

**Statement on behalf of the
American Civil Liberties Union of the District of Columbia
before the D.C. Council Committee on the Judiciary and Public Safety
Performance Oversight Hearing on the Department of Corrections
and Corrections Information Council
by
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Good afternoon, Chair Pinto and members of the Committee. My name is Melissa Wasser, and I am the Policy Counsel of the American Civil Liberties Union of the District of Columbia (ACLU-D.C.). I present the following testimony on behalf of our more than 15,000 members and supporters across the District.

The ACLU-D.C. is committed to working to dismantle systemic racism, safeguard fundamental liberties, and advocate for sensible, evidence-based criminal justice policies. We strongly believe the District must center the voices of Black individuals, organizations, and coalitions in decision-making and solutions to public safety and criminal justice policies.

My testimony today will focus on three actions that we urge the D.C. Council to take immediately to address the inhumane conditions at the D.C. Jail facilities, the egregious lack of transparency and accountability demonstrated by the D.C. Department of Corrections (DOC) and its leadership, and the systemic injustices perpetuated by the District's decades-long carceral approach to public safety.

These include (1) addressing conditions and housing issues at the D.C. Jail, (2) empowering strong, independent oversight and the sharing of information by the Corrections Information Council (CIC), and (3) banning the use of solitary confinement and other harmful isolation practices like the DOC's abuse of "safe cells."

- I. The Council must address conditions at the D.C. Jail, including inhumane living conditions and housing transgender residents inconsistent with their gender identity.**

As we enter another performance oversight season, some of the same issues that the ACLU-D.C. has highlighted in previous oversight hearings¹ or lawsuits² remain: residents inside the D.C. Jail facilities are still being subjected to inhumane living conditions, even after the U.S. Marshals found “systemic failures” at the Jail back in 2021, including unsanitary living conditions and punitive denial of food and water.³ Residents lack running water, are being served inedible food in unsanitary conditions, and are experiencing flooding and mold in their showers.⁴ Local residents, advocates, and family members of the mostly Black residents inside the D.C. Jail have been raising these problems for years, yet only recently were these concerns about inhumane living conditions elevated once family members of the mostly white January 6 defendants received attention for jail conditions.⁵ These conditions will continue to exist until there is concrete oversight by the Council or the court system that improves these heinous conditions.

Access to healthy and edible food plays a key role in ensuring safety within DOC. Edible food is a fundamental basic need that DOC has a constitutional duty to provide to people in its facilities. The lack of access to healthy and edible food at the

¹ ACLU of the District of Columbia, “ACLU-DC Testifies at Performance Oversight Hearing on the Department of Corrections and Corrections Information Council,” March 1, 2023, <https://www.acludc.org/en/legislation/aclu-dc-testifies-performance-oversight-hearing-department-corrections-and-corrections>. See also ACLU of the District of Columbia, “ACLU Testimony at the D.C. Council Oversight Hearing for the Department of Corrections,” March 2, 2022, <https://www.acludc.org/en/legislation/aclu-testimony-dc-council-oversight-hearing-department-corrections>.

² ACLU-D.C., *Banks v. Booth – Challenging Life-Threatening Lack of COVID-19 Precautions at the D.C. Jail*, <https://www.acludc.org/en/cases/banks-v-booth-challenging-life-threatening-lack-covid-19-precautions-dc-jail>.

³ U.S. Marshals Service, Statement by the U.S. Marshals Service Re: Recent Inspection of DC Jail Facilities, Nov. 2, 2021, <https://www.usmarshals.gov/news/press-release/statement-us-marshals-service>. See also Katie Mettler and Emily Davies, “People in jail sued over covid safety. The oversight didn’t last.,” *The Washington Post* (Aug. 29, 2022, 2:25 PM), <https://www.washingtonpost.com/dc-md-va/2022/08/29/coronavirus-jail-conditions-lawsuits/>.

