

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON FIRE AND CRIMINAL JUSTICE SERVICES

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August 20, 2014
Start: 10:18 a.m.
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HELD AT: 250 Broadway - Committee Rm, 14th Fl.

B E F O R E:

ELIZABETH S. CROWLEY
Chairperson

COUNCIL MEMBERS:

FERNANDO CABRERA
MATHIEU EUGENE
PAUL A. VALLONE
RORY I. LANCMAN

A P P E A R A N C E S (CONTINUED)

2 [gavel]

3 CHAIRPERSON CROWLEY: Good morning. My
4 name is Elizabeth Crowley. I am the chair of the
5 Fire and Criminal Justice Services Committee. Today
6 the Committee will be voting on proposed intro
7 number 292A sponsored by Council Member Dromm,
8 Lancman, King, and others including myself which
9 requires the Department of Correction to post a
10 quarterly report on its website regarding punitive
11 segregation statistics for city jails. We had a
12 hearing on this bill in June and I want to thank my
13 colleagues for their participation and for
14 introducing this important legislation and for all
15 the work that the prison rights advocates have done
16 as well. We will hear from Council Member Dromm
17 shortly and get more details about the bill. But
18 generally it requires DOC to report information
19 about its use of punitive segregation including how
20 many people are housed in punitive segregation,
21 their age, race, gender, their length of stay,
22 whether they've been injured, attempted, or
23 attempted to commit suicide while segregated,
24 whether they've been sexually or physically
25 assaulted, were they subjects of force, whether

2 they receive certain services such as recreation
3 and showers, medical attention, and phone calls, as
4 well as a number of other indicators. I think our
5 collective hope is when we receive this data we
6 will be able as a council for the public to have a
7 better understanding of the department of
8 corrections use of punitive segregation and whether
9 changes to the system needed, are needed. Since our
10 June hearing some amendments to the bill were made.
11 My understanding is there'll be a no fiscal impact
12 as a result of this bill. We are going to hear and
13 vote on a pre-considered resolution introduced by
14 Council Member Dromm. Historically DOC would
15 require individuals who are returning to city jails
16 who had not completed their punitive segregation
17 time from prior incarceration to complete their
18 time owed. However in January of 2012 DOC modified
19 its policy and began expunging time owed for
20 certain fractions from prior incarcerations.
21 Currently minor infractions older than a year and
22 any serious infraction such as the use of a weapon,
23 arson, or assault which is older than two years are
24 expunged for individuals returning to jail. Council
25 Member Dromm's resolution calls on the Department

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2 of Correction to end the practice of placing
3 individuals returning to city jails into punitive
4 segregation to complete time owed. I, I recommend a
5 yes vote on this bill and on the resolution. I
6 think the data the bill requires is long overdue so
7 we can effectively evaluate how punitive
8 segregation is being used and whether it needs to
9 change. On the, on the resolution I understand some
10 members might be reluctant to expunge old
11 infractions and so called time owed. Particularly
12 for serious offenses. But from my perspective the
13 serious offenses are crimes and if the department
14 has proof that a crime has been committed they must
15 refer this to the district attorney for prosecution
16 and not rely on some returning to jail to serve old
17 time when people are waiting to serve time for more
18 recent infractions. I'd like to acknowledge my
19 colleagues who have joined me today Council Member
20 Dromm, Council Member Vallone, Council Member
21 Rodriguez, Council Member Cabrera, Council Member
22 Lancman. And now I'd like to call on Council Member
23 Dromm to do an opening statement and then we'll uh,
24 take a vote, and then we'll have a hearing on the
25 resolution.

2 COUNCIL MEMBER DROMM: Well thank you
3 very much Madam Chair and thank you for your
4 leadership on this issue. Thank you for your
5 concern about the, the issues that have arisen
6 regarding Riker's Island. And thank you for
7 beginning to investigate this over two and a half
8 years ago when I first came to you on the specific
9 issues and for accommodating us at least four times
10 to visit Riker's island so that I could see many of
11 the issues that we're going to talk about today
12 first hand and have that experience. And I really
13 want to thank you and congratulate you and, and,
14 and just to, to highlight that today. So today the
15 committee on fire and criminal justice will vote on
16 introduction 292A which will enable policy makers,
17 advocates, and the general public to gain insight
18 into the department of corrections use of punitive
19 segregation, restricted housing, and clinical
20 alternatives to punitive segregation. This is an
21 issue that strikes close to my heart as I have
22 witnessed a friend experience the mental torture of
23 solitary confinement also known as punitive
24 segregation. Medical experts, top United Nations
25 officials, constitutional lawyers, and religious

2 leaders concur that solitary confinement is akin to
3 cruel treatment. And when used for extended periods
4 to torture. I mentioned religious leaders because
5 my objection to the current practice of solitary
6 confinement is grounded in my catholic faith. Jesus
7 himself was a victim of torture while in custody,
8 preached mercy for others similarly situated and
9 specifically our incarcerated population.

