

Testimony of Kimberly Westcott, Associate Counsel
Community Service Society of New York
In opposition to proposed changes to Board of Correction rules
Board of Correction
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This testimony is presented on behalf of the Community Service Society of New York (“CSS”), a nonprofit organization serving low-income New Yorkers for over 173 years. I am Kimberly Westcott, Associate Counsel for CSS, where I focus on re-entry issues. Because the reintegration process begins in prison, we support programming and processes that improve prospects for employment and promote effective reentry into the community. CSS has long worked to raise the floor for *all* New Yorkers. This goal is particularly urgent with respect to those damaged and marginalized by encounters with enforcement and the criminal justice system, and, since 2008, our Legal Department has addressed employment and other barriers faced by people with criminal records. Through our Next Door Project, we train and supervise a cadre of retired senior citizen volunteers to help individuals obtain, understand, and fix mistakes on their criminal records, reaching over 600 clients annually. Since 2007, our monthly NY Reentry Roundtable has been an education and advocacy hub for the formerly incarcerated, allies, and practitioners in the criminal justice arena. Additionally, we litigate individual and class action cases, help people obtain certificates that demonstrate rehabilitation, advocate for policy changes on the state and local level, and were instrumental in drafting and enacting the Fair Chance Act.

With this background, CSS welcomes this opportunity to voice our strong opposition to the proposed revisions to the Board of Correction's ("Board") Minimum Standards for New York City Correctional facilities that weaken the limitations on the use of punitive segregation that were just enacted in January of this year, as well as those that would change visiting and packages standards. We believe that these proposed changes would degrade the dignity and health of persons detained at New York City Department of Correction (“DOC”) facilities, and simultaneously alienate and humiliate visiting family members attempting to preserve contacts with their loved ones – contacts that will be essential when the detained individuals return home. In no uncertain terms: the safety of DOC staff is critically important. But the proposed regulations are counterproductive to achieving DOC's legitimate security objectives and could well result in increasing the rate of violence at DOC facilities rather than decreasing it.

Punitive Segregation

The rules issued by the Board in January 2015 governing punitive segregation were a promising first step in limiting the maximum time any incarcerated person can be sentenced to solitary confinement within the DOC system. Recognizing it as an extreme practice, the final rule's policy statement noted that "punitive segregation is a severe penalty that should not be used under certain circumstances in the Department's facilities."¹ Accordingly, the maximum period an individual can serve in punitive segregation was reduced to 30 days for any single infraction, and to 60 days within a six-month period. While still excessive by mental health standards, the changed practices constitute movement toward complying with the determination of the United Nations Special Rapporteur on Torture who found that anything more than 15

¹ New York City Board of Corrections, §1-17(a) (January 2015).

days of solitary confinement constitutes torture. The Inter-American Commission on Human Rights has similarly urged member states to "adopt strong, concrete measures to eliminate the use of prolonged or indefinite isolation under all circumstances."²

Less than nine months after enacting these important changes, though, and with no practical or clinical basis for doing so, the Board proposes to eviscerate them by doubling the current maximum punitive segregation term for a single infraction for individuals accused of assaulting staff, and by removing the requirement for a 7-day respite period after a person has served 30 consecutive days of solitary confinement.

Both social science and experience show that simple removal and isolation of perceived dangerous actors will not promote overall institutional safety or provide increased safety for staff members. Studies have shown that increased use of physical penalties, particularly punitive segregation, does not deter violence in prisons or in any other institutional setting. In fact, research indicates that where solitary confinement is used, incidents of violence among inmates and directed at staff may actually increase. A 2006 study found that the isolation protocol in a supermax prison, where prisoners are in solitary confinement 22 to 24 hours a day, seven days a week, had no effect on prisoner-on-prisoner violence in Minnesota, Arizona, and Illinois,³ and also found that it had only limited impact on prisoner-on-staff violence in Illinois, none in Minnesota, and actually increased violence in Arizona.⁴ In fact, limiting the use of solitary confinement has actually been shown to *decrease* violence in prison. Michigan and Mississippi saw a decline in violence after reducing the number of prisoners in segregation.⁵

The exacerbating effects of extended solitary confinement on persons with previously diagnosed and undiagnosed mental health issues are well known. Research shows that the clinical impacts of isolation can be similar to those of physical torture. Not only are isolated individuals more likely to attempt suicide and commit acts of self-mutilation and harm while detained,⁶ but subsequent to release are diagnosed with depression at a high rate,⁷ which negatively affects their ability to become re-involved with their families and community and to seek employment post-release. A February 2014 study in the *American Journal of Public Health* found that detainees in solitary confinement in New York City jails were nearly seven times more likely to harm themselves than those in the general population.⁸ Incidents of flash anger, irrational

² Organization of American States [OAS], *Annex to the Press Release Issued at the Close of the 147th Session: Situation of Children and Adolescents and Situation of Persons Deprived of Liberty* (Apr. 5, 2013), available at http://www.oas.org/en/iachr/media_center/PReleases/2013/023A.asp

³ Chad S. Briggs, et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41 CRIMINOLOGY 1341, 1341-42 (2003).

