



PROTECTING KIDS. PROVIDING HOPE.

April 13, 2021

Jennifer Jones Austin, Chair
Margaret Egan, Executive Director
New York City Board of Correction
One Centre Street
New York, NY 10007

Re: Notice of Rulemaking Concerning Restrictive Housing in Correctional Facilities to revise the [Minimum Standards](#), the regulations governing the management of and conditions in New York City jails

Dear Chair Jones Austin, Board Members, and Ms. Egan:

It is time for radical change at the Department of Correction. Both the Mayor and the Board of Correction have promised to end solitary confinement. But the Notice of Rulemaking Concerning Restrictive Housing in Correctional Facilities (the “Rules”) falls woefully short of this objective.

Background

Since 1995, Children’s Rights has been a national advocate for youth in state systems. 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. This testimony focuses on the provisions of the Rules that affect young adults (18 to 21 years old). As a member of the New York City Jails Action Coalition, and a supporter of the #HALTsolitary campaign’s [Blueprint for Ending Solitary Confinement in NYC Jails](#), Children’s Rights supports the testimony of advocates who comment on other aspects of the proposed Rules.

Introduction

We were encouraged to see that the core principles of the proposed Rules include treating all people in custody with dignity and respect, not dehumanizing or demeaning them, and imposing the least restrictive conditions and settings possible (§ 6-01 Purpose). We were also encouraged to see that portions of the Young Adult Plan remain in the proposed Rules (Rule § 1-02(c)(1) and (2)), and that the Board of Correction (the “Board”) will monitor Department of Correction (the “Department”) staff trainings focused on working with the young adult population (Rule § 1-02(c)(3)(iii)(H)).

Other provisions of the Rules, however, raise serious concerns about the treatment of young adults in the City's jails: the use of the Risk Management Accountability System, the continued co-mingling of young adults with older adults, the lack of focus on implementing meaningful programming, and the continued use of variances.

Throughout the rule-making process, we urge the Board to keep in mind that the overwhelming majority of incarcerated persons on Rikers Island—72 percent as of April 12, 2021—are pretrial detainees, 52 percent have mental health issues, and nearly 90 percent are Black or other minorities. These factors make truly abolishing solitary confinement, and developing and administering meaningful programming and services, critical for the fair, just, and humane treatment of incarcerated persons in New York City.

I. The Risk Management Accountability System is solitary confinement. Solitary confinement is torture.

The Risk Management Accountability System (“RMAS”) housing described in Chapter 6 of the proposed Rules is simply solitary confinement by another name. In a feat of Orwellian doublespeak, the Rules frankly admit that they “eliminate specific references to punitive segregation and enhanced supervision housing (ESH) and insert references to RMAS where appropriate” (Rules, page 10).

The Department should never house young adults in RMAS. The Rules should prohibit placement of all young people aged 25 and under in RMAS or any other euphemistically-named form of restrictive housing.¹ Certainly for young adults, no amount or type of programming provided for in the proposed Rules §§ 6-20(c) and (f) can mitigate the effects of being held in solitary confinement.

It is our understanding that the RMAS are based on restrictive housing units at North Infirmery Command (NIC) and the Secure Unit at George R. Vierno Center (GRVC), although the Department has not yet provided renderings. These units include inhumane cage-like structures that certainly do not meet the core principles enunciated in the published Rules. They do not provide open space essential for healthy, meaningful human interaction and engagement.

They are just another iteration of solitary confinement where, during the allotted 10 hours of out-of-cell time,² incarcerated individuals move from their cell to a cage in front of their cell where they remain alone. At most, they can have some limited interaction with the person in the cage

¹ Unfortunately, Rule § 1-02(c)(3)(iii)(F) specifically contemplates restrictive housing units as an option for young adults.

² Contrary to proposed Rule § 6-03, all people should have access to at least 14 hours out of cell per day. This timeframe should apply across all jail populations, and should include at least seven hours in spaces conducive to engaging in meaningful programming and activities with other people. *See* February 9, 2021 testimony submitted by Children's Rights.

next to them. Even worse, there is no limit specified in the proposed Rules regarding the amount of time that someone can be held in these conditions.³

As Children’s Rights has testified repeatedly, excessive isolation is incompatible with current research and policy for older youth. Because brain development is still occurring, adolescents and young adults are even 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

We also note that, while the proposed Rules purport to end the use of so-called restraint desks and other restraints during out-of-cell time, they do not place limitations on restraints until November 2021. But shackling people to desks is barbaric; this practice should be abolished immediately.

The Department has furnished no evidence that solitary confinement improves safety. There is no evidence that expanded restrictions on people’s out-of-cell time improves safety. There is no evidence that restraint desks improve safety. In fact, the *Nunez* monitor’s reports show that violence has increased,⁵ all while the Department houses young adults in various forms of solitary confinement, reduces out-of-cell time, and shackles young adults to desks in Enhanced Supervision Housing when they are out of their cells.

