



PROTECTING KIDS. PROVIDING HOPE.

November 9, 2020

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

Re: Renewal of Limited Six (6) Month Variance Requests from Minimum Standard §1-02 Regarding Co-mingling Young Adults (19-21 Years Old) with Adults (22 Years Old and Older); Minimum Standard § 1-16(c)(1)(ii) Regarding the Use of Enhanced Supervision Housing (ESH) for Young Adults (18 to 21 years old); Minimum Standard §1-15(c) Regarding the Department's Use of Separation Status Housing; and Minimum Standards §1-05(b) "Lock-in" and §1-08(f) "Access to Courts and Legal Services"

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

Since 1995, Children's Rights has been a national advocate for youth in state systems. We are also a member of 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. We are concerned about the welfare of young adults and youth at Rikers.

Once again, we are writing to ask that you deny all of the Department of Correction's variance requests.

**CO-MINGLING VARIANCE REQUEST** from Minimum Standard §1-02

Since the co-mingling variance was first approved on September 8, 2015, the Board of Correction has extended this variance 13 times. More than five years later, the Department of Correction's efforts to house all young adults in young adult exclusive housing remain alarmingly deficient. As several Board members acknowledged at the September 11, 2020 Board meeting, it critical that the Board consider the counterproductive effect of renewing such

variances when the Department has yet to provide a concrete plan to house all young adults together.

We urge the Board to deny this variance request. Instead, we ask that the Board require the Department to set a firm timeline for ending co-mingling and to provide access for all young adults to young adult housing, programming, and services.

Despite the Department's claims, there is no evidence that the practice of co-mingling reduces violence.<sup>1</sup> As Children's Rights has testified repeatedly over the years, there are more effective and lasting methods to reduce violence, including an increase in services and age-appropriate programming, as well as continued better training for officers.<sup>2</sup>

Again, 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 wholly predictable issues that arise among detained young people.

**ENHANCED SUPERVISION HOUSING VARIANCE REQUEST** from Minimum Standard § 1-16(c)(1)(ii)

Enhanced Supervision Housing, ESH, was introduced by the Department in response to the phasing out of punitive segregation, but placement in ESH is harmful and inappropriate for young adults. The social science and neurological research that guides best practices for working with older youth shows that young people under age 25 need both developmentally appropriate services and connections with community.<sup>3</sup>

The July 2020 ESH audit report, the most recent, shows the majority of lock-out times to be seven hours or less; there are a few notations that out-of-cell time was reduced due to the young adult's choice.<sup>4</sup> But no one incarcerated in New York City's jails should have less than 14 hours of out-of-cell time per day.<sup>5</sup> As we have testified over many years, excessive isolation is incompatible with current research and policy for older youth.

The Board should deny this variance request. We urge the Board to set a deadline for the discontinuance of the use of restraint desks and a deadline for the discontinuance of ESH for young adults at Rikers.

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<sup>1</sup> See, e.g., Eighth Report of the Nunez Independent Monitor, October 28, 2019, at p. 25 ("what is clear is that the Department does not have an effective strategy for managing this particularly volatile group of young inmates").

<sup>2</sup> See Oct. 7, 2018 and July 9, 2019 testimonies submitted by Children's Rights.

<sup>3</sup> See Dec. 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*.

<sup>4</sup> [https://www1.nyc.gov/assets/boc/downloads/pdf/july\\_2020\\_doc\\_audit\\_report\\_\\_ya\\_esh.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/july_2020_doc_audit_report__ya_esh.pdf).

<sup>5</sup> See Dec. 16, 2019 Public Comment submitted by Children's Rights.

## **SEPARATION STATUS HOUSING VARIANCE REQUESTS**

Separation status housing is punitive segregation. As we have testified repeatedly, the Department’s variance request once again does not include any mention of the treatment of young adults.<sup>6</sup> It includes no due process provisions. As the Department acknowledges in the request, separation status housing also violates a multitude of minimum standards concerning lock-in, recreation, access to courts and legal services, and more.<sup>7</sup>

The September 2020 Implementation Report indicates an average of 40 hours’ stay in separation status. It remains unclear what proportion of this stay is endured by young adults – a critical piece of missing information.<sup>8</sup> Moreover, the Board has not issued a report regarding body scanners and separation housing in almost a year. But in January 2020, the Board reported that “[p]eople placed in Separation Status were more likely to be Young adults and Black than the average daily population in DOC custody” and that “[o]f the 41 unique individuals placed in Separation Status, 34% (n=14) were young adults aged 18-21 years, compared to 9% (n=651) of the average daily population of people in DOC custody” from July to November 2019.<sup>9</sup>

The January 2020 Report also notes that “[t]he processes for placement and removal from Separation Status are regularly delayed and out of compliance with policy, leading to people in custody spending extended time in highly restrictive restraints and in transit to the unit.”<sup>10</sup> We urge the Board to determine if this is still the case, as it is further reason to end separation status housing.

We urge the Board to deny this variance request and to stop allowing the Department to create new forms of punitive segregation for young adults and other incarcerated persons. Separation Status Housing must be abolished. The use of body scanners must be discontinued.

## **SECURE UNIT VARIANCE REQUESTS** from Minimum Standards §1-05(b) and §1-08(f)

The Department’s requested variance dictates that young adults’ engagement in programming will now become a condition of moving up and out of Secure Unit, which is punitive segregation by another name. Given that young adults already “spend an average of fifty-five (55) total days in Secure Unit,”<sup>11</sup> this is highly ill-advised. It seems more appropriate for the Department to focus considerably more energy and resources on young adults’ “meaningful[] participat[ion] in

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<sup>6</sup> See Oct. 22, 2019, Nov. 11, 2019, and Feb. 10, 2020 testimonies submitted by Children’s Rights.

<sup>7</sup> <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/November/November-Separation-Status-Six-Month-Limited-Variance-Renewal-Request-Letter-11-5-2020.pdf>

<sup>8</sup> <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/separation-status/Separation-Status-Monthly-Report-September-2020.pdf>.

<sup>9</sup> See Jan. 2020 Body Scanners and Separation Status in New York City Jails Report at p. 39.

<sup>10</sup> *Id.* at p. 5.

<sup>11</sup> <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/November/November-Secure-Unit-Six-Month-Limited-Variance-Renewal-Request-Letter-11-5-20.pdf>

their ISPs and the assigned programming aimed at addressing their unique individualized needs,”<sup>12</sup> before they get to Secure Unit in the first place.

We urge the Board to deny this variance.

## CONCLUSION

We respectfully request that the Board deny all of the Department’s variance requests.

As we have testified before, it does not appear that either the Board or the Department has a plan to allocate resources for management, officers, training, programming, and schools for addressing the needs of incarcerated young adults on Rikers. In addition, there does not seem to be a comprehensive plan in the works for this vulnerable population after Rikers closes. Children’s Rights remains deeply troubled about the lack of a plan, and calls on the Board and the Department to develop one that truly addresses the needs of incarcerated young adults.

Finally, many of the proposed variances rely on euphemistically named housing placements that are little more than substitutes for punitive segregation. We note that restrictive housing rulemaking abolishing solitary confinement is not on the Board’s meeting agenda. When the Board does consider the rulemaking, it should include the abolition of separation status housing, ESH, and the Secure Unit.

Sincerely,



Daniele Gerard  
Senior Staff Attorney



Tobin Kassa  
Paralegal

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<sup>12</sup> *Id.*