10 Brutalizing individuals with mental health and
11 substance abuse issues and Riker's island is one of
12 the largest facilities in the world housing this
13 population. And then releasing them to the street
14 endangers everyone. Just as distressing as the
15 brutalizing impact on New York City's boldest. The
16 practices condoned and in some instances encouraged
17 create an even more dangerous environment for those
18 corrections officers who simply want to do their
19 jobs as safely and professionally as possible. When
20 the stakes are so high and the potential damage so
21 extreme we as a council must step in to ensure at
22 the very least that the practice is monitored
23 closely. The U.S. Attorney's scathing report on
24 Riker's horrific treatment of adolescents
25 highlights why it's so urgent that we act to shed

2 light on what it happening. Darkness has, if not
3 enabled, at least aided the degradation, isolation,
4 humiliation, and torture of countless individuals
5 who have passed through the jail system. 42

6 categories of data will be collected ranging from
7 the nature of infractions to mental health

8 indicators to details about the provision of
9 recreation time, phone calls, and showers. By

10 gathering this information we will be able to
11 monitor conditions and have a better informed role

12 in reforming our city's jails. This committee will
13 also hear and vote on a pre-considered resolution

14 calling on the department of correction to end the
15 practice of placing individuals returning to city

16 jails into punitive segregation to complete time
17 owed. The DOC has moved to limit the practice but

18 this resolution will encourage the board of
19 correction which is currently in the process of

20 making rules, changes around punitive segregation
21 to end the use of time owed altogether. Again I

22 want to thank the Chair Crowley for bringing these
23 bills to a vote and also to Council Member Lancman

24 and King who have joined me as prime sponsors of
25 292A. Thank you very much.

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2 CHAIRPERSON CROWLEY: Thank you Council
3 Member Dromm. [clears throat] Excuse me. I'd like
4 to call on the clerk to take a vote.

5 COMMITTEE CLERK PENN: Kevin Penn,
6 Committee Clerk. Roll call in the Committee on
7 Fire and Criminal Justice intro 292A. Council
8 Member Crowley.

9 CHAIRPERSON CROWLEY: I vote aye.

10 COMMITTEE CLERK PENN: Cabrera.

11 COUNCIL MEMBER CABRERA: Aye.

12 COMMITTEE CLERK PENN: Lancman.

13 COUNCIL MEMBER LANCMAN: Aye.

14 COMMITTEE CLERK PENN: Vallone.

15 COUNCIL MEMBER VALLONE: Aye.

16 COMMITTEE CLERK PENN: By a vote of four
17 in the affirmative, zero in the negative, no
18 abstentions, the item's been adopted. Members
19 please sign the committee report.

20 CHAIRPERSON CROWLEY: In addition can we
21 please vote on the resolution together? Thank you.

22 UNIDENTIFIED COUNCIL MEMBER: On the
23 resolution my, my vote is no. On the intro it's
24 yes... [background cough]

25

2 CHAIRPERSON CROWLEY: We'll keep the
3 vote open as we have the rest of our hearing
4 proceeds. Before I call up the witnesses... I'd like
5 to first state when I became the chair back in 2010
6 this committee started to sound the alarm on all
7 the violence that was happening at Riker's Island.
8 We pressed the Bloomberg Administration for years
9 to take action. And Riker's was suffering from
10 chronic issues of deteriorating infrastructure,
11 severe understaffing, a growing mentally ill
12 population that requires specially, specialized
13 care. And even though the inmate population has
14 decreased over the years the incidents of violence
15 continue to rise and correction officers are still
16 working in unacceptable, unacceptable levels of
17 overtime. Some instances they're clocking 80 hours
18 a month. I commend the mayor, de Blasio for taking
19 some action earlier this year following our hearing
20 in June. The mayor committed an additional 32.5
21 million in this year's budget to help combat
22 violence and to... the mentally ill population at
23 Riker's. And it's an important first step but
24 there's still so much more that we have to do. We
25 have to understand that correctional officers have