⁴ *Id.* at 1365-66.

⁵ Jeff Gerritt, *Pilot Program in UP Tests Alternatives to Traditional Prison Segregation*, DETROIT FREE PRESS, January 1, 2012, available at www.freep.com/fdcp/?unique=1326226266727. See also Terry A. Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM JUST. & BEHAV. 1037, 1041 (2009); John Buntin, *Exodus: How America's Reddest State – And Its Most Notorious Prison – Became a Model of Corrections Reform*, 23 GOVERNING 20, 27 (2010).

⁶ American Civil Liberties Union (ACLU) Briefing Paper: *The Dangerous Overuse of Solitary Confinement in the United States* n. 42 (August 2014), available at <https://www.aclu.org/report/dangerous-overuse-solitary-confinement-united-states>

⁷ *Id.* at 4, n. 22 (citing Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM J. OF PSYCHIATRY 1450 1452-53 (1983)).

⁸ *Id.* at 5, n. 42. (Citing Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104:3 AM J. PUBLIC HEALTH 442, 442-447 (March 2014), available at <http://aiph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742>).

rage, and uncontrolled emotional reactions are also common consequences of solitary confinement.⁹ Long term solitary confinement can also create post-traumatic stress, as Professors Craig Haney and Mik'ail DeVeaux have discussed in recent scholarly works.¹⁰

Given the overwhelmingly negative effects, it is difficult to see how the increased use of solitary confinement could positively impact upon safety at DOC facilities or the communities to which incarcerated persons will ultimately return. And the proposal for increased use of solitary is particularly troubling given that most individuals in DOC custody have not been convicted of any crime. Most are awaiting trial, in many instances because they and their families are too poor to afford bail. In 2012, for example, more than two-thirds of the 12,000 incarcerated individuals at Rikers Island were pre-trial detainees who had not been convicted of a crime.¹¹ In light of its debilitating and well-documented mental health impact there is no defensible basis to increase time in punitive segregation for any reason. And given that the vast majority of individuals in DOC confinement have been convicted of no crime, increased punitive confinement *cannot* be condoned based upon the status of the victim, or for any other reason, with the hope (and with no evidence supporting it) that harsher punishment somehow serves a deterrent effect.

While staff members deserve and require adequate protection, recent experience has demonstrated through the tragic stories of Kalief Browder and others that the costs are too high,¹² that solitary confinement is trauma-inducing, and absent a situation where a person commits "persistent acts of violence" – not a single act of violence against a staff member – it cannot be justified. Therefore the DOC must implement a humane disciplinary system that provides incentives for positive behavior and establishes alternative sanctions that ensure jail safety while offering a therapeutic response to aggressive behavior.¹³

Dehumanizing and Alienating Visiting Standards

The Board should also reject proposed changes to the Visiting Standards, which further limit children, family and friends' opportunities for meaningful physical contact while visiting loved ones awaiting trial or serving a short sentence in NYC jails. It is well established that regular visits by family members not only improve the mental and emotional health of the incarcerated person, but also help support family cohesion, reduce stress among children and caregivers, and improve the likelihood that the family will be able to withstand the stresses of incarceration.¹⁴

⁹ *Id.* at 4, n. 25. (Citing Grassian, *supra* note 7, at 1453; Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIM. BEHAV. & MENTAL HEALTH 85, 91 (1997); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 130 (2003).

¹⁰ Craig Haney, *The Psychological Impact of Incarceration: Implications for Postprison Adjustment*, in PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES 33, 33 (Jeremy Travis & Michelle Wahl eds., 2003). See also Mik'ail DeVeaux, *The Trauma of the Incarceration Experience*, 48 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REVIEW 257 (2013).

¹¹ NYC Independent Budget Office, NYC's Jail Population: Who's There and Why? (Citing DOC data).

¹² Gonnerman, J. "Kalief Browder, 1993-2015." *The New Yorker*, June 7, 2015.

¹³ Ray Ferns, *Habits of Thinking: Working within Correctional Environments to Introduce and Sustain Personal Change*, Journal of Community Corrections (Winter 2008), available at <http://www.pbpp.pa.gov/Information/Documents/Research/TPR4.pdf>. See also Virginia DOC Administrative Segregation Step Down Program, available at, https://www.slatlanta.org/STAR/2013documents/VA_Step_Down.pdf

¹⁴ See generally American Civil Liberties Union (ACLU) Briefing Paper: *The Dangerous Overuse of Solitary Confinement in the United States* (August 2014). See also Jeremy Travis & Michelle Waul. *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities*. Washington, DC: Urban Institute Press (2003).

