



NEW YORK CITY DEPARTMENT OF CORRECTION

Cynthia Brann, Commissioner

Office of the Commissioner

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June 26, 2018

Derrick D. Cephas, Chair
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

RE: Continuing Variance Request from Minimum Standard §3-06(e)(5) “Nursery program” for Raise the Age Specialized Secure Detention Facilities and Specialized Juvenile Detention Facilities

Dear Mr. Cephas:

Pursuant to §1-15(c) of the New York City Board of Correction’s (“Board”) Minimum Standards, the New York City Department of Correction (“Department”) requests a continuing variance from BOC Minimum Standard §3-06(e)(5), “Nursery program,” for the purpose of establishing Specialized Secure Detention (“SSD”) facilities and Specialized Juvenile Detention (“SJD”) facilities as required by New York State’s Raise the Age legislation (“Raise the Age” or “RTA”). The Department asks that this variance take effect on the date the variance is approved by the Board.

In 2017, the Governor signed into law New York State’s Raise the Age legislation, which amended and enacted various provisions of law to raise the age of criminal responsibility from 16 to 18. This legislation changes the way 16 and 17 year olds are prosecuted and detained. RTA created a new category of criminal defendant under the Criminal Procedure Law, called “Adolescent Offenders” (“AOs”), for 16- and 17-year-old offenders charged with felonies.¹ AOs will have their cases heard in a newly created “Youth Part” of the Supreme Court,² and, if detained prior to trial, will be held off of Rikers Island in SSD facilities, which are jointly licensed by the Office of Children and Family Services (“OCFS”) and the State Commission on Correction (“SCOC”), and jointly operated by the New York City Administration for Children’s Services (“ACS”) and the New York City Department of Correction. RTA also amended state Correction Law to add a new section, 500-p, which prohibits the City from holding youth under 18 in a Rikers Island Correctional Facility or any facility located on Rikers Island after October 1, 2018 (“Rikers youth”). This population must be removed from Rikers Island and housed in an SJD facility, which, similar to an SSD, will also be jointly licensed by OCFS and SCOC and jointly operated by ACS and DOC.³

¹ This part of the law goes into effect for 16 year olds on October 1, 2018, and on October 1, 2019 for 17 year olds.

² Some adolescent offender cases originating in the Youth Part may thereafter be transferred to Family Court.

³ An SJD facility may be co-located with either an adult jail or an SSD facility.

The City has identified appropriate facilities in which the AOs and existing Rikers youth can be housed by October 1, 2018, and these facilities are currently being renovated in order to accommodate the new populations and comply with State regulations. Both SSD and SJD facilities are subject to regulations jointly issued by OCFS and SCOC. These regulations set forth specific requirements for the housing and supervision of youth that align with the rehabilitative spirit of Raise the Age. As of the date of this variance request, both SCOC and OCFS have issued regulations. Various City agencies involved in RTA implementation⁴ carefully reviewed the regulations and compared them to the Board's Minimum Standards to identify conflicts. The agencies' representatives have worked with the Board on this issue to encourage an open dialogue and determine the best path forward to resolving any conflicts, and to pursue an outcome that most benefits the young population affected.

There are two general categories of conflicts. The first category consists of BOC Minimum Standards that directly conflict with a State regulation regarding the same topic. For this category, the State regulation preempts the BOC Minimum Standard. The second category consists of Minimum Standards that have no corresponding State regulation. For this latter category, there are several Minimum Standards that cannot be complied with in the SSD and SJD facilities for a number of reasons, most prominently related to physical design and space, but also based on differing models between the adult and juvenile justice systems. One of these is Minimum Standard §3-06(e)(5) for a "Nursery program."

Good faith efforts have been made to comply with this provision of the Minimum Standards throughout RTA's planning and implementation process. Specifically, the City explored more than 70 potential sites to house the AOs and Rikers youth that would be able to meet the City's spacing needs and conform with the varied requirements of the State's regulations, Board Minimum Standards, as well as the requirements of the federal monitorships, such as Nunez, Brad H., Handberry, and Benjamin. Of the sites considered, an existing ACS juvenile detention facility, Horizon, located in the Bronx, is best equipped for use by the Rikers youth and AO populations since it is already functionally similar to an SSD/SJD and conforms, in both design and operation, to a juvenile justice model of custody.

The Department is seeking a continuing variance from Minimum Standard §3-06(e)(5) to allow the Rikers youth and AO population to be housed in facilities that do not have "necessary child care" and a "nursery program." The Department is seeking a variance from §3-06(e)(5) in part because the physical plant of Horizon cannot accommodate a nursery: this change in design would require extensive reconstruction and additional space that is not available. I am informed that a nursery program would also be underutilized at the SSD/SJD, that the number of female youth who remain in an SSD or SJD for any substantial amount of time is projected to be low, that the probability that female youth are also pregnant during that time is even lower, and it is very improbable that a pregnant youth would give birth during their short stay at the SSD/SJD.

Applying the existing DOC model, if a late-term pregnant youth is admitted, I am informed that ACS would make an individualized assessment to determine the best interests of the child, as required by law (Correction Law 611), which takes into account the mother's history of violence. I am also informed that ACS plans to have a wrap-around model of support that provides a variety of parenting services to all young parents (mothers and fathers), which includes supported visitation, parent-child service

⁴ Following passage of RTA, the Mayor's Office of Criminal Justice ("MOCJ") started a number of task forces for RTA implementation that include representatives from MOCJ, the Law Department ("Law"), the Mayor's Office of Operations ("Operations"), DOC, ACS, the Department of Design and Construction ("DDC"), and Health and Hospitals Corporation ("H&H").

coordination and specialized case management, education, and coaching. I am further informed that ACS is currently in the process of procuring these wrap-around services for the SSD/SJD facilities and that these services also follow the youth back to the community or other settings, upon their release.

The Department appreciates the Board's consideration of this continuing variance request, which, if granted, will allow the Department, in conjunction with ACS, to continue to prepare for the housing needs of both the Rikers youth and the new AO population consistent with the goals of Raise the Age.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia Brann". The signature is written in black ink and is positioned above the printed name.

Cynthia Brann

cc: Martha King, Executive Director