2 some of the toughest jobs in this city. And the
3 truth is we're not properly equipping our officers
4 with the tools nor the training necessary to
5 prevent incidents of violence from occurring in the
6 first place. We need to be proactive instead of
7 reactive in stemming the root of violence in our
8 city jails. We need the state to reform the age of
9 adult criminal responsibility from 16 to 18. New
10 York State is one of only two states in the entire
11 country along with North Carolina where at 16 year
12 olds are automatically tried as adults and placed
13 in adult prisons. It is embarrassment and the state
14 needs to reform this policy immediately. Youth
15 incarcerated and adult facilities are more likely
16 to suffer physical and emotional abuse and to
17 become a recidivist. More, moving, moving
18 adolescents off of Riker's Island we must begin as
19 a committee to explore what needs to be done. We
20 need better training policies. The DOC has no
21 distinction in training for managing adolescents
22 versus managing adults. We need to make sure that
23 our officers are getting specialized training to
24 work with not only the adolescents but those that
25 are considered mentally ill. We also need to

2 reexamine how we admiter (phonetic), how we
3 administer punitive segregation in the jails. And I
4 am supporting today's resolution because I believe
5 if an inmate or an officer commits a crime within
6 Riker's they should be dealt with by our criminal
7 justice system not the internal disciplinary
8 procedures within DOC. Crime is a crime so why
9 should the crimes committed on Riker's Island be
10 exempt from our city and our state laws. We are
11 going to continue this serious discussion. We're
12 looking to have a hearing next month, it hasn't
13 been calendared yet, on the recommendations from
14 the U.S. Attorney General, U.S. Attorney's recent
15 report on the adolescents at Riker's Island. I'd
16 like to now call up witnesses who are here to
17 testify in regards to the resolution that we just
18 voted on and that will be voted on in our council
19 stated meeting, at our council stated meeting
20 tomorrow. First witness from the Legal Aid Society
21 Sara Kerr.

22 SARA KERR: Good morning. Is that
23 working? Okay. Okay. My name is Sara Kerr. I'm an
24 attorney with the prisoner's rights project of the
25 legal aid society. Thank you for the opportunity to

2 offer this testimony today and we testify in
3 support of the resolution calling on the New York
4 City Department of Correction to end the practice
5 of placing individuals returning to the jails into
6 punitive segregation to complete time owed from
7 prior periods of incarceration. We support the
8 resolution because the owed time is far too
9 intimated to have any meaning in terms of jail
10 administration and jail management. People who come
11 back into the system should be treated as though
12 they have a clean slate and should remain in
13 general population and not be punished in
14 isolation. Old Bing time is frequently greatly
15 removed in time. And there is a failure to engage
16 in any process to determine a current legitimate
17 institutional need for the imposition of the owed
18 time. We believe that this is a violation of
19 procedural due process and absent of legitimate
20 institutional need determined at a current due
21 process hearing in position of old Bing time.
22 Likeways [phonetic] violates substantive due
23 process due to the severity of the punishment
24 relative to any demonstrated need. I think Council
25 Member Dromm for pointing out how really severe

2 punitive segregation is. It should not be taken
3 lightly it is, should be a punishment of last
4 resort and so the implementation of old Bing time
5 is particularly egregious. Punitive segregation is
6 known to cause serious physical, psychological, and
7 developmental harm especially to those who are more
8 vulnerable by reason of youth or mental health
9 status and I applaud Council Member Crowley for
10 calling for raising the age. DOHMH has a recent
11 study that outlines some of these serious problems
12 showing that solitary confinement is a dangerous
13 and self-defeating practice, risk of self-harm and
14 potentially fatal self-harm. Increases in solitary
15 confinement independent of prisoner's mental health
16 status and age group they found willingness to,
17 the, people had a willingness to do anything in
18 order to escape that punishment. And patients with
19 mental illness became trapped because they
20 continued to accumulate additional punitive
21 segregation time when they uh, when their symptoms
22 increased and it was interpreted as rule breaking
23 behavior. The report indicates a need to reconsider
24 the use of solitary confinement as punishment in
25 the jails. This is also called for by Board of

