



Defending America's
Abused and Neglected Kids

Derrick D. Cephas, Acting Chair
NYC Board of Correction
51 Chambers Street, Room 923
New York, NY 10007

January 5, 2017

Re: Rulemaking; "Limited Six (6) Month Variance Renewal Request to BOC Minimum Standards Regarding Co-mingling Young Adults (19-21 years old) with Adults (22 years old and older): Section 1-02"

Dear Mr. Cephas and Board Members:

Children's Rights is a national advocate for youth in child welfare and juvenile justice systems and a member of the New York Jails Action Coalition. Since 1995, Children's Rights has served as a national watchdog organization, fighting to protect and defend the rights of young people, because we believe that children have the right to the best possible futures. Our experience with adolescents and young adults in foster care and juvenile justice systems often brings us in contact with adult corrections, as our clients are disproportionately represented in that setting. We are very concerned about the welfare of young adults at Rikers.

It has come to our attention that the Board has commenced the fact-finding phase of rulemaking on restrictive housing in City jails. We write to remind the Board at this critical juncture of the dangers inherent in the overuse of restraints on young adults, and the lack of due process afforded to young adults in the restrictive housing units. As the Board undertakes rulemaking during the first quarter of 2018, we ask that the Board codify limits on the use of restraints on young adults in the restrictive housing units that take into account young adults' unique characteristics, as well as national standards. We also ask that through the rulemaking process, the Board amend the Minimum Standards to outline due process procedures within the restrictive housing units that the Department must follow and report on periodically to ensure a fair environment. Finally, in regards to the variance request, we ask that the Board mandate that the Department take steps to ensure that all young adults have the opportunity to participate in age-appropriate programming and school regardless of their placement. We also ask that the Department implement reforms to ensure that young adults have access to the mentorship of positive adult influences without subjecting them to the risks inherent in blended housing units.

RESTRAINTS

The Board's recent implementation of a new standard governing the use of restraints on young adults in Secure and Enhanced Supervision Housing is a step in the right direction, but our concerns regarding the use of restraints on young adults at Rikers remain. Reports that young adults continue to be subject to restraints without reason inform these concerns. The harmful effects of restraints have been well-documented. In fact, some studies show that the use of restraints, and forms of seclusion contribute to unsafe environments for both

those subject to restraints, and those who impose them.¹ The use of restraints has been recognized as having “no therapeutic value,” and “frequently result[s] in severe emotional and physical harm, and even death.”²

Many of the young adults subject to restrictive housing are more susceptible to the harms of restraints, having experienced past trauma, such as abuse or neglect. Indeed, the prevalence of Post-Traumatic Stress Disorder is approximately 3.5% in the general population, and 30% to 75% among incarcerated men.³ Research has shown that the use of restraints can result in the incarcerated person re-experiencing trauma as a re-enactment of other past traumas.⁴ Best practices indicate that the incarcerated person’s past traumatic experiences should be considered when determining whether restraints should be imposed. In applying a uniform approach to imposing restraints, and without the consultation of a multidisciplinary team, including mental health professionals, the Department consistently and systemically fails to take into account the young adults’ unique needs and trauma histories, resulting in greater psychological harm.⁵

The key to ending the Department’s reliance on restraints is to address conflict and noncompliance holistically, with input from a multidisciplinary team of professionals, including staff from Health & Hospitals. Systems that have successfully ended the use of restraints or decreased instances of restraint use have adopted trauma-informed practices and an individualized approach to responding to conflict. Such programs should address the strengths, needs and challenges of the young adult population. Going forward, the Department should codify and implement standards governing the use of restraints that are age-appropriate and take into consideration young adults’ unique developmental needs. In doing so, the Board should look to the most comprehensive national standards for conditions of juvenile confinement, the Juvenile Detention Alternatives Initiative of The Annie E. Casey Foundation’s Juvenile Detention Facility Assessment Standards, in implementing rules governing the use of restraints on young adults in ESH and Secure.

LACK OF FAIRNESS AND DUE PROCESS

We are concerned that the Department’s practices may be routinely denying young adults procedural due process protections within ESH and Secure, and may run afoul of basic principles of fairness. This is particularly concerning considering the nature of the liberties at stake and the unusually punitive conditions in ESH and Secure. Once placed in ESH and Secure, the Department can confine already-incarcerated young adults to their cells for seventeen hours or more per day, shackle them at the ankles, bolt them to restraint desks, deny them visitation with loved ones and deny them access to mail. Additional punishments include restricting access to haircuts, commissary purchases, unit programs or the transfer to a lower Level within the unit.⁶ Given the severity of these punishments, it is crucial that the Minimum Standards dictate with specificity the due process protections that the Department must provide to young adults in restrictive housing.

The use of other restrictions, such as “solo housing,” that have gone unaddressed by the Board have also alerted us to the possibility of additional infringements on violations of the due process rights of young adults in

¹ Charles G. Curie, *Special Section on Seclusion and Restraint: Commentary: SAMSHSA 's Commitment to Eliminating the Use of Seclusion and Restraint*, 56(9) *Psychiatric Services* 1139-1140 (2005). Moreover, some studies indicate that seclusion and restraint use leads to an increase in the behaviors that staff members are attempting to control or eliminate. See Jones RJ, Timbers GD. *An analysis of the restraint event and its behavioral effects on clients and staff*. *Reclaiming Children and Youth*. 11:37–41 (2005).

