



Close Rosie's • 534 w 187th st #7 New York, NY 10033
<http://www.CloseRosies.org>

December 2, 2019

RE: Board of Correction Minimum Standards Regarding the use of Restrictive Housing

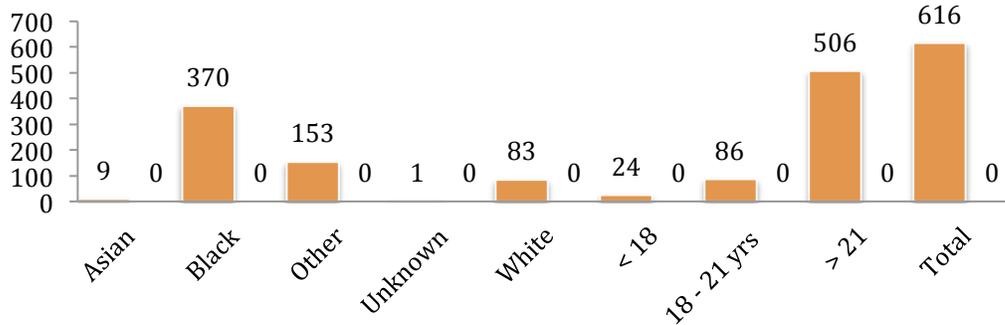
Good Morning: I am Kelly Grace Price, the founder of Close Rosie's. I thank the board for allowing me the chance to speak. I would like to address four main issues this morning:

- 1. Current profile of women in solitary-like conditions on Rosie's**
- 2. Lessons learned from past BOC Rulemaking (ESH & PREA)**
- 3. The current membership of the BOC has been appointed au-reboire to the mandates of the NYC Charter. This makes the current seated body an invalid entity.**

- 1. Current profile of women/girls/trans/intersex/gender non-conforming persons in solitary confinement-like conditions on Rosie's:**

Solitary Confinement of Women & Girls on Rosie's

Punitive Segregation, Solitary Confinement & Protective Custody: aka "The Bing" Over the Past Five Years



	# Women/Girls in the Bing	Average Days in
Asian	9	28 days
Black	370	28 days
Other ¹	153	26 days
Unknown	1	9 days
White	83	33 days
< 18	24	23 days
18 - 21 yrs.	86	36 days
> 21	506	27 days
Total	616	28 days

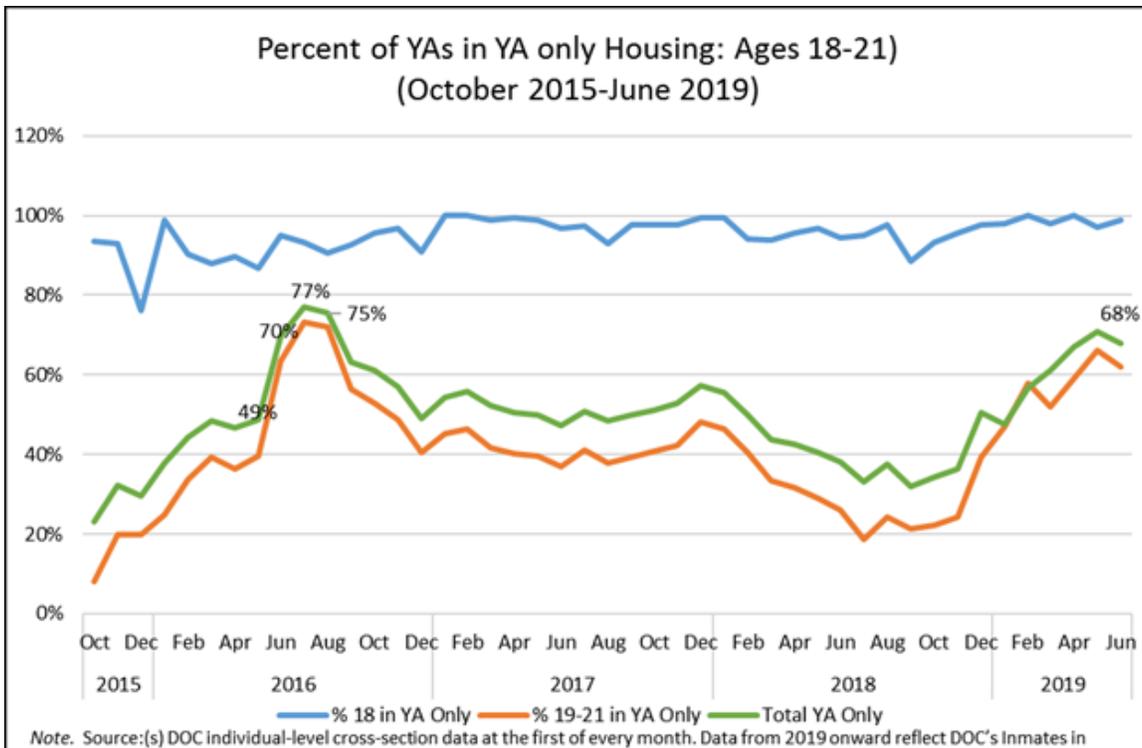
- Girls under the age of 18 spent 552 days in solitary or solitary-like confinement.
- The average time spent in Solitary by white women and girls is 33 days. That's ~20% higher average days in the Bing than averaged by Black, Asian & those women and girls classified as "other" by the DOC.
- The DOC does not track Latinx persons placed in ESH/solitary-like conditions at Rosie's. Why?