⁴ District of Columbia Corrections Information Council, FY23 Annual Report on the District of Columbia Department of Corrections, p. 14, Oct. 20, 2023, https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/DOC%20Annual%20Report%202023%20.pdf. See also District of Columbia Corrections Information Council, FY22 Annual Report on the District of Columbia Department of Corrections, Dec. 2, 2022, https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/DOC%20Annual%20Report%202022%20.pdf.

⁵ Alex Koma, “Jan. 6ers and Marjorie Taylor Greene Drive Attention to the D.C. Jail. Real Reform Remains Elusive.,” *Washington City Paper* (Apr. 11, 2023), <https://washingtoncitypaper.com/article/598405/jan-6ers-and-marjorie-taylor-greene-drive-attention-to-the-d-c-jail-actual-reform-remains-scarce/>. See also Chris Stein, “‘They fought for freedom’: the nightly vigil to sanctify the January 6 rioters,” *The Guardian* (June 3, 2023), <https://www.theguardian.com/us-news/2023/jun/03/washington-dc-vigil-january-6-capitol-trump>.

D.C. Jail is not only a food safety issue, but an issue impacting District costs, health of residents, and racial justice. Introduced by Chair Pinto and seven Council colleagues, Bill 25-0112, the Food Regulation Ensures Safety and Hospitality Specialty Training Aids Re-entry Transition and Success (FRESH STARTS) Act of 2023, would set requirements for nutrient-dense food served in correctional facilities, require DOC to adopt the Good Food Purchasing Program, strengthen oversight of food and nutrition in correctional facilities, and establish a task force to explore and propose additional long-term improvements.

While some elements of FRESH STARTS have been included in Bill 25-0345, the Secure DC Omnibus Amendment Act of 2024, the bill does not go far enough to make meaningful improvements to how residents at the D.C. Jail are fed and treated. We urge the Council to fully pass the FRESH STARTS legislation and ensure there are unannounced inspections of the food service and a requirement of additional reporting on nutrition and specialty meals (religious and otherwise) being provided at the jail. Passing this legislation would help address a longstanding problem that DOC has yet to satisfactorily address on its own and is also critical to moving the District away from a carceral approach to one that focuses on prevention, intervention, and rehabilitation.

Residents at the D.C. Jail should also not be given a potential death sentence due to a lack of medical care from DOC staff. Last year, ACLU-D.C. notified this committee that we learned, either directly or through partner organizations who regularly visit the Jail, that numerous residents at the Jail who have serious medical needs that are not being met because of months-long delays in providing necessary medications, necessary equipment, or in taking individuals to doctors' appointments after medical staff have identified the need for these measures.⁶

Over the course of 2022, judges in the District of Columbia Superior Court repeatedly found that DOC has failed to provide constitutionally adequate medical care.⁷ As we have learned firsthand through our own litigation against the D.C.

⁶ ACLU of the District of Columbia, ACLU-DC Testifies at Performance Oversight Hearing on the Department of Corrections and Corrections Information Council, March 1, 2023, <https://www.acludc.org/en/legislation/aclu-dc-testifies-performance-oversight-hearing-department-corrections-and-corrections>.

⁷ *Id.*

Jail, the Jail did not and will not make improvements unless there are court-appointed monitors and inspectors making changes on the ground.⁸

Additionally, ACLU-D.C. has learned that DOC is still housing transgender women in the men’s unit, despite our previous lawsuit in 2021⁹ and settlement in 2022. While DOC removed a policy with an unlawful presumption for housing based on gender assigned at birth and replaced it with a policy that would house people according to their gender identity, CIC reported in an April 2023 inspection of Central Cell Block (CCB) that “men are housed on the first floor, women are housed on the second floor, and transgender residents are housed on the first floor in a cell by themselves.”¹⁰ DOC must answer why they are still housing transgender female residents in the men’s unit, especially after formally changing its policy to settle our lawsuit. It is past time for the Council to act and force DOC to fix these well documented failures and make changes to these unconscionable conditions.