2 Correction experts and advocacy groups and most
3 recently the Department of Justice. The Department
4 of Justice report addressed adolescents and found
5 that punitive segregation was excessive and
6 inappropriate. They also reported that the
7 Department should take steps based on their
8 investigation of violence to ensure the integrity
9 of the disciplinary process. And I point out in
10 particular the, the systemic problems with false
11 reporting and other things that would affect
12 anything that was a hearing to find out the truth.
13 They also noted that their investigation suggested
14 that the systemic issues that they identified exist
15 in all of the city jails and are not limited to the
16 adolescent population. So reforms to time owed have
17 been claimed but we'd like to report that they have
18 not been carried out in a consistent manor at the
19 facility level and we believe they fall short of
20 the necessary reform. In 2012 we had a client who
21 was serving old Bing time that dated as far back as
22 1999. We had a client return to city custody in
23 October 2013 who was placed into punitive
24 segregation for infractions that were over two
25 years old and some were nonviolent offences. From

2 July 2013 until, until he was released from custody
3 in May of 2014 a client served old Bing time for a
4 450 day sanction that was imposed in 2002 to 2003.

5 All of these disciplinary sanctions should have
6 been expunged under the guidelines DOC has reported

7 to the Board of Correction and they were not. We
8 believe that is you know a valid reason for

9 supporting this resolution and calling for DOC to
10 change the minimum standards. In May of 2014 one of

11 my clients, I work mostly with people who have
12 serious mental illness was placed into the caps

13 unit and he was doing well there. He was then

14 removed from caps based on them, on a determination
15 that he owned old Bing time. That should have had

16 nothing to do with that decision at all. No one in

17 the caps unit is there who isn't serving punitive
18 segregation time. It's an alternative for people

19 with serious mental illness. I tried to get him

20 placed back into caps. I suggested this should have
21 been expunged. I talked about how he had been doing

22 well and that had fear for you know increase self-
23 harming behaviors which were something in his not-

24 so-distant past. Those attempts were not headed and
25 in the RHU at GRVC he self-harmed again and was

2 transported to the Belleview Hospital Prison Ward.
3 This should not have happened. The, the, you know
4 the reforms that were supposed to be in place, are
5 supposedly in place now simply are not being
6 headed. I'm going to end by saying you know this is
7 part in parcel of DOC reducing its reliance on
8 punitive segregation. The Department must develop
9 new practices to maintain security and ensure
10 compliance with facility rules without resorting to
11 lengthy harmful isolation. We believe the city
12 council should adopt the resolution to encourage
13 DOC to change its policy as part of its reform to
14 move away from reliance on punitive debt
15 segregation as a disciplinary measure. And I thank
16 you for having this public forum. The City Council
17 plays and must continue to play an important role
18 in understanding, monitoring, and tracking
19 conditions in the city jails. Thank you.

20 CHAIRPERSON CROWLEY: Thank you. Council
21 Member Dromm or any of my colleagues, questions? I,
22 we're going to stop the testimony hearing for a, a
23 moment so that Council Member Mathieu Eugene could
24 cast a vote. Where's the clerk?

25 COMMITTEE CLERK PENN: Eugene.

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2 COUNCIL MEMBER EUGENE: I thank you...

3 Madam Chair I vote aye in both legislation. Thank
4 you.

5 COMMITTEE CLERK PENN: Final vote in the
6 Committee on Fire and Criminal Justice Intro 292
7 five in the affirmative, zero negative, no
8 abstentions. Pre-considered Reso four in the
9 affirmative, one in the negative, no abstentions.

10 CHAIRPERSON CROWLEY: Thank you. Next
11 we'll hear from the Jail Action Coalition. We have
12 Five Mualimm-ak and R. R. Roberts. Once you're
13 ready please identify yourself for the record and
14 begin your testimony whomever chooses first.

15 FIVE MUALIMM-AK: Yes, thank you. My
16 name is Five Mualimm-ak. I'm with the Jails Action
17 Coalition and I would like to thank the City
18 Councilman Dromm for presenting this solution to a
19 longstanding problem that we had at Riker's and
20 also those who are in support of it and you of
21 course Chair.

22 DAKEM ROBERTS: Yes my name is Dakem
23 Roberts. I'm a member of the jail action coalition
24 also found in secretary general of the negation.
25 I'm also a former child prisoner. I, I've been a

2 prisoner for the last 38 years from the age of 16.

