



May 11, 2021

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

Re: Limited Six (6) Month Variance Renewal Request to Several Board of Correction Minimum Standards 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.

Children's Rights urges the Board of Correction to deny the Department of Correction's variance request.

First, separation status housing is punitive segregation by another name. Second, as we have testified previously, the variance request does not include any mention of the treatment of young adults.¹ This is a significant problem, because isolation of any kind is particularly detrimental to young adults. They should not be placed in separation status housing under any circumstances. Although the Department claims that since January 2021, only one person has been placed in this type of housing, in the Board's most recent report on separation status, young adults and people of color were disproportionately represented in separation status housing.² As long as separation status housing exists, this could easily occur again.

Third, as the Department acknowledges in its request, separation status housing also violates a multitude of minimum standards. For example, regarding § 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

¹ See January 11, 2021, November 9, 2020, and July 13, 2020 testimonies submitted by Children's Rights.

² See January 2020 Board of Correction Report on Body Scanners and Separation Status in New York City Jails at p. 39.

“all individuals housed in separation status housing may request law library services, which are fulfilled accordingly.” The Department adds that individuals cannot be transported to the library, though, and does not specify how law library service requests will actually be “fulfilled.”³ With regard to § 1-08(b-d) Access to Courts and Legal Services, the Department’s attempt to incorporate due process provisions is symbolic at best.⁴ There must be stronger due process protections for adult placement in separation status housing, including providing actual access to counsel, timely notice, and an opportunity to be heard.

Fourth, Children’s Rights notes once again that this variance seems to grant the Department a great deal of discretion concerning compliance with the Minimum Standards, allowing it to deny the most basic rights to incarcerated individuals, including young adults.

As the Board moves forward to abolish solitary confinement, which you have proclaimed is your intent, extending the Department’s ability to use yet another form of it does not make sense. In requesting this variance, the Department also underscores the need for the Board to revise the proposed Notice of Rulemaking Concerning Restrictive Housing in Correctional Facilities to place a strict limit on the number of times a variance can be sought and granted.

Now is the time to prevent further governing by variance. Now is the time to abolish solitary confinement in all its forms.

We urge the Board to deny the Department’s request.

Sincerely,



Daniele Gerard
Senior Staff Attorney



Tobin Kassa
Paralegal

³ See April 30, 2021 Limited Six (6) Month Variance Renewal Request to Several Board of Correction Minimum Standards Regarding the Department’s Use of Separation Status Housing, p. 4.

⁴ See April 30, 2021 Limited Six (6) Month Variance Renewal Request to Several Board of Correction Minimum Standards Regarding the Department’s Use of Separation Status Housing, p. 3-4.