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Criminal Justice Issues and Prisoners' Rights

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by [Victoria Law and Eva Lerner](#) | December 22, 2014

On Friday, December 19th, hundreds packed into the audience at a meeting of the New York City Board of Correction (BOC), the body that oversees New York City's jail system. At issue was the use of solitary confinement on Rikers Island specifically, whether to move forward with a new, highly-restrictive Enhanced Supervision Housing unit (ESHU). The proposed ESHU, at an estimated cost of \$14.8 million, will not replace punitive segregation units on the island jail; instead, it will serve as an additional form of segregation.

According to the New York City Department of Correction (DOC), the ESHU will curb the dramatic increase in serious violence at Rikers by separating 250 who are considered violent or security threats including gang leaders and those who have instigated or participated in a riot while in custody from the general population. Those in the ESHU would spend 17 hours a day locked into their cells.

But for advocates, who have been working for years to reform what they see as the torturous practice of solitary confinement on Rikers, the new units represent a significant step backwards. Many expressed disappointment with Mayor Bill de Blasio and his new Correction Commissioner, Joseph Ponte, who came to New York City from Maine with a reputation as a reformer.

The New York City Jails Action Coalition (JAC), which works to promote human rights in the city's jails, organized a press conference on December 10th to publicize the proposed amendments and air their concerns. Referring to the weakened criteria for placement in punitive segregation, Skylar Albertson of the Bronx Defenders said, The ineffectual hearing process and overbroad criteria for ESHU will allow corrections officers to sentence an incarcerated person to isolation at any time, for any reason and without oversight.

Susan Goodwillie of the Urban Justice Center said that the ESHU would perpetuate the same pattern of punitive segregation that has fostered the very violence that they are seeking to change.

Solitary Confinement in New York's Jails

In April 2013, JAC petitioned the NYC Board of Correction to amend the Board's Minimum Standards regarding the NYC Department of Corrections (DOC) use of solitary confinement in New York's jails. Solitary confinement (punitive segregation) is the practice of locking people in isolated, windowless cells without human contact for 22-24 hours a day. According to the DOC, New York City has 1,215 units in punitive segregation, 990 of which are on Rikers Island. The island holds people [awaiting trial](#) who cannot afford bail as well as those serving sentences of one year or less.

People in punitive segregation are denied most of the privileges allowed in the jail, including phone calls and family visits, rehabilitative or educational programming, and access to personal property. Members of JAC advocate for stricter minimum standards governing the use of punitive segregation, pushing for limits to the number of days one can spend in solitary confinement, improvements to due process for people at risk of or sentenced to punitive segregation, and a ban on the use of solitary confinement for youth under the age of 25 and people with mental illness.

Last year, following the appearance of two [scathing reports](#), the Board of Correction voted to make new rules governing solitary confinement in the city's jail system. These rules have yet to appear.

Those on both sides of the solitary confinement debate agree that violence has plagued Rikers in recent years, but sharply diverge on both the causes of this violence and the appropriate responses to it.

In 2011, the Legal Aid Society and two private law firms filed [Nunez v. the City of New York](#), a class-action lawsuit, to end the unnecessary and excessive force inflicted upon inmates by staff in all of the city's jails. In August 2014, the U.S. Department of Justice issued a [report condemning](#) the deep-seated culture of violence by staff against adolescents housed at Rikers Island. On Thursday, December 18, the day before the Board of Correction hearing, the Justice Department announced that it [planned to join the Nunez suit](#).

The Department of Corrections contends that the ESHU will address violence by removing those deemed most violent from general population and confining them to one housing unit. On the other hand, JAC and other advocates argue that much of the violence takes

place at the hands of staff, and that the ESHU is unduly harsh and punitive rather than therapeutic.

Testimony Defends and Attacks New Segregation Units

The BOC meeting was held at an auditorium at the headquarters of New York City's Department of Health and Mental Hygiene. But Dr. Robert Cohen, a commissioner on the Board of Correction, noted that the City of New York had not allowed representatives of the Department of Health to attend or speak at the hearing. Instead, a bus full of corrections staff arrived shortly after eight am to fill the auditorium. Uniformed corrections officers filled more than a quarter of the available seats, forcing many to stand. DOC officials, including Norman Seabrook, the head of the Corrections Officers Benevolent Association, were also in attendance. Over 100 [people signed up to testify](#).