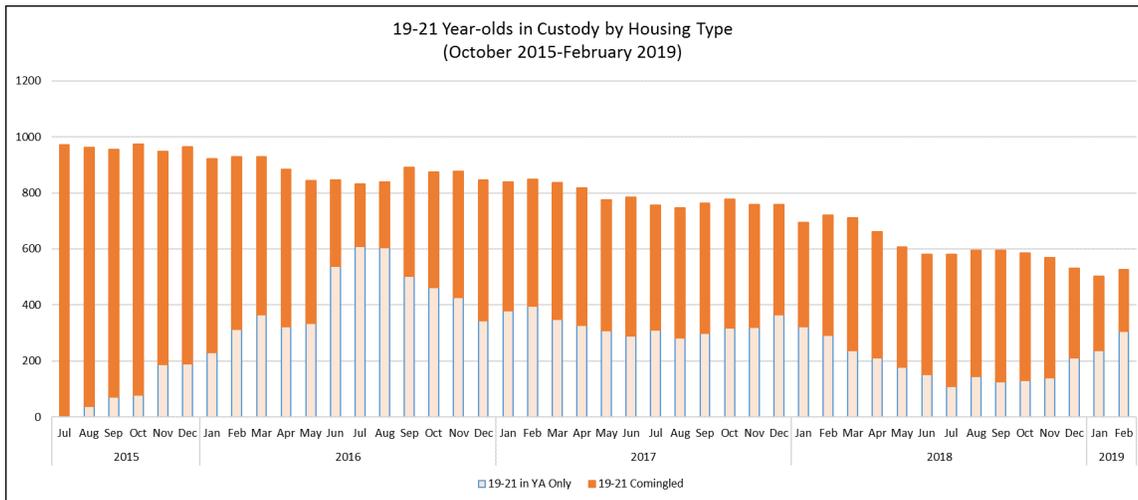
¹ The NYCDOC did not provide information about Latinx women, girls, trans, intersex or gender non-conforming persons in solitary or solitary-like confinement on Rosie's.

² Charter of the City of New York; Chapter 25, Section 626; linked November 8, 2019;

2. LESSONS LEARNED from past BOC Rule-Making

A. ESH: In 2014 the NYC BOC embarked on a rule-making process around the creation of “new” Enhanced Supervised Housing (ESH) to ‘replace’ the practice of solitary confinement on Rikers. The process was long, contentious and arduous. An extra BOC hearing was scheduled in December of 2014 as more time was needed to debate and discuss the final vote. In January new BOC members appeared and a vote was finally pushed through: the board approving the practice with conditions. One of these conditions was that practice of blended units (housing units that mix youth under the age of 21 with adults) had to be reported on monthly. [These reports can be found currently on the BOC website](#); but the data and information provided in these reports conflicts with a July 2019 posting on the BOC’s website entitled: [“Are Young Adults housed with adults?”](#)





The data posted in the monthly housing reports don't include data on YA's placed in Adult units: they only count people in units already labeled as YA units. If a young adult is placed in a unit labeled an Adult Unit that head is not included in the tally for "# YAs in Co-mingled Housing Areas." Only YA's in units labeled as YA units that have some adults in them are included in this reporting. This is nutz. Close Rosie's has identified as many as ten reports with data that conflicts with the July 2019 data and will continue my evaluation.

