



PROTECTING KIDS. PROVIDING HOPE.

May 11, 2020

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

Re: Renewal of Six (6) Month Variance Requests from Minimum Standard §1-05(b), “Lock-In” and Minimum Standard §1-08(f), “Access to Courts and Legal Services”; Renewal of One (1) Month Variance Requests from Minimum Standard §2-04(c)(3), “Treatment” and Minimum Standard §2-05(b)(2)(i-ii), “Medications”

Dear Chair Jones Austin and Board Members:

Since 1995, Children’s Rights has been a national advocate for youth in state systems. We are also a member of the Department of Correction’s Advisory Board (formerly the Adolescent and Young Adult Advisory Board) and 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 and Horizon.

SECURE UNIT VARIANCE REQUESTS

The New York City Department of Correction (“the Department”) seeks to renew two six-month limited variances related to each of the following Board of Correction (“the Board”) Minimum Standards: §1-05(b) “Lock-In” and §1-08(f) “Access to Courts and Legal Services.” These variances were first requested on May 10, 2016.

We remain concerned that young adults are spending too much time in their cells on the Secure Unit. As you know, with some exceptions, “No prisoner shall be required to remain confined to

his or her cell” for more than eight to 10 hours in a day.¹ But recent reports show that the Department has not even kept track of lock-in/lock-out times on the Secure Unit:

Based on the housing area logbook, the lock-in/lock-out times were not consistently recorded for the phases in which young adults were housed within the unit on two (2) of the four (4) dates audited. On March 3, 2020, the lock-in time for 2:00 pm was not recorded for Phase 2. On March 11, 2020, the lock-out time for 5:00 am was not recorded for Phases 1, 2 and 3. Lastly on March 27, 2020, the lock-in/lock-out times for all inmates could not be determined because the facility was unable to locate the housing area logbook for this audit date.²

We also note in the Department’s March 2020 audit of the Secure Unit that the majority of young adults in Phase 3 were on lock-out for more than 10 hours with no problems reported.³

Therefore, it is unclear on what basis the Department is seeking to keep young adults in their cells for longer periods of time by requesting a variance for a minimum of 10 hours a day out-of-cell-time within the unit. As we have frequently testified, notably in our December 2019 public comment opposing restrictive housing rulemaking, we urge the Board to establish a 14-hour minimum of daily out-of-cell time for all young adults incarcerated in the City’s jails.⁴ As the Board is aware, excessive isolation is incompatible with current research and policy for older youth.

In addition, by not allowing the young adults in the Secure Unit to leave the unit to go to the law library, the Department confines them to the unit itself even when they are on lock-out. Use of kiosks, an allegedly temporary solution, seems to have become permanent, with requested variances recurring for four years now. We urge the Board to require the Department to devise a plan for young adults on the Secure Unit to use the law library, and to set a date by which this will occur.

Neither of today’s variance requests is actually “limited”; we request that the Board deny them, and that the Board set firm dates for the Department to comply with the applicable minimum standards.

COVID-19 VARIANCE REQUESTS

The Department also seeks to renew two limited one-month variances related to each of the following BOC Minimum Standards: §2-04(c)(3) “Treatment” and §2-05(b)(2)(i-ii) “Medications.” These variances were first granted on April 14, 2020.

¹ The Rules of the City of New York, Minimum Standard §1-05(b) “Lock-In”, available at [http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/title40boardofcorrection/chapter1correctionalfacilities?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork_ny\\$anc=JD_T40C001](http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/title40boardofcorrection/chapter1correctionalfacilities?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$anc=JD_T40C001)

² NYC Department of Correction Secure Unit Compliance Audit (March 2020), p. 2, available at https://www1.nyc.gov/assets/boc/downloads/pdf/march_2020_doc_audit_report_secure_unit.pdf

³ *Id.*

⁴ See December 16, 2019 Public Comment submitted by Children’s Rights.

These variances (to waive certain requirements regarding treatment plans and the frequency of appointments for incarcerated persons with mental and emotional disorders) were granted for one month after staff from Correctional Health Services (“CHS”) testified that the variances were necessary to allow more flexibility for staff to focus on COVID-19. CHS also testified that they would be “happy to report” what they were seeing as a result of the variance approval.

As the Jails Action Coalition has noted, we are deeply concerned about the lack of transparency regarding conditions in the jails during the COVID-19 pandemic, and request that the Board require CHS to report fully on healthcare delivery and discharge planning. The Board should require CHS to provide a detailed update regarding the effects of these variance requests on their ability to administer adequate care to incarcerated persons, especially to young adults and youth on Rikers.

The Board should also require the Department to provide an update on meeting COVID-19 protocols, including social distancing, availability of personal protective equipment for incarcerated persons, and hand washing. We refer the Board to the letter submitted by the Jails Action Coalition for requests for additional information.⁵

We note that the population on Rikers has diminished since the public health crisis began, and therefore urge the Board deny the CHS variance requests. Every incarcerated person with mental and emotional disorders, which the Daily Snapshot indicates is over half the population,⁶ should receive medical attention in compliance with minimum standards.

Granting continued variances on this issue could constitute an end run around the Board’s determination to limit CHS’s initial six-month request. We urge the Board to reject the CHS variance requests.

CONCLUSION

We respectfully request that the Board deny all of the Department’s and CHS’s variance requests today. As always, we urge the Board to require the Department to comply with the Minimum Standards as written, especially with regard to the Young Adult Plan.

Finally, we understand the Board will provide an update on restrictive housing rulemaking at the May 12th meeting. We urge the Board to reinstate the Young Adult Plan in its entirety, and to abolish solitary confinement outright.⁷

Sincerely,



Daniele Gerard



Meghan Kacsmar

⁵ See May 5, 2020 JAC Letter to the Board of Correction

⁶ See New York City Department of Correction Daily Snapshot (updated daily), available at <http://52.71.132.68/nycjail/>

⁷ See December 16, 2019 Public Comment submitted by Children’s Rights.