3 I was released at the age of 40. I remain on

4 lifetime parole. I've also, because of the

5 psychological and physical torture that I've

6 suffered throughout the time as a former child

7 prisoner. I've renounced U.S. citizenship on

8 several occasions which wasn't accepted. I even

9 sought asylum in Cuba. I did exactly what they

10 asked me to do and I left the country and I sought

11 to renounce citizenship again in Belize. And within

12 24 hours they had me back and I say that, that the

13 parole laws are equivalent of the, of the fugitive

14 slave act. And this is because under your laws

15 slavery remains an institution. And this is why I

16 have concluded that the growth and expansion of

17 what I know as the prison slave industrial complex

18 remain such because it's profitable to keep people

19 in prison. I mean if you walk into any of these

20 state buildings and I bet dollar to a donut if I

21 was to pull that chair up it would have core craft

22 under it. That chair, almost every piece of

23 furniture, every school, hospital, state building

24 is produced by slave labor. And I suffered years in

25 the box. I suffered physical torture. They

2 attempted to emasculate me because I wouldn't allow
3 myself to be abused. I, as a child, had to learn
4 how to fight and defend myself. And I'm going to
5 tell you now people like me are going to be coming
6 out. And what happens when we get out and you want
7 to hold us and abuse us... I mean you can't blame the
8 monster, you have to blame the Frankenstein doctor.
9 So I'm just letting you know, you know that you
10 guys got to really take into consideration what you
11 have, what you're dealing with here. And I can also
12 tell you that when I was brought back to this
13 country in 2011 from Belize I owed time from two,
14 excuse me, no, yeah when I brought, I, when I was
15 brought back to this country in 2011 I owed time
16 from... no no no. Okay I had Bing time from when I
17 was brought back in this country in 2011. When I
18 received the violation, not for a new crime, I
19 received the violation of parole and put back in
20 prison in 2013 and this is after the date you
21 mentioned in 2012 I was compelled to not only do
22 that time in SHU but I was also made to pay a 25
23 dollar fine. And let me tell you, prisoners don't
24 get paid 25 dollars you know. So this is what
25 you're up against. So the idea that they ended the,

2 the, the rule where a person who, who has time over
3 their head uh... it's just not true because in 2013 I
4 was made to do time in the Bing for a violation
5 that occurred over 2,000 years ago when I was
6 brought back into your country. And I was born in
7 this country. I was born here. But I don't
8 recognize this country as my country. I was free in
9 Cuba. I was freer in Cuba than I was here. And they
10 don't torture their people over there. You torture
11 me in Guantanamo Bay. So I'm letting you know, you
12 know get it straight because you got people like me
13 to deal with.

14 CHAIRPERSON CROWLEY: Thank you for your
15 testimony Mr. Roberts. Does anybody on the
16 Committee have any questions? No? I have no
17 questions either. Want to thank the representatives
18 from the Jail Action Coalition for your testimony.
19 And next I'm going to call up...

20 FIVE MUALIMM-AK: Excuse me. I think we
21 both had individual testimonies. If you don't mind
22 I would like to speak.

23 CHAIRPERSON CROWLEY: Sure. Sure. I, I
24 apologize.

2 FIVE MUALIMM-AK: It's okay. Thank you.

3 My name is Five Omar Mualimm-Ak. Before I was
4 exonerated during my time incarcerated I have spent
5 time in solitary confinement on Riker's Island.

6 Then MCC and all before being convicted of a single
7 crime. As I moved onto state facilities I worked as

8 a facilitator teaching classes phase one, phase

9 two, phase three getting people prepared for

10 returning back to society. Several years later I

11 returned to Riker's Island due to a court

12 appointment. At this time I'm preparing for court I

13 was grabbed during a meal, handcuffed, and taken

14 back to solitary confinement because I owed box

15 time. During this process I've lost all of my legal

16 documents that I had preparing for court which of

17 course negatively impacted my court decision. And

18 then of course being brought into court from

19 solitary confinement is a very restraint process.