Across the board the numbers are conflicting/different ref co-mingling in the different data posted by the BOC. For instance:

[The BOC Oct 2018 YA Monthly Housing Report says there were 299 YAs ages 16-21 in YA ONLY housing.](#)

BUT [The JULY 2019 BOC graphic in the new data report shows only around ~210 YAs in YA ONLY housing in Oct 2018...](#)

Facility	# YAs in YA-only Housing Areas	# YAs in Co-mingled Housing Areas	# Total	% of total YA population
GRVC	31	24	55	7.8%
OBCC	14	82	96	13.7%
EMTC	31	35	66	9.4%
RMSC	33	4	37	5.2%
RNDC	169	0	169	24.1%
AMKC	21	92	113	16.1%

¹ One young adult was being treated at EHPW at the time this report was compiled

1

Young Adult Housing Monthly Progress Report
October 2018

Facility	# YAs in YA-only Housing Areas	# YAs in Co-mingled Housing Areas	# Total	% of total YA population
BKDC	0	69	69	9.8%
MDC	0	38	38	5.4%
NIC	0	18	18	2.5%
VCBC	0	39	39	5.5%

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- [May 2019](#)
- [April 2019](#)
- [March 2019](#)
- [February 2019](#)
- [January 2019](#)
- [December 2018](#)
- [November 2018](#)
- [October 2018](#)
- [September 2018](#)
- [August 2018](#)

This has apparently been the practice throughout all YA reporting for years. I have a hunch the July 2019 data was released only in graphic form and without specific data/numbers for a reason...I will FOIL the data behind the graphic to get exact numbers. I wonder if there are other shortages on data offerings by the DOC on co-mingling? For instance, are all of these Co-mingled Units Programming

Reports only based on data pulled from units labeled as YA units with Adults in them omitting units labeled as Adult units w YAs in them?

- [March 2018 \(Updated April 17, 2018\)](#)
- [Comingled Units Programming Report](#)
- [February 2018 \(Updated April 17, 2018\)](#)
- [Comingled Units Programming Report](#)
- [January 2018](#)
- [Comingled Units Programming Report](#)
- [December 2017](#)
- [Comingled Units Programming Report](#)
- [November 2017](#)
- [Comingled Units Programming Report](#)
- [October 2017](#)
- [Comingled Units Programming Report](#)
- [September 2017](#)
- [Comingled Units Programming Report](#)

We cannot allow these “data mistakes” to stand uncorrected. We also cannot allow these criminal practices to continue and accept them from agents of our government. I think the proper frame for these crimes is to view them in light of” NYS 195.00 **Official misconduct**.

A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit: 1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or 2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor. Additionally there MAY be other public records laws that have been broken in presenting this data.

