



PROTECTING KIDS. PROVIDING HOPE.

December 16, 2019

Jacqueline Sherman, Interim Chair
New York City Board of Correction
One Centre Street
New York, NY 10007

Re: Public Comment on Rulemaking Concerning Restrictive Housing in Correctional Facilities

Dear Interim Chair Sherman and Board Members:

Children's Rights appreciates this opportunity to comment publicly on the Rulemaking Concerning Restrictive Housing in Correctional Facilities (the "Proposed Rules"). The Board of Correction (the "Board") has proposed these Rules as a new chapter of the [Minimum Standards](#), the regulations governing the management of and conditions in New York City jails, including Rikers Island.

Since 1995, Children's Rights has been a national advocate for youth in state systems. We are also a member of the Department of Correction's Adolescent and Young Adult Advisory Board and the New York City Jails Action Coalition. Our experience with adolescents and young adults in foster care and juvenile justice systems often brings us into contact with young adult and youth corrections policy, as our clients are disproportionately represented in young adult and juvenile correction facilities.

Background

In 2014, the Board approved minimum standards that required the Department of Correction (the "Department") to house young adults separately and apart from adults and provide them with age-appropriate programming. Since then, the Department has repeatedly requested, and the Board has granted, variances from those minimum standards. Now, five years on, the Board's Proposed Rules eliminate those requirements altogether, and codify additional practices widely acknowledged to be harmful to young adults.

Social science and neurological research that guide best practices for working with older youth show that adolescent development does not end at age 18. Young people continue to mature well

into their mid-twenties, making them uniquely vulnerable and impressionable.¹ This is especially true for young adults in child welfare and criminal justice systems. These young people require supports that respond to their unique needs.² The Proposed Rules do not require the Department to provide these supports.

Children’s Rights urges the Board to amend the Proposed Rules to mandate that the Department meet and strengthen its obligations to incarcerated young adults.

I. The Proposed Rules should require that the Department house young adults aged 18 to 21 separately.

The Proposed Rules eliminate the current Minimum Standards obligation that young adults “shall . . . be housed separately and apart from inmates over the age of 21.” (Proposed Rules §§ 1.02(c) and (d)). The Proposed Rules should be amended to require that the Department provide access to young adult housing, programming, and services for all young adults.

There is no evidence that reductions in violence are caused by the practice of co-mingling. Instead, research shows that there are more effective, long-term methods to reduce violence, including more age-appropriate programming, more services, and continued better training for officers.³

We also know from experience that placing young adults in co-mingled housing units effectively cuts off their regular access to key programs and services. For example, only the young adults housed at Robert N. Davoren Center (RNDC) can use the Peace Center located there. Young adults in co-mingled housing units are also denied access to education in classroom settings with their peers.

We urge the Board to shift the Department’s emphasis regarding young adult housing areas. These areas should not be used solely for “compliant” youth. They should be supportive, age-appropriate settings in which Department staff can respond properly and effectively to predictable conflict and violence among detained young people.

II. The Proposed Rules should require that the Department provide age-appropriate programming for all young adults.

The Proposed Rules eliminate the current Minimum Standards obligation that young adults “shall be provide[d] with age-appropriate programming.” (Proposed Rule § 1.02(c)). The Proposed Rules should be amended to require that the Department provide all young adults with age-appropriate programming and services.

¹ Schiraldi, Western, and Bradner “Community-Based Responses to Justice-Involved Adults” (Sept. 2015) <https://www.ncjrs.gov/pdffiles1/nij/248900.pdf>.

² See December 19, 2014 Public Comment submitted by Children’s Rights—*Older Youth Development: Insights from Child Welfare and Implications for New York City Department of Correction Policy and Practice*. We rely on our research from this paper throughout this testimony.

³ See October 7, 2018 testimony submitted by Children’s Rights.

During this critical period of development in adolescence and young adulthood, the opportunity to interact with supportive adults and practice reasoning, decision-making, and self-regulating skills strengthens young people's ability to function in the years ahead. Settings that remove and isolate youth from their age-appropriate communities, whether correctional or congregate foster care, can severely limit opportunities to build enduring relationships with caring adults. Youth have better outcomes if their unique needs are addressed, and they are not required to navigate systems created for older adults.

We urge the Board to shift the Department's emphasis regarding programming. So far, it is used as an incentive for young adults to behave. We believe programming must be made available for all incarcerated youth, and should not be used as a reward system.

