mental illness.<sup>10</sup> Raemisch instituted these new policies after spending a day in solitary confinement and the reforms increased safety.

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<https://www.bjs.gov/content/pub/pdf/urhuspj1112.pdf>.

<sup>3</sup> Corcoran, M.M. (2015). Effects of Solitary Confinement on the Well Being of Prison Inmates. *OPUS*, 37-39. <https://steinhardt.nyu.edu/appsych/opus/issues/2015/spring/corcoran>.

<sup>4</sup> Luigi M, Dellazizzo L, Giguère C-É, Goulet M-H and Dumais A (2020) Shedding Light on “the Hole”: A Systematic Review and Meta-Analysis on Adverse Psychological Effects and Mortality Following Solitary Confinement in Correctional Settings. *Front. Psychiatry* 11:840. doi: 10.3389/fpsy.2020.00840

<sup>5</sup> Kaba, F., Lewis, A., Glowa-Kollisch, S., Hadler, J., Lee, D., Alper, H., Venters, H. (2014). Solitary Confinement and Risk of Self-Harm Among Jail Inmates. *PubMed*. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/>

<sup>6</sup> Corcoran, M.M. (2015). Effects of Solitary Confinement on the Well Being of Prison Inmates. *OPUS*, 37-39. <https://steinhardt.nyu.edu/appsych/opus/issues/2015/spring/corcoran>

<sup>7</sup> Cole, K.M. III. (1972). Constitutional Status of Solitary Confinement. *Cornell Law Review*, 57(3), 476-489. <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=3990&context=clr>

<sup>8</sup> Kupers, T.A., et al. (2009). Beyond Supermax Administrative Segregation: Mississippi’s Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs. *Criminal Justice and Behavior*. [https://www.aclu.org/sites/default/files/field\\_document/asset\\_upload\\_file359\\_41136.pdf](https://www.aclu.org/sites/default/files/field_document/asset_upload_file359_41136.pdf)

<sup>9</sup> Simms, A.A. (2016). Solitary Confinement in America: Time for Change and a Proposed Model of Reform. *Penn Law: Legal Scholarship Repository*.

<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1198&context=jlasc>

<sup>10</sup> Simms, A.A. (2016). Solitary Confinement in America: Time for Change and a Proposed Model of Reform. *Penn Law: Legal Scholarship Repository*.

Solitary confinement also makes our communities less safe. We all share a powerful societal interest in penal rehabilitation. We want people returning home from incarceration to thrive and succeed in their communities. We very much do not want them trying to reintegrate after having been traumatized and irreparably damaged by intentional torture. Each year, hundreds of New Yorkers are released directly from extreme isolation into our community. Very few receive any educational, rehabilitative programming, or transitional services to help them prepare for their return to society. The result is an artificially higher, if understandable, degree of recidivism for people with former criminal legal system involvement.

Individuals who have been subjected to solitary confinement face special challenges that society is poorly equipped to address. According to Craig Haney in *The Science of Solitary: Expanding the Harmfulness Narrative*, they encounter many serious obstacles to successful reintegration. There are few programs available that acknowledge their solitary-confinement-related traumas and assist them in overcoming the psychological aftereffects. Solitary confinement survivors are more likely to manifest symptoms of PTSD. Like the misguided punishment they were exposed to, the challenges they face are extreme. The results are unsurprising. Formerly incarcerated persons who spent time in solitary confinement are significantly more likely than other former prisoners to die during their first year of community reentry, especially from suicide, homicide, and opioid abuse.<sup>11</sup>

As public defenders, we advocate strongly and tirelessly for recognition of the basic human dignity of our clients. Solitary confinement makes a mockery of that concept. It is inhumane and should be a relic of the past. It creates, perpetuates, and exacerbates mental illness while reinforcing the toxic racial disparities in our criminal justice system. It reduces respect for our court and penal systems and acts as a stain on our collective morality. It has no place in a civilized society.

#### IV. CONCLUSION

Opponents of this rule claim that solitary confinement is a tool used solely in the most serious cases, after a particular dangerous individual has committed some act of violence. The reality is that solitary is used across the board, in general population, in mental observation, or protective custody, through the use of involuntary lock-ins. This past July, a young adult client housed in a mental observation unit in the Rose M. Singer Center was locked in her cell for 24 hours a day. She was not permitted to shower, go to rec, or have access to any programming. After multiple weeks in these conditions, she attempted suicide. Thankfully, she survived the attempt, but these were the same conditions that only a week prior had killed Michael Lopez. Opponents claim solitary confinement creates a safe environment in jails, but 32 deaths since 2021 is not indicative of a safe environment.

NYCDS strongly supports passage of the instant legislation.

If you have any questions about my testimony, please contact me at [cboyle@nycds.org](mailto:cboyle@nycds.org).

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<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1198&context=jlasc>

<sup>11</sup> Craig Haney, *The Science of Solitary: Expanding the Harmfulness Narrative*, 115 NW. U. L. REV. 211 (2020).