II. The Council should empower strong, independent oversight by ensuring CIC can make unannounced inspections at DOC facilities and can share time-relevant information regarding DOC facilities and practices.

In 2023, the CIC conducted seven on-site inspections of DOC facilities.¹¹ While this is the largest number of inspections in the past 7 years, the CIC still lacks the authority to make unannounced inspections, does not have unfettered access to facilities, and cannot enforce the necessary follow-up once it has identified critical deficiencies, meaning that CIC cannot force DOC to make appropriate changes at their facilities.¹²

⁸ Katie Mettler and Emily Davies, “People in jail sued over covid safety. The oversight didn’t last.” The Washington Post (Aug. 29, 2022, 2:25 PM),

<https://www.washingtonpost.com/dc-md-va/2022/08/29/coronavirus-jail-conditions-lawsuits/>.

⁹ ACLU of the District of Columbia, *Hinton v. District of Columbia – Challenging Department of Corrections’ Policy of Discriminatorily Housing Transgender Individuals Based on “Anatomy” Rather Than Gender Identity*, <https://www.acludc.org/en/cases/hinton-v-district-columbia-challenging-department-corrections-policy-discriminatorily-housing>.

¹⁰ District of Columbia Corrections Information Council, *FY23 Annual Report on the District of Columbia Department of Corrections*, p. 10, Oct. 20, 2023, https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/DOC%20Annual%20Report%202023%20.pdf.

¹¹ District of Columbia Corrections Information Council, *FY23 Annual Report on the District of Columbia Department of Corrections*, p. 7, Oct. 20, 2023, https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/DOC%20Annual%20Report%202023%20.pdf.

¹² D.C. Code § 24–101.01, <https://code.dccouncil.gov/us/dc/council/code/sections/24-101.01>.

This is partly due to the lack of funding CIC has to follow its statutory oversight mandate. In the past, ACLU-D.C. and other partner organizations have pushed for a new permanent, independent oversight body with enforcement power to meaningfully make changes to conditions and problems at DOC facilities.¹³ Last Council period, the Council took steps towards independent oversight and passed Bill 24-0076, the Corrections Oversight Improvement Omnibus Amendment Act of 2022. During the 2023 budget season, both the Mayor and the Council failed to fully fund the Corrections Oversight Improvement Omnibus Amendment Act of 2022.

The full funding, \$575,000 to \$596,000 each fiscal year, would have been a total of \$2.3 million over the four-year financial window. Funding this bill would have allowed CIC to hire two Program Specialists to produce more reports on DOC facilities and fully fund a contract for national policy experts to monitor national policy developments affecting correctional facilities and provide associated training to its staff. Without this critical funding to implement these oversight functions, CIC will fail to carry out its mandate to “inspect, monitor, and report on the conditions of confinement at facilities where DC residents are incarcerated.”¹⁴ The Council should fully fund CIC during this upcoming budget season to ensure it can carry out their mandate and share time-relevant information about the conditions of confinement at DOC facilities.

III. The Council should pass legislation banning the use of solitary confinement at the Jail.

Solitary confinement is a reality for many people incarcerated in our nation’s capital. The United Nations has said that solitary confinement amounts to “psychological torture,”¹⁵ and even professional associations that represent corrections administrators have said that “prolonged isolation of individuals in jails and prisons is a grave problem in the United States.”¹⁶ The Council has an

¹³ Alex Koma, “D.C.’s Prison Oversight Efforts Have Become a ‘Total Sham.’ Advocates Are Pressing for Major Changes.” WASHINGTON CITY PAPER (Sept. 13, 2022), <https://washingtoncitypaper.com/article/570928/advocates-want-major-changes-to-dcs-prison-oversight-efforts/>.

¹⁴ DC Corrections Information Council, About the DC Corrections Information Council, <https://cic.dc.gov/page/about-cic>.