20 So that also had a negative impact on my court

21 date. Please note that I was originally kept in

22 punitive segregation in Riker's Island for a book

23 after a fight broke out. Riker's Island has a

24 process called pre-hearing detention in which if

25 there's a fight in the day room everybody goes to

2 the box until they figure it out. You're there for
3 24 hours, two or three days until they serve you
4 with the tickets and then other two or three days
5 so basically for a week you'll be in solitary for
6 24 hours a day, seven days a week waiting to see if
7 you're going to be kept there. During this time I
8 received a book from my uncle who was a black
9 panther book and that wasn't allowed and they kept
10 me there. And then of course frivolous tickets
11 remained me there until I was kicked out of Riker's
12 and sent to MCC for maximum security closed custody
13 all for non-violent institutional disciplinary
14 infractions. T20141633 pre-considered Department of
15 Correction to end the practice of placing
16 individuals returning to city jails into punitive
17 segregation also known as solitary confinement to
18 complete time owed. This resolution must pass to
19 make us a better city and a progressive city. Once
20 we realize, and we have all these data from all
21 these reports and doctors like Doctor Gillian,
22 Doctor Stuart Grecian [sp?] but also the Board of
23 Corrections Report and also the DOJ Report. And we
24 have all the information that says this process
25 must not work. And we need to make that change and

2 I think City Councilman Daniel Dromm for making the
3 opportunity to improve this city and improve this
4 state in itself because we can be a better example.

5 Riker's Island holds more people than any other
6 punitive segregation in any other penal colony on

7 the planet. It's one of the largest county jails on
8 the planet. So we have to have unique circumstances

9 for that. And if we do not change as problems arise
10 then we will have no change in the people and the

11 citizens that we hold and contain there. I, myself,
12 still receive mental health therapy and treatment

13 because of the damages that I concurred there. This
14 is why I work so efficiently to change those for

15 people with mental illness inside. I am also suffer
16 from Bi-polar Disorder. And placing a person inside

17 of solitary with a mental illness only exasperates
18 their conditions. During this time coming down I

19 expected to see my children that I haven't seen in
20 so many years but of course you're denied a contact

21 visit when you're in solitary. So all of these
22 things affect our population, our citizens, our

23 taxpayers. And we have to understand that in order
24 to make things different, in order to make a better

25 city we must make change. So I implore you pass

2 this resolution. Support it fully because one in
3 100 American adults are incarcerated. We have over
4 two million people incarcerated. So no matter where
5 your constituents are you have someone incarcerated
6 in your district and this affects us all as a city.

7 CHAIRPERSON CROWLEY: Five if you could...

8 FIVE MUALIMM-AK: Thank you.

9 CHAIRPERSON CROWLEY: ...just for the
10 benefit of the committee... if you could let us know
11 when you were incarcerated at Riker's island and,
12 and you stated earlier that you've been diagnosed
13 with Bi-polar disorder. Were you given the proper
14 medical attention while you were on Riker's Island?

15 FIVE MUALIMM-AK: No. The reason why is
16 because if you cannot produce the medical records
17 of your treatment at that time then they won't
18 recognize you of having a mental illness. Riker's
19 doesn't do assessment.

20 CHAIRPERSON CROWLEY: And what years
21 were you there?

22 FIVE MUALIMM-AK: '99. I came back down
23 in 2003, 2007, and then finally in 2010.

24 CHAIRPERSON CROWLEY: Okay. Any
25 questions from the committee? Okay. Thank you,

2 thank you both. And we're going to have one last
3 person who registered to testify Alex Reinert.

4 ALEX REINERT: [off mic] And I apologize
5 that I don't have written copies of my testimony
6 that I... provided... [crosstalk]

7 CHAIRPERSON CROWLEY: Okay just please
8 identify yourself...

9 ALEX REINERT: Certainly.

10 CHAIRPERSON CROWLEY: ...and speak into
11 the mic.

12 ALEX REINERT: Good morning. My name is
13 Alex Reinert. I live in Brooklyn, New York and I'm
14 a Law Professor at the Benjamin N. Cardozo School
15 of Law where I teach, write, and practice in the
16 areas of prisoner's rights among other things. And
17 I'm here to offer my support for T2014-1633 the
18 resolution to abolish DOC's policy regarding time
19 'owed' in punitive segregation. I put owed in quote
20 and I, as I hope we all would. To go without saying
21 that the views I express here are my own and not
22 those of my employer. There are many good reasons
23 to end DOC's practice of holding over unserved
24 punitive segregation time when it's applied it is
25 done so arbitrarily. I think we've heard some

