

Testimony of Jared M. Trujillo, Esq. On Behalf of the New York Civil Liberties Union Before the New York City Council Committees on Criminal Justice Regarding Intro. 549-2022

September 30, 2022

The New York Civil Liberties Union (NYCLU) thanks the New York City Council Criminal Justice Committee for holding this important hearing on Intro. 549-2022. The NYCLU is the New York affiliate of the American Civil Liberties Union. It is a not-for-profit, non-partisan organization with eight offices throughout the state and more than 180,000 members and supporters. The NYCLU's mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution.



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Intro. 549 would ban solitary confinement in all its forms in New York City jails, except for emergency de-escalation for a maximum of four hours immediately following an alleged incident. In its place, the bill would require the Department of Correction (DOC) to utilize alternative forms of separation that are proven to better enhance safety, health, and well-being.

The NYCLU is deeply committed to ensuring all humans in custody are treated fairly and humanely. The current conditions at Rikers Island are not only inhumane, they are deadly. As of September, 16 people have died on Rikers this year, which is a significant increase from previous years, and it is already the same as the total number who died at the jail all of last year.¹ Too many of these deaths have come from isolated confinement. This past July, Elijah Muhammad was locked in shower cages, where he barely had space to sit.² He had a ligature around his neck. He was then moved to another form of solitary confinement, where he lacked access to medical care and a bed. He subsequently died. In August 2021, Brandon Rodriguez died after he was locked in a similar shower cage.³ These are just two examples.

¹ Jan Ransom & Jonah Bromwich, "*Tracking The Deaths In New York's Jail System in 2022*," New York Times. Sept. 27, 2022. Available at: <https://www.nytimes.com/article/rikers-deaths-jail.html>

² Jan Ransom, "*In Rikers Cell, a Man Lay Dead For Hours Before he Was Discovered*," New York Times. July 12, 2022. Available at: <https://www.nytimes.com/2022/07/12/nyregion/rikers-jail-man-dead.html>

³ Courtney Gross, "*An Inside Look At The Lives Lost On Rikers*," Spectrum New York 1, July 14, 2022. Available at: <https://www.ny1.com/nyc/all-boroughs/public-safety/2022/07/14/an-inside-look-at-the-lives-lost-on-rikers-island>



Besides death, even short periods of solitary confinement can cause debilitating and long-lasting mental health issues, physical health problems, and suicidal ideation.⁴

Despite the well-known and deadly harms of solitary confinement and the benefits of alternative forms of separation, the DOC continues to inflict solitary confinement by many different names. While the last Mayor promised to end solitary, and the current DOC Commissioner vowed to implement real alternatives involving full days actually out-of-cell, the jails continue to lock people in solitary confinement 23+ hours a day, for extended periods of time, as reported by Board of Correction member Dr. Robert Cohen during the hearing. As admitted by DOC Commissioner Molina during the hearing, incarcerated people are often placed alone in two-foot extensions of their regular cells. While the Commissioner calls these “day rooms,” that is merely a euphemism for solitary confinement, where caged individuals have no communication or limited communication with others. Mental health experts have said this form of solitary will cause the same harm as other forms.⁵ These practices also violate the Humane Alternatives to Long-Term Solitary Confinement Law (HALT), state law binding on New York City, by failing to provide at least 7 hours of out-of-cell time per day.

To be clear, the devastating impact of solitary confinement on the human psyche has been documented since the 1800’s.⁶ In 1890, the U.S. Supreme Court noted:

[A] considerable number of the prisoners [in solitary confinement] fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.⁷

The Court also noted that solitary was a “terror” and a “peculiar mark of infamy.” Jurisdictions greatly reduced the use of solitary until the 1970’s and 1980’s, when tough-on-crime policies caused prison populations to swell.⁸ As Black and brown communities were being decimated by the War on Drugs and other policies that caused mass incarceration, the dehumanization of solitary confinement crept back into jails and prisons.