² See, e.g. Position Statement 24: *Seclusion and Restraints*, Mental Health America, <http://www.mentalhealthamerica.net/positions/seclusion-restraints>

³ Nancy Wolff et al., *Screening for PTSD Among Incarcerated Men*, 42(2) *Crim. Justice Behav.* 219-236 (2014). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4321801/>

⁴ Wanda K. Mohr et al., *Adverse Effects Associated with Physical Restraint*, 48(5), *The Canadian Journal of Psychiatry* 330-7 (2003). <https://www.ncbi.nlm.nih.gov/pubmed/12866339>

⁵ See Janice LeBel et al., *The Dollars and Sense of Restraints and Seclusion*, 1 *J. Law Med.* 73-81 (2012). <https://www.ncbi.nlm.nih.gov/pubmed/23156649>

⁶ Fourth Report of the Nunez Independent Monitor, 248 (2017).

restrictive housing. In the fourth *Nunez* monitoring report, the monitor indicated the existence and use of “solo housing,” a type of restrictive housing that is presumably even more restrictive than ESH and Secure. As indicated in the report, at least one young adult was restricted to solo housing for a total of 91 days. Without further information, it is impossible to tell if the individuals subjected to solo housing are permitted any out-of-cell time, any programming, or any access to educational opportunities. It is entirely unclear whether the Department provides young adults subjected to solo housing with any procedural due process protections, given the lack of publicly available information about this program.

When the Department does provide young adults subject to restrictive housing with a written explanation informing them of their placement there, it is reportedly devoid of the necessary details that would allow young adults to prepare for a due process hearing. Indeed, the written explanation is reportedly a cookie-cutter form that does not indicate what punishments, such as the imposition of restraints, the Department will impose. The lack of specificity in the notice provides the impression that the “hearing” is a mere formality, evidenced by the low participation rates among young adults subjected to placements in restrictive housing units. Further, it is unclear whether the form is translated into all young adults’ native languages, and how the information is communicated to those young adults who are unable to read.

Young adults often linger in the restrictive housing units without the opportunity to be heard in a meaningful time and meaningful manner, and without the benefit of sufficient status reviews. It is entirely unclear as to the manner of the adjudication hearings when they do take place. The fact that young adults do not have advocates representing them during hearings adds to the lack of transparency, and calls into question whether the Department is protecting the young adults’ procedural due process rights. These further restrictions, coupled with the Department’s reportedly uniform approach to setting behavioral and program participation expectations, without clear progress monitoring, fail to provide young adults with a fair process for improvement and advancement through the restrictive housing units.⁷

Ensuring that the Minimum Standards protect young adults’ procedural due process rights will promote safety within the City jails, and promote rehabilitation. As the Board staff has observed, “[r]esearch has shown that individuals are more likely to cooperate with law enforcement when processes are fair and they perceive they have been treated fairly.”⁸

CO-MINGLING

In regards to the Department’s request to continue to co-mingle young adults with adults in blended housing units, we are concerned with the Department’s explanation that the determinations as to where to house young adults depends on their desire to go to school or complete programming.⁹ Young adults could, on a daily basis, change their decision as to whether they want to complete programming or attend school. In restricting young adults to co-mingled units, the Department is failing to offer age-appropriate services on an ongoing basis, which could stunt the progress of the young adults housed there. The Department has reported that the older adults’ presence can have a “calming effect” on the young adults. However, there are other, safer opportunities for young adults to be exposed to positive older adult influences through programming, such as organized mentorship, rather than blended housing units. The Board should review the Vera Institute of Justice’s initiatives in the area of the confinement of young adults, including the work being done by the

⁷ Fourth Report of the *Nunez* Independent Monitor, 243-244 (2017).

⁸ *An Assessment of Enhanced Supervision Housing*, New York City Board of Correction 6 (2017) (citing Tom R. Tyler, *Why People Obey the Law* (2006) and Lorraine Mazerolle et al., *Procedural Justice, Routine Encounters and Citizen Perceptions of Police: Main Findings from the Queensland Community Engagement Trial (QCET)*, 8 J. Experimental Criminology 343 (2012)). http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/FINAL-BOC-ESH_Assessment-Adults-2017.04.26.pdf

⁹ July 11, 2017 Public Meeting Minutes, *New York City Board of Correction*.

http://www1.nyc.gov/assets/boc/downloads/pdf/july_11_2017_board_meeting_minutes_final.pdf

Department of Correction in Connecticut, which has recently implemented a structured program focused on young adults by providing them with mentors, encouraging them to develop leadership skills, engaging family members and introducing restorative justice practices.¹⁰ As members of the Jails Action Coalition have advocated, ensuring that connections to the community are strengthened through facilitating visitation in more family-like and age-appropriate settings is paramount to the goals of rehabilitation and safety. In order to work toward accomplishing these ends, if the Board must grant the variance request, we ask that the Board mandate that the Department report on the progress of ensuring that age appropriate programming and school is offered regularly to each and every young adult as soon as possible and regularly.

We appreciate your consideration of these concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Catherine Frizell". The signature is fluid and cursive, with a prominent flourish at the end.

Catherine Frizell
Staff Attorney
Children's Rights

¹⁰ Mark Pazniokas, 'To Focus on Young Adults Who are in Prison is Very Cutting Edge,' The CT Mirror, March 5, 2017. <https://ctmirror.org/2017/03/05/to-focus-on-young-adults-who-are-in-prison-is-very-cutting-edge/>