III. Young adults should have 14 hours of lockout time each day, not 10 hours.

The Board should establish a 14-hour minimum of out-of-cell time for young adults incarcerated in the City's jails. Proposed Rule § 6-11(b) requires a minimum of only 10 hours of out-of-cell time per day for youth in transitional/administrative housing. This is not enough for adults, and certainly not enough for young adults.

Excessive isolation is incompatible with current research and policy for older youth. Because brain development is still occurring, adolescents and young adults are more vulnerable than older adults to the negative effects of isolation, including increased risk for mental illness or worsened mental illness; anxiety; rage; insomnia; self-mutilation; suicidal thoughts; and suicide. In addition to the immediate harm it presents, isolation can impede brain development and affect long-term cognitive and social abilities.⁴

No one incarcerated in New York City's jails should have less than 14 hours of out-of-cell time per day.

IV. The Proposed Rules should require the immediate development of a written plan for the discipline of young adults.

The Board itself has acknowledged that any delay in developing a graduated sanctions disciplinary plan for young adults will continue to undermine safe, fair, and effective discipline and behavior management for young adults. The preamble to the Proposed Rules notes:

The NYC jail system lacks a holistic and transparent approach to implementing discipline and behavior management for young adults. The absence of a written plan detailing the key elements of the Department's approach to discipline for this population makes it impossible for DOC to measure the effectiveness of its processes, strategies, and goals

⁴ See December 19, 2014 Public Comment submitted by Children's Rights—*Older Youth Development: Insights from Child Welfare and Implications for New York City Department of Correction Policy and Practice*.

regarding the discipline of young adults when they commit violent acts or engage in other misconduct, and hinders the Board's ability to conduct effective monitoring in this area.⁵

Therefore, there is no reason to postpone, as contemplated by Proposed Rule § 6-09, the Department's submission to the Board of a written plan consistent with the requirements of the *Nunez* Agreement.

V. The Proposed Rules should require the Department to abolish certain practices immediately.

1. The use of restraint desks

Pursuant to Proposed Rule § 6-36(e), shackling young adults to desks will be permitted until March 2022. There is no reason to wait more than two years to end this cruel and inhumane practice. It has not been used in the Secure Unit for two years or at Horizon for over a year, and should no longer be permitted in Enhanced Supervision Housing or anywhere else.⁶

2. Solitary confinement

This is torture. Proposed Rule § 6-07 should be amended to abolish solitary confinement outright. As a member of the New York City Jails Action Coalition, Children's Rights supports the Coalition and #HALTsolitary campaign's [Blueprint for Ending Solitary Confinement in NYC Jails](#) to end this barbaric practice.

VI. Conclusion

The Proposed Rules violate the [Board's stated recognition](#) that young adults have unique needs and require a distinct management approach. The Proposed Rules as currently drafted codify variances that Children's Rights has repeatedly advocated against.⁷

While the Board has granted repeated variances from the Minimum Standards, the Department's management of the jails has not improved. The *Nunez* Monitor's recent report shows that use of force numbers are up and the use of force rate is the highest since the settlement agreement went into effect four years ago.⁸ Children's Rights is particularly concerned about the use of force on adolescents and young adults.

Use of force rates for 16- and 17-year olds and 18-year olds are significantly higher than those for their adult counterparts.⁹ The Monitor also voiced concern about the use of force on 19- to

⁵ [Notice of Rulemaking Concerning Restrictive Housing in Correctional Facilities](#)—Notice of Public Hearing and Opportunity to Comment on Proposed Rules, at p. 23.

⁶ See, e.g., Children's Rights testimony before the Board dated November 12, 2018 and July 9, 2019.

⁷ See, e.g., Children's Rights testimony before the Board dated February 11, 2019 and November 11, 2019.

⁸ Eighth Report of the Nunez Independent Monitor, October 28, 2019, at p. 3.

⁹ Eighth Report of the Nunez Independent Monitor, October 28, 2019, at p. 25; see also <https://thecity.nyc/2019/12/force-more-frequent-against-teens-at-juvenile-lockups.html>

21-year olds on Rikers.¹⁰ We agree with the Monitor that the Department does not have an effective strategy for managing incarcerated youth and young adults.

The Proposed Rules do not show that either the Board or the Department has a plan for allocating resources for management, officers, training, programming, and schools for this vulnerable population.

We call on the Board of Correction to make amendments to the Proposed Rules to renew the Department's commitment to the Young Adult Plan. Young people incarcerated in New York City jails deserve no less.

Sincerely,



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¹⁰ Eighth Report of the Nunez Independent Monitor, October 28, 2019, at p. 25.