The first to speak was DOC Commissioner Joseph Ponte. I have heard so many misconceptions about this unit, he began. I want to help correct these misconceptions. During his testimony, he pointed out that, as of December 4th, DOC had eliminated punitive segregation for 16- and 17-year-olds. Instead, it has a transitional housing unit for adolescents. However, the unit lacks policy directives to govern its operations and, as Board of Corrections member Bryanne Hamill pointed out, youth are only allowed out (or locked out of their cells) for two hours in the morning and two in the afternoon. That would still constitute a form of punitive segregation, she noted.

Again and again, Ponte stated that the proposed ESHU is not a form of solitary confinement. His assertion was echoed by the other DOC officials who testified after him, including James Dzurenda, DOC's first deputy commissioner, and Sidney Schwartzbaum, the president of the deputy wardens union. They also conjured worst-case scenarios to justify policies, such as the lack of contact visits, including visitors smuggling scalpels wrapped in electrical tape. Scott Temple, interim commissioner of the Connecticut Department of Corrections, also testified, asserting that Connecticut's experience proves the effectiveness of this type of housing.

But in a public comment to the Board of Correction, Linda Wilson, Executive Director of the Staten Island affiliate of the National Alliance on Mental Illness, [stated](#), The proposed ESHU restrictions are extreme, cumulative, and inflexible: reduction in out of cell time from 14 hours per day to 7 hours per day, inability to use the jail law library (replacing it with the in cell law library service that has proven inadequate in the jails punitive segregation housing areas), inability to attend congregate religious services outside the ESHU, deprivation of all contact visits regardless of risk, packages limited to approved vendors and a permissible items list, strip searches and mechanical restraints every time the person leaves the housing unit, and opening and reading all incoming and outgoing non-privileged mail. Vulnerable populations such as individuals with mental illness, physical disability, physical injury, or young people (other than 16 and 17 year olds) are not excluded.

Commissioner Ponte, in his testimony, placed the ratio of people on Rikers Island with mental illness at 33 percent. Alexandra Korry, chair of the New York Advisory Committee on the U.S. Commission of Civil Rights, disagrees. During the Committee's six-month investigation, which included visits to Rikers, they found that 48 percent of people on the island have mental health diagnoses.

Isolation further harms people with mental health issues, advocates argue. Wendy Brennan, the executive director of New York City chapter of the National Alliance on Mental Illness, stated her organization's unequivocal opposition to solitary confinement and the rule change to allow the ESHU. She testified about how isolation exacerbates existing mental health issues and causes behavioral and mental health issues in those without preexisting conditions. We believe that people with mental illness will be overrepresented in ESHU just like they are in punitive segregation.

Dr. Frances Geteles has provided psychiatric evaluations for torture survivors. She noted that torture survivors and others who have experienced trauma need contact with family, religious groups and the larger community in order to heal, but that the ESHU deprives people of all three. In addition, she said, isolation supports an increase in depression, anger, loss of impulse control and aggression.

Those who had spent time behind bars whether as incarcerated people or as staff also spoke out against the proposed unit. [Johnny Perez](#), now an advocate for the Safe Reentry program at the Urban Justice Center and a member of the Jails Action Coalition, spent 90 days in solitary at Rikers as a teenager. Nearly twenty years later, he still remembers the cold and the intense isolation of those 90 days. He said that, although policy states that a person can appeal their segregation sentence, appeal forms are often unavailable and, in segregation, people are not given blank paper or pens. Meals are widely spaced dinner is served at 4 pm and breakfast not until 7 am. If the person is not awake, he is not given food. During those 90 days, Perez went from 180 to 155 pounds.

Until six months ago, Dr. Daniel Selling was the director of mental health for the city's jail system. He listed several programs that the DOC and the Department of Health created to address mental illness and other behavioral issues on the island. Unfortunately, many of the programs we devised and implemented became perverted by the Department of Corrections, he stated. The Intensive Treatment Unit, for instance, was originally created to have enhanced mental health treatment for those in punitive segregation. Within a few years, it met its demise because of pressure from the union to stop coddling dangerous inmates, he testified. Similarly, the Mental Health Assessment Unit for Infracted Inmates went from 50 to 250 beds and quickly became violent. This is the same thing that will happen to the ESH, he warned, noting that the unit would increase the overall footprint of solitary confinement at Rikers by 250 beds.

Selling was not the only former Rikers staff whose experiences condemn the proposal. [Mary Buser](#), the assistant chief of mental health at the punitive segregation unit from 1998 to 2000, also condemned the unit, noting that people with mental illness were often placed in segregation, where they reacted with head banging and other forms of self-harm.

