



PROTECTING KIDS. PROVIDING HOPE.

January 11, 2021

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 Commingling Young Adults (18-21 Years Old) with Adults (22 Years Old and Older) and Minimum Standard §1-15(c) Regarding the Department's Use of Separation Status Housing

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 urge the Board of Correction to deny all of the Department of Correction's variance requests.

### **CO-MINGLING VARIANCE REQUEST**

More than five years since the Board approved the first commingling variance request, the Department's efforts to house all young adults in young adult exclusive housing still remain deficient. We are writing to request that the Board deny this variance request, and direct the Department to provide all young adults access to young adult housing, programming, and services.

In its most recent variance request, the Department "additionally requests the ability to commingle eighteen (18) year-olds at the Rose M. Singer Center ('RMSC'), where the low census of young adults presents housing challenges for young adults with separation or security

considerations.”<sup>1</sup> The Board should ask the Department to explain how housing fewer incarcerated persons increases the need for commingling.

The Department’s renewal request shows that even with a reduced population on Rikers, it still does not have a plan for complying with Minimum Standard §1-02(c)(1) and ending commingling. Instead of granting the Department’s repeated requests for variances from minimum standards, the Board should deny this variance as it did at the November 10, 2020 meeting.

## **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>2</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>3</sup>

The November 2020 Monthly Separation Status Implementation Report indicates an average of 39 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>4</sup> But in January 2020, the Board reported that young adults and people of color were disproportionately represented in separation status housing: “[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>5</sup>

The Department notes that “[w]ithout separation status housing, the body scan machines would be made irrelevant.” This would be a welcome development for many reasons, including that it is not clear what level of training the Department deems “proper” or “sufficient” for staff “to operate and supervise the operation of body scanners.”<sup>6</sup>

Children’s Rights also notes that without separation status housing, there would be no need for the long list of onerous variance requests the Department includes today.<sup>7</sup> These variances seem

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<sup>1</sup> See January 7, 2021 Limited Six (6) Month Variance Renewal Request to Board of Correction Minimum Standards §1-02 Regarding Commingling Young Adults (18-21 Years Old) with Adults (22 Years Old and Older).

<sup>2</sup> See Feb. 10, 2020, July 13, 2020, and Nov. 9, 2020 testimonies submitted by Children’s Rights.

<sup>3</sup> See January 7, 2021 Limited Six (6) Month Variance Renewal Request to Board of Correction Minimum Standards §1-15(c) Regarding the Department’s Use of Separation Status Housing.

<sup>4</sup> See Monthly Separation Status Report, Report period of November 1, 2020 – November 30, 2020.

<sup>5</sup> See January 2020 Board of Correction Report on Body Scanners and Separation Status in New York City Jails at p. 39.

<sup>6</sup> See January 7, 2021 Limited Six (6) Month Variance Renewal Request to Board of Correction Minimum Standards §1-15(c) Regarding the Department’s Use of Separation Status Housing.

<sup>7</sup> See January 7, 2021 Limited Six (6) Month Variance Renewal Request to Board of Correction Minimum Standards §1-15(c) Regarding the Department’s Use of Separation Status Housing.

to grant the Department a great deal of discretion, and to deny the most basic rights to incarcerated individuals, including young adults.

For example, regarding the requested variance to Minimum Standard § 1-05(a-c) Lock-In, there is no provision for out-of-cell time at all, and no possibility of outdoor recreation (§ 1-06 Recreation). This is surely torture. Regarding § 1-08(f)(4) Law Library Access, the Department writes that “all individuals housed in separation status housing may request law library services, which are fulfilled accordingly.” But the Department adds that individuals cannot be transported to the library without stating how law library service requests will be “fulfilled.”<sup>8</sup> Regarding § 1-08(b-d) Access to Courts and Legal Services, the Department does not commit to ensuring an individual’s access to at least a virtual court appearance.

We respectfully request that the Board deny all of the Department’s variance requests and stop allowing the Department to create new forms of punitive segregation for young adults and other incarcerated persons.

Sincerely,



Daniele Gerard  
Senior Staff Attorney



Tobin Kassa  
Paralegal

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<sup>8</sup> See January 7, 2021 Limited Six (6) Month Variance Renewal Request to Board of Correction Minimum Standards §1-15(c) Regarding the Department’s Use of Separation Status Housing.