

Testimony of the Children's Defense Fund – New York
Before the Board of Correction

Public Hearing on Proposed Rule
Regarding Enhanced Supervision Housing
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Good Morning. My name is Beth Powers. I am the Senior Juvenile Justice Policy Associate at the Children's Defense Fund – New York (CDF-NY). Thank you to the Board of Correction (BOC) for the opportunity to testify today.

The Children's Defense Fund's (CDF) Leave No Child Behind® mission is to ensure every child a *healthy start, a head start, a fair start, a safe start and a moral start* in life, and successful passage to adulthood with the help of caring families and communities. It is with this mission in mind that CDF-NY brings a holistic approach to advocating for children at each stage of their youth. Across New York State, we act as a resource and partner for children, families and organizations, and are recognized as an authority in the endeavor to protect children and strengthen families. Our unique approach to improving conditions for children combines research, public education, policy development, community organizing and advocacy activities, making us an innovative leader for New York's children in the areas of health, education, early childhood development and youth justice.

My testimony today addresses the rule under consideration which would authorize the establishment of Enhanced Supervision Housing Units (ESHU) and limit the use of punitive segregation. I will focus my remarks regarding the potential impact on adolescents.

In the past year, CDF-NY along with other advocates for detained youth have met with the adolescent committee of the BOC to discuss the harms of isolated confinement and age-appropriate alternative interventions for confined youth. We are grateful for the Adolescent Committee's close attention to these issues, and sincerely hope that any rule promulgated at this time limits the use of isolated confinement of any sort for adolescents and young adults age 16-24. To be clear, CDF-NY strongly supports the removal of all 16 and 17 year olds from adult corrections. We believe that these youth are better served in the juvenile justice system. To the extent that this cannot be done immediately, we urge the City to initiate a planning process to expedite the removal of this age group from adult jails, while also ensuring that are not placed in isolated confinement during their time in adult corrections.

CDF-NY strongly supports the elimination of the use of punitive segregation for 16 and 17 year old adolescents. We applaud the Department of Correction (DOC) for taking this monumental step in the treatment of 16 and 17 year olds and the BOC for acknowledging that punitive segregation is a "serious and unacceptable threat to the physical and mental health of inmates who are adolescents". We additionally support the exclusion of 16 and 17 year olds in the consideration of the development of the ESHU. We understand that 16 and 17 year olds have begun to be placed on two new units as alternatives to punitive segregation. While we are greatly encouraged by the prospect of the new alternatives to punitive segregation, we strongly urge the BOC to monitor the new units to ensure they are implemented as intended, with a focus on programming and as an alternative to segregation. It was brought to our attention that adolescents on the Adolescent Transitional Repair Unit may be confined to their cells 20 hours a day. We urge the BOC to investigate this concern and ensure that youth are not subject to any form of prolonged segregation. The isolation of adolescents, under any and all names, should be ended in NYC jails and age appropriate positive behavioral responses put in place to ensure safety.

It is widely accepted that solitary confinement is excessively harmful. The United Nations Committee on Torture and the European Court of Human Rights have both deemed solitary confinement to be forms of torture and a violation of human rights. In their 2011 report, *Growing up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, the American Civil Liberties Union (ACLU) and Human Rights Watch (HRW) examined the detrimental effect isolation has on adolescents and ultimately recommended prohibiting the use of solitary confinement for youth. A recent report issued by the New York Advisory Committee to the U.S. Commission on Civil Rights details the detrimental effects of solitary confinement on young people in New York jails and prisons. The report recommends the elimination of solitary confinement for adolescents and young people up to age 25. As a result of a lawsuit brought by the New York Civil Liberties Union (NYCLU), the New York State Department of Corrections and Community Supervision (DOCCS) recently agreed to remove adolescents, pregnant women, and inmates with developmental disabilities from extreme isolation in New York state prisons.