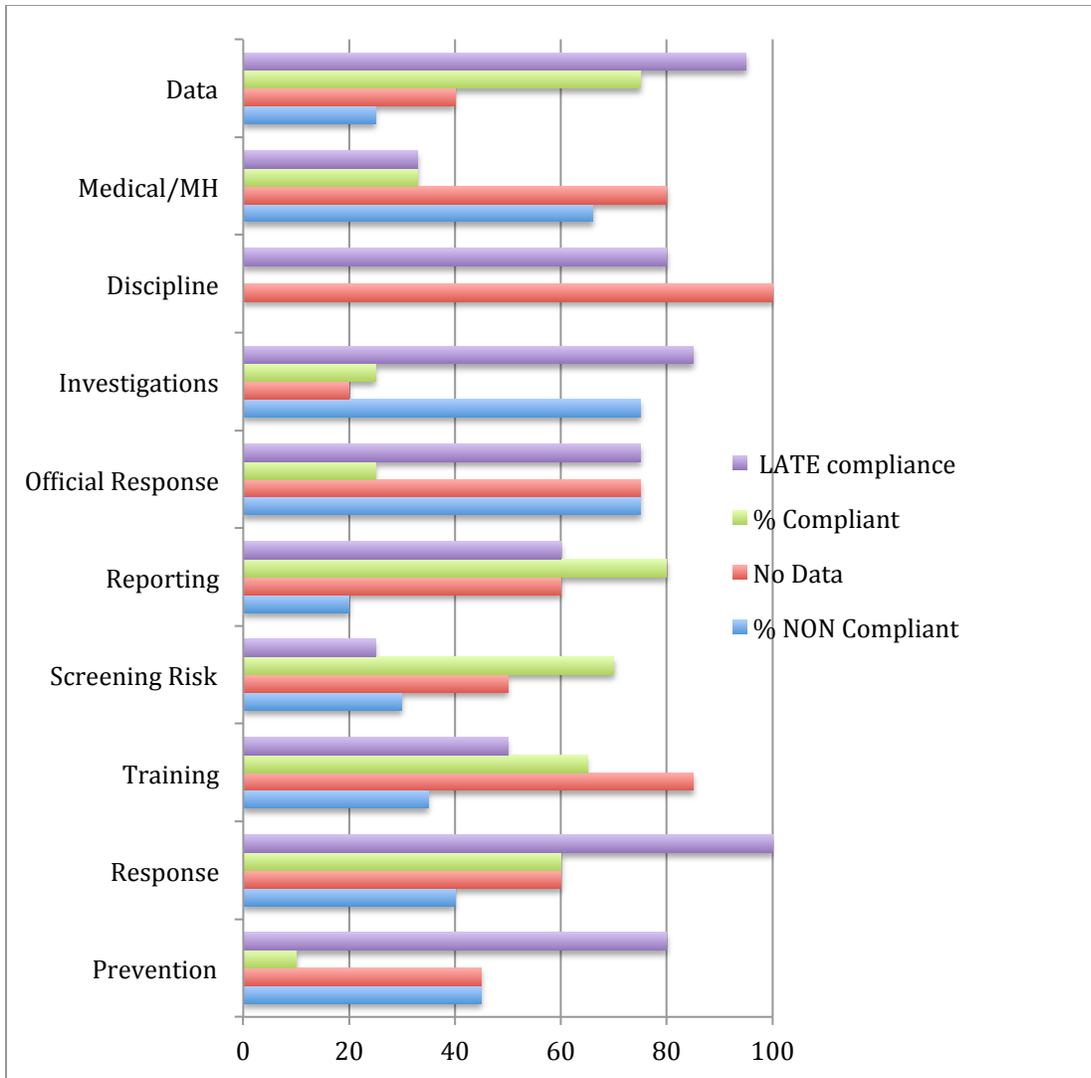
We cannot allow the DOC to keep creating these insane units and making promises to the BOC and the advocacy community that they don’t keep or they doctor the data/model the selection criteria the

data is based on. A review of all DOC “blended unit” data reported to the BOC as a stipulation for the creation of ESH should be undertaken. This is FIVE YEARS after the ESH rule was created and we are still dealing with the detris the DOC churns out in the guise of data required by the ESH rule-making process. FOH.

B. Lessons Learned: PREA:

Percentage of Standards Implemented:

There are Forty-One distinct standards of the PREA rules adopted into the NYC Department of Corrections Charter by BOC vote in November of 2016. These 41 standards may be categorized into ten distinct rubrics: Data; Medical and Mental Health; Discipline (Staff and Incarcerees/Detainees); Investigations; Official Response; Reporting; Screening Risk; Training; Response and Prevention. Each standard has several subdivisions—some have over a dozen. In all Close Rosie’s has charted over 120 PREA standard subdivisions that required implementation. Below is a graphic tracking the percentage of standards/subdivisions of standards in each category that the DOC is either: 1) compliant; 2) compliant but LATE in achieving 3) Non-compliant or; 4) standards that we have no data regarding compliance regarding. We need to write into the Restrictive Housing Rule a sliding-scale compliance barometer. We cannot just evaluate each rule subdivision on a compliant/non-compliant basis and the sliding-scale standards need to be written into the rule AHEAD of time. Below an example:



Likewise we need to provide machine-readable templates to the DOC for all their reporting required under the standards for Data Collection and Review (§ 6-08).

3. The current membership of the BOC has been appointed au-reboire to the mandates of the NYC Charter. This makes the current seated body an invalid entity, your votes not official and any future votes should be postponed until a true and correct board can be properly appointed.

1. **BACKGROUND:** New York City Charter (“the Charter,”) requires that: “Members shall be

appointed for a term of six years. Vacancies shall be filled for the remainder of the unexpired term. Three members shall be appointed by the mayor, three by the council, and three by the mayor on the nomination jointly by the presiding justices of the appellate division of the Supreme Court for the first and second judicial departments. Appointments shall be made by the three respective appointing authorities on a rotating basis to fill any vacancy...”²

But Board members have not been selected by ‘the three respective appointing authorities’ on a ‘rotating basis’: instead the Mayor has chosen to interpret the City Charter to allow him to replace his appointments without rotating the selection power between the three appointing authorities.