The proposed Rules’ reliance on RMAS and other restrictive housing for young adults and the use of restraint desks simply underscore the Department’s lack of a comprehensive, effective strategy for managing young adults.

The Department’s continued utilization of ineffective methods while hoping for a different result does not make sense.

II. The proposed Rules should prohibit co-mingling for all young adults.

Certain subsections of proposed Rule § 1-02(c)(3) provide for continued co-mingling housing units. But there is no evidence that co-mingling young adults with older adults reduces violence, although this is the ostensible purpose for co-mingling. In fact, the Board acknowledges that there is no such evidence. (Rules, page 9).

³ There should also be defined limits on the scope, reasons for, and lengths of time in emergency lock-ins and “de-escalation confinement” (Rules §§ 6-05, 6-06). The reasons for emergency lock-ins and placement in de-escalation should be reviewed at least every hour and should never last more than four hours in any 24-hour period, or more than 12 hours in any seven-day period. Regular, consistent monitoring by Correctional Health Services staff should be an integral part of these reviews.

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*.

⁵ See, e.g., Eighth Report of the *Nunez* Independent Monitor, October 28, 2019, at pages 3, 25; see also <https://thecity.nyc/2019/12/force-more-frequent-against-teens-at-juvenile-lockups.html>

Instead, research shows that there are effective, long-term methods to reduce violence: more age-appropriate programming, more services, and continued better training for officers.⁶

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 revise the proposed Rules to house all young adults separate and apart from older adults.

III. The proposed Rules should mandate meaningful age-appropriate programming and services for all young adults.

Although the proposed Rules require the Department to provide the Board with monthly public reports on age-appropriate programming and services for young adults, including a list and description of young adult program offerings and providers (Rules § 1-02(c)(3)(iii)(J)), it is not clear what power the Board has to enforce the provision of meaningful, substantive programming for young adults.

In addition, while the proposed Rules require access to five hours of programming a day, such programming can take place in-cell or out-of-cell, and there is no requirement that such programming be with other people. And five hours is not enough time for meaningful programming. Therefore, as part of what should be the universal 14 hours out-of-cell time per day, young adults should have access to at least seven hours of congregate out-of-cell programming and activities.⁷

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.⁸ 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,⁹ as the Board itself has acknowledged.¹⁰ Furthermore, meaningful, substantive programming must be available to all young adults on intake, and not used as a reward for certain behavior.

⁶ See October 7, 2018 and November 12, 2020 testimony submitted by Children's Rights.

⁷ Under the recent HALT legislation's alternatives to solitary confinement, people generally are required to have access to at least seven hours of out-of-cell congregate programs, treatment, services, recreation, activities, and/or meals per day. This timeframe should apply to young adults in New York City jails.

⁸ Schiraldi, Western, and Bradner, "Community-Based Responses to Justice-Involved Adults" (Sept. 2015) <https://www.ncjrs.gov/pdffiles1/nij/248900.pdf>.

⁹ 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*.

¹⁰ <https://www1.nyc.gov/site/boc/jail-regulations/ya-plan.page>

Children's Rights would like to take this opportunity to call on the Board to reinstitute the Adolescent and Young Adult Advisory Committee. In 2019, the Department first greatly diluted the focus of this committee, and then disbanded it altogether. But there is simply no substitute for the regular input of advocates and providers concentrated specifically on programming and services for young adults. And there is simply no substitute for the Department's transparency in the actual provision of programming and services for this vulnerable population.

IV. Variances should be strictly limited.

Proposed Rule § 6-29 permits the Department to apply for a variance from a specific subdivision or section of these rules in accordance with Minimum Standards § 1-15. We urge the Board to rein in this Trojan horse.

The Board should revise the proposed Rules to place a strict limit on the number of times a variance can be sought and granted. Based on the Department's years-long history of repeatedly requesting and being granted variances regarding a host of issues concerning young adults, including housing in ESH, co-mingling, and access to law libraries, now is the right time to prevent further governing by variance.

V. The HALT Act is a floor, not a ceiling, for solitary confinement in New York City jails.

Although the recently passed HALT Solitary Confinement Act includes a 15-day limit on solitary confinement, a well-known provision under international law, the United Nations Special Rapporteur on Torture has specifically called for the full prohibition of solitary confinement for people in pretrial detention.¹¹ As noted above, people in pretrial detention make up the vast majority of those incarcerated in New York City's jails. Also as noted above, on Rikers Island, over half of incarcerated persons have mental health issues. This means that the torture of solitary confinement has no place in New York City jails.

The Board should revise the proposed Rules to abolish all forms of solitary confinement, no matter the euphemism, as promised by the Mayor and the Board.

Sincerely,



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