¹⁵ United Nations, “United States: Prolonged solitary confinement amounts to psychological torture,” Feb. 28, 2020, <https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture>.

¹⁶ Timothy Williams, “Prison Officials Join Movement to Curb Solitary Confinement,” The New York Times (Sept. 2, 2015), <https://www.nytimes.com/2015/09/03/us/prison-directors-group-calls-for-limiting-solitary-confinement.html>.

opportunity to become a leader in ending solitary confinement by passing Bill 25-0543, the Eliminating Restrictive and Segregated Enclosures (“ERASE”) Solitary Confinement Act of 2023 [ERASE Solitary].

Introduced by Councilmember Nadeau and seven Council Colleagues, ERASE Solitary would prohibit nearly all forms of segregated confinement for individuals incarcerated at penal institutions owned, operated, and controlled by DOC; limit the use of safe cells; mandate that all residents in a DOC facility receive at least eight hours of out-of-cell time per day; and require DOC to collect and publish data on the ongoing use of solitary confinement.¹⁷ The bill includes narrow and time-limited exceptions for medical isolation and for people at risk of self-harm. This Committee should hold a public hearing on ERASE Solitary and pass this legislation before the end of this Council period.

Additionally, there is widespread support for ending solitary confinement in the D.C. Jail. ACLU-D.C. recently conducted a survey of 500 likely 2024 general election voters in Washington, D.C. that revealed deep and widespread support for ending solitary confinement.¹⁸ The survey found that “more than half of D.C. voters support ending solitary confinement. A solid 55 percent majority of D.C. voters oppose the use of solitary confinement at the D.C. Jail, including 33 percent who oppose it more strongly”¹⁹ and “the more D.C. voters learn about solitary confinement, the more they want to end it.”²⁰ Support to end solitary confinement increases to 62% when voters learn more about the experience of solitary confinement and increases to 70% when voters learn it “does nothing to rehabilitate people and exacerbates or creates mental illness.”²¹

As we testified to in October 2022, the practice of solitary confinement jeopardizes public safety, wastes taxpayer dollars, and is inhumane and traumatic to the individuals who endure it.²² Ending solitary confinement demands confronting

¹⁷ Bill 25-043 – Eliminating Restrictive and Segregated Enclosures (“ERASE”) Solitary Confinement Act of 2023, <https://lims.dccouncil.gov/Legislation/B25-0543>.

¹⁸ ACLU of the District of Columbia, DC Justice Lab, and Unlock the Box DC, *Breaking Through Isolation: The Urgent Case for the ERASE Solitary Confinement Act in D.C. Jails* (Nov. 16, 2023), <https://www.acludc.org/en/publications/breaking-through-isolation-urgent-case-erase-solitary-confinement-act-dc-jails>.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 5.

²¹ *Id.*

²² ACLU-D.C. Testifies on the Eliminating Restrictive and Segregated Enclosures (“ERASE”) Solitary Confinement Act, October 20, 2022, <https://www.acludc.org/en/legislation/aclu-dc-testifies-eliminating-restrictive-and-segregated-enclosures-erase-solitary>.

inequities in the criminal justice system and the racial bias driving them. ERASE Solitary is not just a legislative change; it is a moral imperative to address systemic injustices and to create a more equitable and effective justice system in D.C.

IV. Conclusion

To say that DOC's management of the jail has been abysmal is an understatement. CIC has not worked to hold DOC accountable, and a swift change is necessary. In its oversight and legislative role, the Council has the power and responsibility to step in and the urgency to do so now is higher than ever. There has never been so much corroborated and glaring evidence that DOC is in serious need of overhaul and external accountability mechanisms. We urge the Council to pass the ERASE Solitary bill, the FRESH STARTS bill, and fully fund the CIC. The ACLU-D.C. is ready to work with you and alongside community partners to address this emergency and fight for the right of everyone held at the jail to be treated humanely.