Studies have established that contact – particularly human, physical contact such as an embrace or the touch of a hand – is essential for fostering a sense of connection and combating the alienation of persons detained from family and friends in the community. Contact strengthens bonds that help visiting family members carry on the struggle of assuming the outside obligations of the incarcerated person, e.g. raising children and supporting the family financially and emotionally, and helps the individual maintain relationships with children, family and friends. Continued contact with one's children is crucial: studies have shown that in the absence of regular contact, children – particularly young children – are negatively affected by separation arising from incarceration of a parent and are at increased risk for developing behavioral problems and academic failure.¹⁵ Research also demonstrates that regular visits to a family member or loved one in jail or prison may strengthen the relationships between family members, reduce the stress levels both of persons incarcerated and those on the outside, and improve mental health outcomes, resulting in children reporting fewer feelings of alienation and increased levels of self-esteem.¹⁶

DOC claims that the proposed rules limiting physical contact are needed to reduce violence and stop contraband from entering the jails. But there is no evidence that the proposed limitations would accomplish these goals. In fact, a 2014 NYC Department of Investigation report found that a large portion of illegal contraband was brought into jails by the uniformed guards and civilian employees.¹⁷ In spite of this, the proposed changes permit DOC to deny visits based on vague criteria about the dangerousness of the incarcerated person and his or her visitors and to allow DOC to conduct broad investigations of visitors, including fingerprint-based criminal record checks, to make decisions about exactly who falls within the definition of "family member" and to decide what constitutes a close or intimate relationship. Beyond the lack of demonstrated efficacy of these practices, the proliferation of the use of background checks on regular citizens and the collection of their personal information violates personal privacy and the process is frequently disconcerting to families, friends and loved ones. This increased surveillance will be piled onto a visiting process that already tests visitors' fortitude. Parents and children are already subjected to a demoralizing lack of privacy, tedious and lengthy waits, humiliation and rude treatment by correctional officers, visiting in crowded, noisy and dirty facilities, studies and experience show.¹⁸ Such poor visitation conditions suggest a lack of psychological safety and do not support an enduring bond among children, family members and parents.¹⁹

Allowing DOC this kind of free-wheeling and arbitrary discretion is unwarranted, dangerous and would affect and possibly screen out many people, including LGBT individuals, survivors of domestic violence, and anyone whose background check might reveal even a low-level or remote criminal offense. But all such individuals may constitute the multi-faceted support system of the detained and incarcerated, promote their

¹⁵ Julie Poehlmann, Danielle Dellarire, Ann Brooker Loper, & Leslie Shear, *Children's Contact with Their Incarcerated Parents: Research Findings and Recommendations*, 65 *American Psychologist* 575, 586 (September 2010).

¹⁶ Joyce A. Arditti, *Child Trauma within the Context of Parental Incarceration: A Family Process Perspective*, 4 *Journal of Family Therapy and Review* 181, 194 (September 2012).

¹⁷ NYC Department of Investigation Report on Security Failures at City Department of Correction Facilities. November 2014. "Investigators say that while visitors to city jails bring in some contraband, a large proportion of the illegal trafficking is carried out by uniformed guards and civilian employees." Available at, https://www.nyc.gov/html/doi/downloads/pdf/2014/Nov14/pr26rikers_110614.pdf

¹⁸ Joyce A. Arditti, *Locked Doors and Glass Walls: Family Visiting at a Local Jail*. 8 *Journal of Loss and Trauma*, 115, 138 (September 2012). See also Megan Comfort (2008). *Doing Time Together: Love and Family in the Shadow of Prison*. Chicago: University of Chicago Press.

¹⁹ See Joyce Arditti, *Child Trauma within the Context of Parental Incarceration: A Family Process Perspective*, 4 *Journal of Family Therapy and Review* 194 (September 2012).

emotional well-being and mental health, and facilitate successful reentry. Over-policing and criminalizing communities of color – already subject to dehumanizing background checks and racially disparate enforcement – increase the likelihood that the resulting disparately-imposed criminal record checks will be used to restrict or prohibit family members from visiting their incarcerated loved ones.

The City should work to improve visiting in the jails by reducing waiting time for visitors, improving equipment used to conduct searches (and eliminate unnecessary pat frisks); clearly communicating visit policies and procedures; assigning sufficient, trained, steady staff to visit areas; and providing appropriate space for visitors, including children. It should not commit additional resources to promote the punitive paradigm of over-policing families, the vast majority of whom do not visit their loved ones bearing weapons, drugs or other contraband.²⁰

CSS recognizes that jails and prisons are complex institutions, and that there may be a very limited role for solitary confinement in exceptional circumstances. But not for simple punishment. Successful removal from general population requires attainable goals for the individual to return to general population and an overall change in correctional culture like that demonstrated by institutions that have adopted Effective Communication techniques.²¹

The Board is charged with serving as the watchdog over the DOC and with ensuring that New Yorkers are treated fairly and humanely by the DOC. Drafting and urging the passage of rules that harm and work *against* New Yorkers is inconsistent with that mandate. We urge the Board to withdraw its current proposed revisions as they concern solitary confinement, visiting regulations and packages. Thank you for the opportunity to comment.

²⁰ Pazmino, G. "New policy announced for Rikers Island visitors." Capital News, March 12, 2015.

²¹ Ray Ferns, *supra* n. 13.