Nevertheless, the recent Department of Justice (DOJ) investigation into the treatment of adolescents at Rikers Island, which looked at the experiences of adolescents between the ages of 16 and 18, cited the excessive use of punitive segregation for adolescent inmates. The report clearly outlined the ways in which 16-18 year olds suffer from DOC use of punitive segregation. The DOJ investigation revealed that the DOC regularly subjects adolescents to punitive segregation that is “excessive and inappropriate.” The DOJ found that 15-25% of youth were in isolation at any given time, and that many of these youth were in this extreme form of punishment for non-violent infractions. In light of recent developments regarding the DOJ’s decision to file suit against New York City for the treatment of youth at Rikers, we hope that the DOJ recommendations to eliminate lengthy isolation of 16-18 year olds and prohibit the placement of 16-18 year olds with mental health concerns in punitive segregation can be addressed at this time.

Neuroscience suggests that brain development continues into the mid-twenties. This continuing development affects brain areas responsible for impulse control, planning, and thinking ahead, amongst others. As a result, youth exhibit more impulsive behavior with less ability to focus on consequences of behavior. These truths put youth in a dangerous position in adult jails, where their social, emotional and developmental needs are inadequately addressed.

While we strongly support limiting the harmful practice of punitive segregation for 16 and 17 year olds, these findings in mind we urge the BOC to require the DOC to make similar restrictions for other vulnerable populations, particularly older adolescents 18-24 years old.

The DOC recently requested a variance from the BOC to allow 18-21 year old inmates to be housed together citing age-appropriate services and entitlement to educational services as benefits to housing these young people together. We are enthusiastic at the acknowledgement of the DOC of the need for unique supports for young people 18-21 years old. We expect the DOC to additionally acknowledge the neuro-scientific research and findings of the New York Advisory Committee to the U.S. Commission on Civil Rights by considering the unique needs of

young people under 25 years old when implementing isolation practices such as punitive segregation and ESHU.

In addition to the vulnerability of this population given their age and development, mental health concerns exacerbate the impact of young people under 25 placed in isolated confinement. The NYC Board of Correction found last fall that of youth in isolation at Rikers, 73% were diagnosed as either seriously or moderately mentally ill, almost double the 39% in the jail population as a whole. We urge the BOC to exclude young people with mental health conditions from punitive segregation and ESHU.

While our recommendation is to ban the use of restrictive housing for adolescents and young people under 25, at a minimum, we strongly urge limitations on the use of such housing for this population. All young people should have access to full educational services and should not be limited to cell study. Additionally all young people should have access to robust age appropriate services. Family engagement is an important element of appropriate rehabilitative services for adolescents. We are particularly concerned with the limitations the ESHU would place on contact visits and the impact of this policy on adolescents and young adults. To the extent that young people continue to be placed in isolation, at a minimum, they should be allowed time outside of their cell to attend school, mental health services, family visits, and other programming. Additionally limitations should be placed on the number of consecutive days in which young people can be subject to any form of isolated confinement.

In addition to our concerns with the conditions older adolescents and young adults would be subject to in ESHU we are concerned with the process by which individuals will be placed in the unit. The broad language currently proposed would allow someone to be placed in a highly restrictive setting for being a “safety threat”. We ask for the use of concrete indicators that are not reliant on the subjective impression of DOC staff when making decisions that will greatly impact the treatment of young people. The BOC must ensure that the procedures in place to notify an inmate of placement in the ESHU, including the option of a hearing, are clearly and plainly explained to adolescents and young adults and urge the allowance of representation from an attorney or other non-DOC employed advocate. Given the vulnerability of young people, particularly those with mental health concerns, the DOC must ensure that these young people are adequately and fairly represented when such steep consequences are at stake.

It is our hope that the DOC will develop and the BOC will enforce age-appropriate interventions for the adolescent and young adult population in NYC jails that allows for jail safety to be maintained and positive programming to be accessed by all young people without the need to expose youth to practices that are known to be detrimental to their well-being.

Recommendations

- 16 and 17 year olds should not be housed in adult jails
- No adolescent or young adult ages 16-24 should be subject to punitive segregation or any form of prolonged isolated confinement.

- As long as adolescents and young adults continue to be housed in isolated confinement of any form, restrictions should be placed on the number of hours per day one can be confined and number of consecutive days one can be confined.
- Any adolescent or young adult in isolated confinement should have full access to education, mental health services, family visits, and age appropriate programming outside of their cells.

Thank you for the opportunity to testify.