2 examples of that. It bears no connection to any
3 legitimate security interest and it unnecessarily
4 exposes detainees to the harms of solitary
5 confinement. Harms which quite frankly have been
6 understood for more than a century now. It was more
7 than a century when the supreme court said we had
8 an experiment with solitary confinement and we
9 learned how much harm it caused. And over a century
10 now we use it much more than we did then. And
11 that's a tragedy. But I want to confine my remarks
12 to one very basic point, DOC's policy is blatantly
13 unconstitutional. Three minutes is not a long time
14 to explain that especially for a constitutional law
15 professor but I will do my best. The analysis
16 starts with a basic principal is that most of the
17 people in DOC custody are pre-trial detainees. They
18 may not be punished. They are not guilty of
19 anything. They may not be punished and yet the
20 policy of holding over punitive segregation time is
21 quite clearly punishment. So it falls on, on that
22 basic principal as it is. Now it might be argued
23 that the use of old, what we call old Bing time is
24 not meant to punish but it's consistent with the
25 alternative and legitimate goal of maintaining safe

2 and secure correctional facilities. Now it might be
3 argued that but there are many reasons and many
4 serious problems with that argument especially as
5 it applies to how DOC uses old Bing time. First
6 there's no evidence that DOC conducts any inquiry
7 at the time that imposes the continued sentence of
8 segregation as to whether imposing the sentence is
9 necessary to ensure a safe and secure correctional
10 system. Indeed the application of the policy
11 suggests otherwise for often it's applied
12 arbitrarily. Sometimes detainees are just subjected
13 to the old Bing time when they're sentenced for a
14 new infraction and then it just gets added on.
15 There's clearly no inquiry at all as to whether or
16 not it's important for the goals of security to use
17 this old Bing time. Second that DOC only looks to
18 unserved portions of Riker's Bing time as opposed
19 to segregation time that might have been served in
20 other systems also undercuts any argument that is
21 based on an assessment of security risks. And third
22 if DOC were actually imposing the Bing time based
23 on an assessment of risk to safety and security
24 there would have to be a hearing at which the
25 detainee would be presented with the opportunity to

2 say look this Bing time is old. It doesn't reflect
3 anything about me now. But those hearings never
4 take place. They don't exist. So there are many
5 reasons to think that it is unconstitutional on its
6 face and even if one tries to construct an argument
7 for why it's constitutional with respect to, for
8 legitimate purposes of maintaining security and
9 safety there's no evidence that that's the way
10 Riker's is using it. And I'll say in closing it's
11 unclear how many other correctional systems operate
12 in the same way as DOC does. I know that it has
13 been challenged in other areas and it's been
14 successfully challenged in other areas which to me
15 suggests another reason to do away with the policy
16 which is maintaining it exposes the city to the
17 risk of a success, a successful litigation and the
18 physical impact of that litigation. And we only
19 need to read the current coverage I think in
20 today's Times or yesterday's Times about how the
21 cost of litigation associated with corrections has
22 sky rocket, rocketed for the city. There's no
23 reason to impose that cost on the tax payers by
24 maintaining this policy. And of course aside from
25 the fiscal impact and I think we've heard some

2 compelling testimony about that today, about this
3 too. The risk to our community of the continued
4 overuse of punitive isolation of which this is just
5 one example. Alright, and I mean this is one
6 example of the overuse of punitive isolation. There
7 are many more within Riker's. The risk to our
8 community is huge. It does not just, the harms
9 that... imposes do not, do not just fall upon the
10 detainee under, as I'm sure the committee is aware
11 of. Falls upon communities, it falls upon families,
12 it falls upon friends. It is a serious harm and
13 it's one that we should be doing our best to
14 mitigate. So that's why I support this resolution.
15 It is one, one step in reducing the use of solitary
16 at Riker's. And I thank the committee for its, for
17 its serious consideration of this and, and I hope
18 that it passes in, before the full council. Thank
19 you very much.

20 CHAIRPERSON CROWLEY: Thank you. Any
21 questions from Committee? Council Member Vallone.

22 COUNCIL MEMBER VALLONE: Professor just
23 real quick. I, I agree with complete amount of
24 change that has to be done and I, I, I, my
25 hesitation and my caution is removing the entire

2 process without putting a process in place is my
3 concern. The serious offences of those within the,
4 for the detainees for coming back after a two year
5 period. And I stand and I, I listen to my council
6 members and I, I hear what's happening but I under,
7 their minimum standards are being reviewed...

