



NEW YORK CITY DEPARTMENT OF CORRECTION

Cynthia Brann, 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: Six Month Limited Variance Request from Minimum Standard §1-10 “Telephone Calls” 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 six month limited variance from BOC Minimum Standard §1-11, “Telephone Calls,” 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 September 1, 2018.

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, 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.²

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

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

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 implementation³ 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.

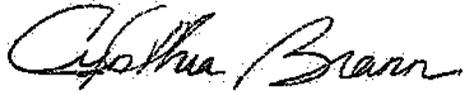
There are two general categories of conflicts. The first category consists of BOC Minimum Standards that directly conflict with a State regulation regarding the same topic. For this category, the State regulation preempts the BOC Minimum Standard. The second category consists of Minimum Standards that 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 space, but also based on differing models between the adult and juvenile justice systems. One of these is Minimum Standard §1-10, "Telephone Calls."

The Department is seeking a six month limited variance from Minimum Standard §1-10 to allow for phasing in one call per day for youth. I am informed of the following: ACS is attempting to procure an automated phone system that would allow daily calls. Until then, ACS proposes a modified model for telephone calls for AOs and Rikers youth that aligns with ACS's existing juvenile detention model. Under this system, all youth would be allowed a minimum of three, seven minute phone calls per week until the automated system is available. The frequency and duration of additional, discretionary phone calls would be directly tied to a positive behavior management system; with positive behavior comes more discretionary phone calls. All calls are facilitated by ACS case managers and are conducted in their presence. ACS case managers initiate each call and confirm the identity of the recipient. This provides both assurances that calls are only conducted with individuals from the youth's approved contact list, while also providing the case manager an opportunity to share/receive relevant information about the youth with appropriate family members. Facilitating daily calls using the current system is not viable and poses safety and operational issues. In addition to discretionary calls earned by youth, mental health staff often arrange calls with youth and family members to share and gather information, or to support the adjustment of individual youth. There is no limit to the frequency or duration of these calls. Youth are also able to contact their attorney and the Justice Center upon request and without restriction. In sum, we are requesting a six month limited variance on the daily phone call requirement, pending operational implementation of our automated-phone system mentioned above. Once that system is in place, ACS commits to permit daily phone calls in full compliance with the Board's minimum standards, with discretion to increase frequency and duration of calls based on behavioral assessments

³ 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").

The Department appreciates the Board's consideration of this 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 below the word "Sincerely,".

Cynthia Brann

cc: Martha King, Executive Director