⁴ Tiana Herring, “*The Research Is Clear: Solitary Confinement Causes Long-Lasting Harm*,” Prison Policy Initiative, December 8, 2020. Available at:

https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/

⁵ Terry Allen Koppers, “*Solitary Confinement By Any Other Name Is Still Solitary, And Needs to End*,” City Limits, August 6, 2021. Available At:

<https://citylimits.org/2021/08/06/opinion-solitary-confinement-by-any-other-name-is-still-solitary-and-needs-to-end>

⁶ Andrew L. Hanna, *Solitary Confinement in America*, 21 U. PA. J. CONST. L. ONLINE (2019).

Available at: https://scholarship.law.upenn.edu/jcl_online/vol21/iss1/2

⁷ *In re Medley*, 134 U.S. 160 (1890)

⁸ *Supra* note 6



The UN Mandela Rules have condemned long-term solitary confinement as torture.⁹ The New York legislature also took action to reduce the harmful impact of solitary confinement by passing the HALT Solitary Confinement Act. Following the deaths of Kalief Browder, Layleen Polanco, and far too many others, New York City has made modest reforms to the use of solitary. However, the continued use of tiny shower cells and decontamination units to store humans in isolation for hours is a humanitarian crisis. The use of “day rooms,” which merely extend isolation cells by two feet fail to address the harmful impact of solitary confinement. They merely extend those harms by two feet. New York City needs to pass Intro. 549 to fully end solitary confinement, and to utilize evidence-tested programs that actually reduce violence.

While solitary causes devastating harm and makes jails and outside communities less safe, alternatives involving full days of out-of-cell programming and engagement are proven to better improve safety. The evidence is clear: what actually works to address violence is the exact opposite of solitary, namely pro-social program-based interventions like the Clinical Alternatives to Punitive Segregation (CAPS) program in New York City jails,¹⁰ and the Resolve to Stop Violence (RSVP) program in San Francisco jails.¹¹

For example, the RSVP program included people who had carried out acts of assault, sexual assault, other violent acts, and repeated “heinous” acts, and led to a precipitous drop in violence among participants to the point of having zero incidents over a one-year period. Best practices in youth and mental health facilities limit isolation to minutes or hours at most.¹² Similarly, CAPS is designed to offer a full range of therapeutic activities and interventions for these patients, including individual group therapy, art therapy, medication counseling, and community meetings.

Importantly, under Intro. 549, if someone allegedly engages in violence, they can immediately be placed in separation on an emergency basis for purposes of de-escalation in order to address the immediate situation, for up to four hours. After

⁹ Andrew Gilmour, “Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty,” UN Chronicle, <https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty#:~:text=Mandela%20found%20solitary%20confinement%20to,to%20better%20conditions%20for%20inmates>.

¹⁰ Glowa-Kollisch S, Kaba F, Waters A, Leung YJ, Ford E, Venters H. *From Punishment to Treatment: The “Clinical Alternative to Punitive Segregation” (CAPS) Program in New York City Jails*. Int J Environ Res Public Health. 2016 Feb 2;13(2):182. doi: 10.3390/ijerph13020182. PMID: 26848667; PMCID: PMC4772202.

¹¹ James Gilligan, Bandy Lee, “The Resolve to Stop the Violence Project: Transforming an In-House Culture of Violence Through a Jail-Based Programme, *Journal of Public Health*, Volume 27, Issue 2, June 2005, Pages 149–155, <https://doi.org/10.1093/pubmed/fdi018>

¹² Jeffrey L. Metzner & Jaime Fellner, “Solitary Confinement and Mental Illness In US Prisons: A Challenge for Medical Ethics,” *Journal of the American Academy of Psychiatry and the Law*, March 2010.



that immediate period, people can still be separated from the general facility population. However, Intro. 549 would change the nature of that separation. Rather than isolation that is known to increase the likelihood of violence, people who are separated would be placed in environments, like those above, that are better suited for actually reducing and preventing violence.