8 ALEX REINERT: Mm-hmm.

9 COUNCIL MEMBER VALLONE: ...changes are
10 being made.

11 ALEX REINERT: Mm-hmm.

12 COUNCIL MEMBER VALLONE: If a system's
13 in place where hearing is given and there is no
14 arbitrary rule or arm for the Department of
15 Corrections such as decide when old Bing time is
16 put in place. But if there's a process to put in
17 can we establish something with your assistance and
18 here to, to finally put something in place? Because
19 there are many horrible examples where this is mis-
20 used. But there are instances where there are... bad
21 people and we need to have that situation where
22 there's got to be some ability for the Department
23 of Corrections going forward. After this as the
24 dust settles and everything is done I think we,
25 your, your help and advice and, and those who have

2 gone through this I think this is where we as a
3 council can learn uh, to make the new minimum
4 standards. What, what would, is there hope for
5 that type of process to go forward.

6 ALEX REINERT: So I have two responses
7 and I appreciate the question. The first is I think
8 Riker's has the ability to actually take these
9 things into consideration already. I, I think they
10 do and to the end and they can. The problem is the
11 blind application of it and it's complete
12 arbitrariness. So, so that's one thing. The other
13 issue and this is really to something that Chair
14 Crowley said. Look if it's a serious infraction and
15 if we're talking about a, some, an act of violence
16 that occurs within Riker's then it should, then if
17 it's serious enough then it's something that
18 generally will be prosecuted and probably should be
19 prosecuted. And if someone is prosecuted and serves
20 time for an act of violence that they, that occurs
21 in Riker's they have been punished, they have been
22 punished. And so to say when they come back into...

23 COUNCIL MEMBER VALLONE: But that
24 doesn't address the original, they have been
25 punished but how does one secure the safety within

2 the institutions against additional crimes if I
3 happen to be next to that person. What is my
4 protection to know that I will not, my... will not be
5 subjugated or I won't be punished by this...

6 ALEX REINERT: Sure.

7 COUNCIL MEMBER VALLONE: ...particular
8 individual who has no... or I'm in a cell, I'll just
9 keep serving my time but my safety, my livelihood,
10 my mental health, everything while I'm in that one
11 year at Riker's Island is still subject to that
12 individuals disregard for my safety.

13 ALEX REINERT: So, I mean but absolutely
14 but that is a, that is a, a process that Riker's
15 can engage in and does engage in now when someone
16 gets classified when they first come in. I mean you
17 can, Riker's has the, has the ability to say based
18 on what we know we think this person is someone who
19 we need to have closer custody over. So that, I
20 don't think that's a, I, I don't think Riker's is
21 limited at that, at this point and engaging in that
22 process. And I think they're free to engage in that
23 process again assuming they provide all the
24 procedural protections that the person's entitled
25 to. So I, actually I don't think, I think this is a

2 problem, the problem you're speaking to, and I
3 think it's a real problem and one that should be
4 acknowledged is one that Riker's can and does have
5 a handle on. It's just that they're using a very
6 blunt instrument on this right now in, in this, in
7 the application of this policy they're using a very
8 blunt instrument. So I think if you take away...
9 (crosstalk) that blunt, if you take away that
10 instrument I don't think, I don't think you need to
11 substitute something. I think Riker's has the
12 ability and the power...

13 COUNCIL MEMBER VALLONE: And, and I
14 guess that's where we need additional testimony
15 going forward.

16 ALEX REINERT: Sure.

17 COUNCIL MEMBER VALLONE: To, to make
18 sure that, that system's in place so that everyone
19 has a check point or check valve to make sure we
20 can separate and or isolate under a different turn
21 or way so that people can receive the treatment and
22 get better and make sure that we don't have the
23 recidivism but also the protection for those that
24 are there... (crosstalk)

2 ALEX REINERT: Right. I mean it's just
3 important to recognize the, when someone comes back
4 into the system we can't, you know we, we can't
5 base our prediction of their behavior solely on
6 something that they've done in the past right?
7 We're just...

8 COUNCIL MEMBER VALLONE: Thank you very
9 much.

10 ALEX REINERT: Sure, thank you.

11 CHAIRPERSON CROWLEY: Thank you
12 professor for your testimony. I'd like to thank
13 again Council Member Dromm for his introductions
14 and the committee for your involvement in today's
15 hearing. I am now going to conclude the hearing of
16 August 20th, 2014.

17 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date _____ August 22, 2014 _____