PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

TESTIMONY OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE NEW YORK CITY COUNCIL COMMITTEE ON CRIMINAL JUSTICE
DECEMBER 11, 2020

Good morning,

My name is Jumaane D. Williams, and I am the Public Advocate for the City of New York. I would like to thank Chair Powers and the members of the Committee on Criminal Justice for holding this very important, and very timely hearing. I especially want to thank Chair Powers and the Speaker for being so vocal in calling on the Board of Correction to change its standards on punitive segregation and end solitary confinement.

Solitary confinement is torture. Whether we call it restrictive housing, punitive segregation, or separation status, at the end of the day it is a form of torture that causes trauma and long-term mental, physical, and social harm. Needless to say, a ban on this harmful practice is long overdue. At the end of June, the Mayor called for an end to solitary confinement and promised to create a working group that would present a report on how to stop this practice – a report that was supposed to be released this fall. He also expanded the list of pre-existing conditions that would prohibit inmates from being placed in solitary confinement, so that it now includes asthma, seizure, diabetes, heart disease, physical disabilities, among several others. While this was the right move for the City to make, it is coming very late in the game. Why did the Mayor not expand this list of exceptions years ago? If he had, members of our community like Layleen Polanco – a transgender woman who died while in solitary confinement at Rikers due to an epileptic seizure – would still be alive today. I know her sister, Melania Brown, is with us today, and I thank her for joining us yesterday at an event my office had as well. Second, the Administration needs to update us on the status of this working group that the Mayor planned to put together, and when their report will be released. We need to know their findings and recommendations as to when and how this practice will finally end.

Instead of waiting on the Mayor to take definitive action in ending solitary confinement, I along with my colleagues in the City Council are confronting this task head on. Intro 2173 would ban the use of solitary confinement in City jails. As a co-prime sponsor of this bill, I applaud Council Member Dromm for leading this effort. I want to take some notice today to raise the concerns that I and many criminal justice advocates have about the bill in hopes that we can continue to work collaboratively to get this done the right way. While the bill prohibits the use of solitary confinement, it states that the practice may be used to de-escalate immediate conflict, and in said situation, the individual cannot be placed in such confinement for longer than four hours. I

understand that escalatory incidents may arise where separation may be needed to mitigate the situation. At the same time, there is a difference between separation and isolation. To isolate an individual is to put them in an environment by themselves. This practice does not serve the purported purpose and has a severe negative effect on many people.

Advocates have also raised to my office that the definition of each term in the bill is either too vague and/or too specific, such as the definition of restrictive housing. As written, the bill allows DOC to define restrictive housing without strict guidelines. A person can remain in restrictive housing with a review every 15 days. This can basically mean solitary confinement, just by a different name. Another concern is the phrasing of emergency lock-in. I am concerned the current definition is not strict enough to ensure all other options have been considered, and there is a periodic, hourly review by the chief of the department if it is used.

I also share the concerns held by many advocates, who I know will be testifying later today, about the out-of-cell time policies established in this bill. The bill mandates that all incarcerated individuals have access to at least 14 hours of time outside of their cells every day, except the individuals placed in restrictive housing and those placed in the aforementioned four-hour solitary confinement to de-escalate immediate conflict. Those individuals would have access to at least 10 hours of time outside of their cells. Activists who have advocated to ban solitary confinement are calling for 14 hours out of cell each day across the board. By only allowing certain individuals to be out of cell for 10 hours, this provision leaves 4 additional hours in which someone can be locked in a cell. Therefore, I tend to be in support of our community advocates' call to change the provision in this bill, to ensure all incarcerated individuals have 14 hours out of their cell every day.

I want to make clear that there are differences between isolation and separation, and also be clear that we understand we have the need for consequences for poor behavior, one of those consequences being separation. But isolation is a punishment that causes a significant, harmful physical and psychological impact on many incarcerated individuals. One example of a non-harmful consequence is the Clinical Alternative to Punitive Segregation unit, also known as CAPS. This program started in 2013 as a new treatment unit developed by the New York City Jail system for individuals with serious mental illness, but I believe this can be expanded to include people with less serious mental illness or no mental illness at all. CAPS was designed to offer a full range of therapeutic activities and interventions for participants, such as individual and group therapy, art therapy, counseling, and community meetings. In fact, this program proved to be more effective in reducing self-harm and injury than restrictive housing. CAPS is just one example of the many programs we need to consider as a consequence for bad behavior, rather than resorting to things like solitary confinement.

The time for New York City to end solitary confinement is now. If the tragic deaths of Layleen Polanco and Kalief Browder tell us anything, it is that this unsafe disciplinary practice is not the answer. This method of punishment does more harm than good, and it does not address the underlying causes of problematic behavior.

I do want to just mention, as my colleague Council Member Dromm did, that this is not only for the people who are housed and incarcerated – it is also for the people who work there, including the men and women of the corrections union. This is the only law enforcement union that is treated in the way that they are, and I believe it is because they are Black and Brown. In the beginning of this pandemic, they were forced to work without PPE and social distancing. I believe that if they were not Black and Brown, primarily women, they would not have been put in this situation.

The fact of the matter is Rikers, and many jails across this nation, are set up to continue circles of violence. We want everyone to be safe, including the men and women who go to work, and whose families want them to come home the same way they went to work. We ask them to join us in a conversation where we understand that there has to be separation at times, and there has to be consequences for poor behavior, but not isolation and torture. That we can work together to put in systems that actually change behavior to the type of constructive behavior that we want to see. I thank the Committee on Criminal Justice for giving me this opportunity to speak today.