The Mayor’s own press officer, Avery Cohen, has affirmed this mis-reading of the BOC’s Charter recently in the press when on October of 2019 former judge and long- time board member Hon. Bryanne Hamill was ousted from her position by the mayor and replaced by an administrator from ACS without any correction knowledge or experience just before several contentious votes ref the curbing of solitary confinement and solitary-like practices employed by the NYC Department of Correction: “We thank Bryanne Hamill her for her service and for the commitment she has demonstrated to the board throughout her tenure,” said mayoral spokesperson Avery Cohen. *“As is common with appointees from previous administrations, a mayor replaces board members whose terms expire.”*³ [Emphasis added]

Over the past six years, since Mayor de Blasio has taken office, whenever an important vote has been pending within the BOC the Mayor has plucked board members from the panel and replaced them with people he believes will vote in a manner that dovetails with his current needs or that of the NYC DOC: the entity the BOC is charged with oversight of:

² Charter of the City of New York; Chapter 25, Section 626; linked November 8, 2019; <https://nyccharter.readthedocs.io/c25>.

³ The City; “**De Blasio Ousts Key Solitary Confinement Foe as Reform Nears**”; By **Reuven Blau** and **Rosa Goldensohn**; Oct. 17, 2019. Linked November 8, 2019.

This just happened in October of 2019 with Hon. Judge [Bryanne Hamill](#): her appointment selection should have been rotated to the NYC Council but instead the Mayor took the opportunity to replace her with Felipe Franco and not to allow the appointment opportunity to rotate to one of the other two “appointing agencies.” [Honorable Bryanne Hamill](#) was appointed jointly by Mayor Bloomberg and the Appellant Division in October of 2013. Although she was known as one of the most intelligent, able and robust advocates on the BOC her Mayor De Blasio did NOT renew her appointment. This action came just as the BOC prepares to enter rule-making regarding the use of Restrictive Housing (aka solitary confinement and solitary-like practices) which Hon. Judge Hamill was integral in drafting the initial rule versions and pushing the initiative through to a period of public comment and vote which is scheduled to occur on or about early January of 2020.

In November of 2014, when the BOC was faced with the decision to create new “Enhanced Supervision Housing” (EHS) units to replace solitary-like conditions, suddenly, a new Board Member, [Jennifer Jones Austin](#), appeared as a new member on the BOC appointed by Mayor de Blasio.⁴

Board Member [Dr. Gerard Bryant](#)⁵: Appointed January 11, 2016 by Mayor De Blasio disappeared in the summer of 2018 without comment and was replaced by the Mayor—the appointing authority did not rotate.

[Robert L. Cohen, M.D.](#) appointed by NYC Council on December 19, 2011⁶ renewed on October

⁴ CITY OF NEW YORK BOARD OF CORRECTION: OPEN MEETING November 18, 2014: https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/bocminutes_11_18_14.pdf

⁵ “January 11, 2016—Mayor Bill de Blasio today appointed Gerard Bryant to the Board of Correction, <https://www1.nyc.gov/office-of-the-mayor/news/041-16/mayor-bill-de-blasio-appoints-gerard-bryant-the-board-correction>.

⁶ December 19, 2011: “RESOLUTION APPROVING THE RE-APPOINTMENT BY THE COUNCIL OF ROBERT COHEN, M.D. AS A MEMBER OF THE NEW YORK CITY BOARD OF CORRECTION.” <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1020881&GUID=4217C033-F556-4177-957F-484601ED3657&Options=&Search=>

11, 2017 by the NYC Council.⁷

Tino Hernandez: appointed in 2019 by Mayor De Blasio

Michael J. Regan⁸: Appointed in April of 2010 by NYC Council: appointment renewed by NYC Council on 3/9/16. The Mayor automatically renewed Mike Regan’s appointment on the BOC, which expired in 2017. The appointment was not put into rotation for the next appointment authority to consider.

Stanley Richards⁹: Vice-Chair: Appointed on May 27, 2015 by NYC Council.