During oral testimony, Commissioner Molina even praised the positive impact of the CAPS program, which offers intensive medication management, group therapy, art therapy, and other rehabilitative programming. CAPS participation and completion has been shown to substantially reduce instances of violence. This is why it was particularly disappointing to hear the Department of Correction note that only five individuals are currently engaged in CAPS. With rates of violence eight times higher than at other similarly situated jails in the country,¹³ and a potential federal takeover of Rikers, why has DOC weaponized forms of solitary confinement rather than programs that work like CAPS?

Finally, we must note that the Commissioner's oral testimony blatantly mischaracterized the realities of solitary confinement at Rikers. Repeatedly, the Commissioner stated that there is no solitary confinement at Rikers. When Chair Rivera asked if shower cells and decontamination units were used to warehouse incarcerated people for hours, and even longer than a day, the Commissioner said "no." When asked about Brandon Rodriguez who died in a shower cell, he changed his answer to "it is under investigation." This is particularly concerning because several members of the City Council and the Public Advocate, who have toured Rikers, have seen the shower cells. Many of these individuals were seated immediately in front of the Commissioner as he testified, while multiple family members of individuals that indisputably died or suffered grave injuries after being placed in shower cells sat close behind Commissioner Molina. In other instances, the Commissioner noted that DOC could not be out of compliance with HALT because they do not employ solitary confinement, however, he then admitted that individuals are frequently placed in isolated cells with two-foot extensions. Regardless of the terminology used by the Commissioner to describe them, the reality is that these cells are solitary confinement, with all the inherent risks of psychological damage and other harms.

Alone, these statements are concerning. However, they must be taken into context of the Commissioner's recent statements and actions. One day before the hearing, the New York Times reported that Commissioner ordered that an incarcerated person, Mr. Pondexter, be moved from Rikers immediately before his death to ensure he was "off the department's count," which is already as high as it was for all of 2021.¹⁴ When asked by Chair Rivera, the Commissioner claimed that his

¹³ Jan Ransom & Jonah Bromwich, "*Rikers Still Unsafe and Unstable Under New Jail Chief, Watchdog Says*," March 16, 2022. Available at:

<https://www.nytimes.com/2022/03/16/nyregion/rikers-jail-violence-report.html>

¹⁴ Jan ransom, "*Jail Boss Urged Man's Release In Apparent Bid to Lower Rikers Death Toll*," New York Times, Sept. 27, 2022. Available at:

<https://www.nytimes.com/2022/09/27/nyregion/riker-death-count.html>



policy was to seek compassionate release for those who are ill when possible, but when asked how many times he sought compassionate release prior to this instance, he did not know, beyond “not enough.” Notably, the Commissioner could not provide any details of how he used compassionate release before this occurrence. Further, shortly after Commissioner Molina started in his new role, he fired Deputy Commissioner for Intelligence and Investigation Serena Townsend, without required clearance from the Federal Monitor. Allegedly, he had asked Ms. Townsend to “get rid of” thousands of disciplinary cases, and she was terminated after she refused.¹⁵ The apparent lack of transparency from top DOC officials is concerning for as it relates to everything that takes place on Rikers, but particularly concerning for solitary confinement, where people have even less access to the outside world and even more limited process to address human rights violations before they become dangerous or fatal.

Ultimately, DOC has shown it will exploit any vagueness in the law to continue using deadly forms of solitary confinement. Allowing them to do so is a policy choice. This City Council can end the use of solitary confinement and promote evidence-based programming that will make jails safer. It is imperative that this body passes Intro. 549 without delay.

¹⁵ Graham Rayman, “*Mayor Adams’ New Jail Commissioner Pressured Top Investigator to ‘Get Rid Of’ 2,000 Disciplinary Cases, Then Fired Her When She Didn’t*,” New York Daily News, Jan. 13, 2022. Available at: <https://www.nydailynews.com/new-york/nyc-crime/ny-sarena-townsend-louis-molina-doc-case-backlog-investigations-rikers-20220113-rulyprxl5hhdn7cclb2ztcueu-story.html>