Sister Marianne Defies, who worked as a chaplain for women at Rikers from 1984 to 2007, also denounced the horrors of solitary on the island. Segregation at Rose M. Singer, the women's unit, consists of 50 cells where women are locked in 23 hours each day. They are allowed one hour outside their cell to exercise in an enclosed yard. She described the unit as either overwhelmingly loud as women yelled to each other through their cell doors or screamed from the isolation or as deathly quiet during count time. Countering the DOC's assertion that segregation prevents violence, she noted that women are frequently sent to segregation for rules violations such as talking in the hallways or having unauthorized food or clothing in their cells. I now realize I was a witness to torture, she testified.

But these testimonies failed to move Norman Seabrook, the president of the Correctional Officers Benevolent Association and, according to [the New York Times](#), a roadblock to reform. No one talked about the inmate who slashes another inmate and gives him 90 stitches or

who rapes another inmate, Seabrook told the BOC, after sitting in the audience for five hours. It is unacceptable for people to sit here and advocate for inmates who have raped and robbed others.

Seabrook lambasted the Board, accusing them of not giving corrections officers the same consideration they do for the Jails Action Coalition, and invited them to hold a hearing with the correctional officers to hear their side. He agreed with the assessment that Rikers had a deep-seated culture of violence but only on the side of those locked inside. After speaking, Seabrook shook hands with each and every one of the dozen corrections officers who remained in the auditorium. Then he exited, taking all of them with him and missing the hearings last testimonies, some of which directly refuted his assertion that the islands culture of violence rests solely with those incarcerated.

Only four commissioners with the Board of Corrections remained as the afternoon wrapped up. In their closing statements, Dr. Robert Cohen and the Honorable Bryanne Hamill expressed disappointment with the Boards actions (or lack thereof) regarding solitary. But it seems that these testimonies, and calls from advocates to give more serious and lengthy consideration to such a proposal, has not swayed the Boards schedule. The Board will vote on the proposed rule to create the ESHU on January 13, 2015.

Accurate information and authentic storytelling can serve as powerful antidotes to ignorance and injustice. We have helped generate public awareness, mainstream media attention, and informed policymaking on what was once an invisible domestic human rights crisis.

Only with your support can we continue this groundbreaking work, shining light into the darkest corners of the U.S. criminal punishment system.

by [Juan Moreno Haines](#)

October 25, 2022

by [Solitary Watch Guest Author](#)

October 13, 2022

by [Vaidya Gullapalli](#)

September 29, 2022

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The ESHU is a massive isolation unit that Commissioner Ponte plans for the Island. He claims the ESHU is not punitive; however, therein lies the contradiction. By lowering the minimum standards for the treatment of prisoners, he, basically, institutionalizes penalization by restricting basic human rights and entitlements. Without notice, due process or right of representation one is disappeared into the ESHU. Once in you cannot come out; you get no contact visitation, limited purchases at the store; double lock down time; limited law library access; little educational materials; your mail is read and censored; you are cuffed from behind everywhere you go, and if they choose shackled, manacled, and gagged; your correspondence has to be pre-approved, and all this if you return to the Island as a pre-trial detainee with a record of violence (ie., defending yourself from assault or abuse or have mental illness). It is nothing less than a 21st century torture chamber. We must expose sensory deprivation, forced isolation, and psychological torture; we must further refuse to permit the introduction of an ESHU; finally, we must push our program for community control of the Island as a first step toward the abolition of the Prison/Slave Industrial Complex. Free the Land! Free the Slaves!!!

I just cannot understand why a prisoner subjected to the hell of solitary should not have the right to a family/friend visit. I cannot understand why a prisoner is not allowed a piece of paper and a pen or pencil. I cannot understand why a sleeping prisoner is not left his meal. Why are almost all personal possessions disallowed in solitary? I do realize there are possible dangers inherent in smuggling in contraband and using some possessions for violent reasons, but the prison should do a better job in such prevention. Otherwise we have isolated prisoners with almost no stimulation, no contact, almost nothing. How don't we expect them to be depressed and angry? (I personally could not take such incarceration. I think it would play havoc with my better self.)

If prisoners are guilty and thus incarcerated, shouldn't there be a stress on some rehabilitative elements? I understand the dangers of placing certain prisoners in a general prison population, but what if a prisoner is not violent? What about prisoners who are isolated yet very young or mentally ill?

I believe in incarceration for the guilty. I believe it must be a most difficult thing in prison to maintain order. But we have to do a better job of eliminating the torture inherent in extreme isolation.

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