Steven M. Safyer, M.D.: Appointed in XXX apt renewed in XXX

Jacqueline Sherman¹⁰, Interim Chair Appointed by Mayor De Blasio and the appellant division In October of 2018, when the BOC endeavored to take a vote on incorporating ACS into DOC workflow practices Jaqueline Sherman, longtime ACS administrator appeared on the board.

⁷ “Report of the Committee on Rules, Privileges and Elections approving the re-appointment by the Council of Robert L. Cohen, MD as a member of the New York City Board of Correction. The Committee on Rules, Privileges and Elections, to which the annexed Council communication was referred on October 17, 2017 and which same Mayor’s Message was coupled with the resolution shown below, respectfully.”

https://www1.nyc.gov/assets/dcas/downloads/pdf/cityrecord/stated_meeting_2017_10_17.pdf

⁸ April 4, 2016: RESOLUTION APPROVING THE RE-APPOINTMENT BY THE COUNCIL OF MICHAEL REGAN AS A MEMBER OF THE NEW YORK CITY BOARD OF CORRECTION:

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2683920&GUID=DA04E41A-2123-4587-89E7-4C1CA13ACC1E&Options=&Search=>

⁹ RESOLUTION APPROVING THE RECOMMENDATION BY THE COUNCIL OF STANLEY RICHARDS AS A MEMBER OF THE NEW YORK CITY BOARD OF CORRECTION:

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2324676&GUID=E0944670-7DFD-4EA1-815B-AFA077FD9C1B&Options=&Search=>

¹⁰ “July 10, 2018 —Mayor Bill de Blasio today announced the appointment of Jacqueline Sherman to the Board of Correction...” <https://www1.nyc.gov/office-of-the-mayor/news/348-18/mayor-de-blasio-appoints-jacqueline-sherman-the-board-correction-names-derrick-cephas-as>

[Derek Cephas](#): appointed by Mayor de Blasio to the Board in October 2014 and he became Vice Chair of the Board in February 2015 and Chair in the spring of 2017.

[Felipe Franco](#): appointed by NYC Mayor and appellant division October 2019.¹¹

[James Perrino](#): appointed by NYC Mayor on 2/14/2017.¹²

New York City has not complied with the rotating appointment process since at least 2014 when Mayor de Blasio took office. Since 2014 there have been at least TWELVE appointments to the NYC BOC and TWO appointment renewals. This is FOURTEEN opportunities to appoint that should have rotated between the three appointing entities respectively. However, the NYC Council has only been afforded THREE of these appointment opportunities—less than half of the appointing opportunities that should have been afforded the council mandated by the NYC Charter. The net effect of New York City’s lack of adherence to the rotating appointment mandate of the NYC DOC/BOC Charter is that the mayor has been able to control key votes and stifle real oversight of the DOC virtually guaranteeing torturous conditions and practices remain stalwart within DOC/BOC operating methodologies. Advocates, community members, and present/formerly detained/incarcerated individuals are all injured by New York City BOC’s unlawful selection process of the “oversight” board meant to bring strict scrutiny and fair, humane practices to the archaic NYC DOC. I will seek a preliminary and permanent injunctive and declaratory relief to prevent New York City BOC from continuing to act on an unfair basis at least until such time as the NYC BOC is in compliance with the its own Charter standard for the selection of NYC Board of Correction members.

I have filed a complaint in NY Supreme Court asking for injunctive and declaratory relief that New York City’s Board of Correction as an invalid body improperly selected under, 24 N.Y. City Charter and preempted by that same local law from taking any further official action such as

¹¹ “Felipe Franco, the deputy commissioner for the Division of Youth and Family Justice within the Administration for Children’s Services (ACS), will serve a six-year term on the city’s Board of Corrections as a de Blasio appointee.” Chronicle of Social Change: October 17, 2019: <https://chronicleofsocialchange.org/news-2/new-york-youth-franco-justice/38403>

¹² “February 14, 2017:— Mayor Bill de Blasio today announced the appointment of James Perrino to the Board of Correction.” <https://www1.nyc.gov/office-of-the-mayor/news/082-17/mayor-de-blasio-appoints-james-perrino-board-correction>

votes, engaging in rule-making or any other furtherance of the body's responsibilities until a true and proper board may be appointed and this matter is satisfied. We cannot proceed with Restrictive Housing rulemaking without Hon. Bryanne Hamill and I look forward to the day that we see her return to her post at 125 Worth st during these meetings.

Kelly Grace Price

Founder, <http://www.CloseRosies.org>

New York, NY

December 2, 2019