



**The
City
of
New York**

NEW YORK CITY DEPARTMENT OF CORRECTION

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

RE: Continuing Variance Request from Minimum Standard §1-04(b)(2) "Single Occupancy" Wet Cells 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 §1-04(b)(2), "Single Occupancy" wet cells, 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. This population ("Rikers youth") 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 on or before 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 §1-04(b)(2) for "Single Occupancy" wet cells.

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 §1-04(b)(2) to allow the Rikers youth and AO populations to be housed in single occupancy dry cells – that is, cells that do not contain either a toilet or a sink. The Department is seeking a variance from §1-04(b)(2) in part because the physical plant of Horizon cannot accommodate individual wet cells: this change in design would require extensive reconstruction and additional space that is not available. In addition, the variance is needed so that the incoming AO population and Rikers youth can be housed in a manner more consistent with nationally recognized best practices in juvenile detention, as RTA envisions. For more than 20 years, juvenile justice systems across the country have moved in the direction of creating smaller and more home-like settings for youth in custody, in a deliberate attempt to move away from more stark, correctional environments resembling adult jails/prisons. Consistent with this shift in practice, I am informed that NYC implemented the Close To Home placement system in which small, home-like settings are the standard, and that youth sleeping rooms at the Horizon Juvenile Center have followed suit and are equipped with a bed, a desk and shelves on which to place clothing. I am also informed that youth are encouraged to decorate their rooms in appropriate ways in order to make the rooms more personalized, familiar and

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").

home-like. Adding toilets/sinks, as are common in adult jails and prisons, would be inconsistent with the City's alignment with recognized best practices. Furthermore, the juveniles are afforded more privacy than the wet cell allows. Additionally, the SCOC regulations in 9 NYCRR §7320.4, "Individual occupancy room requires "(c) At least one functioning toilet, sink and shower shall be available for every 6 youth contained within a living unit".

Although individual rooms in the SSD/SJD will not contain a shower, toilet, or sink, youth will be afforded access these services when needed. When youth are locked in their rooms and wish to use the bathroom, they are able activate a light, from within the room, that is illuminated above the bedroom door. Staff are expected to respond to the light by opening the door and escorting the youth to the bathroom and back, allowing for an additional opportunity for staff to interact with and engage with the youth. It is expected that youth will be escorted by staff to the bathroom upon request. While this range of time can vary based on a host of factors, I am informed that detention staff are typically very attentive to these requests by youth.

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 new AO population and the Rikers youth consistent with the goals of Raise the Age.

Sincerely,



Cynthia Brann

cc: Martha King, Executive Director