



children's
defense fund
new york

April 21, 2021

New York City Board of Correction
1 Centre St., Room 2213
New York, NY 10007

Via email

Re: Public Comment on the Proposed Rules Concerning Restrictive Housing

Dear Board Chair Jones Austin and Members of the Board:

I write to you with deep concern about the proposed rules concerning restrictive housing¹, especially the provisions concerning Young Adults and the application of the Risk Management Accountability System (RMAS) outlined there. It is my hope that you will consider this written comment, and the input from many others raising similar concerns, as you move forward with this important rule-making process.

As my prior written and oral testimony over the last few years has often discussed, there is a growing consensus in neurobiology, developmental psychology and sociology that age 18 is not the end of youth development, but rather a transitional point where young people continue to learn and grow into their mid-twenties.² During emerging adulthood, the prefrontal cortex of the brain, which regulates emotions, critical thinking, planning, and impulse control, is still developing. Emerging adults, like younger adolescents, are impulsive and often do not foresee the consequences of their choices. Brain development during this period means that individuals at this stage of life have significant capacity to make positive changes but are also especially vulnerable to trauma.

¹ *Proposed Rules*, dated March 5, 2021: <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2021-Restrictive-Housing/2021.03.05-Proposed-Rule.pdf>.

² BJ Casey et al., *How Should Justice Policy Treat Young Offenders?: A Knowledge Brief of the MacArthur Foundation Research Network on Law and Neuroscience*, p. 3 (Feb. 1, 2017): https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2746&context=faculty_scholarship; *The Promise of Adolescence: Realizing Opportunity for All Youth*, National Academies of Sciences, Engineering, and Medicine (2019): <https://www.nap.edu/resource/25388/Adolescent%20Development.pdf>.

This understanding is the foundation of the Board’s existing rules that protect Young Adults in the Department’s custody—prohibiting the use of punitive segregation, housing them together in dedicated units with specially-trained staff, and providing age-appropriate programming, education and supports for youth 18 to 21.³ (Minimum Standard §§ 1-02(c)(1)-(2).) As the Board recognizes, these rules were codified to “reduce violence by...fostering age-appropriate rehabilitative opportunities.”⁴

Therefore, it is shocking to see the proposed rules undermine these protections and essential age-appropriate supports, subjecting this age group to highly restrictive RMAS housing units, for unlimited lengths of time, and where access to and the effectiveness of programming and educational supports will be significantly diminished. These rules reflect a retreat from the Board’s commitment to Young Adults and must not be codified as currently drafted. The release of architectural renderings of the RMAS cages reaffirms our position: unlimited caging of youth will inhibit programmatic and service engagement for young adults who need it most.

Young Adults Can be Held in RMAS Units for Unlimited Periods of Time

Under the proposed rules, there is no limit on the number of days, weeks or months that a Young Adult can be subject to confinement in a RMAS unit. Indeed, they can remain in these highly restrictive housing settings whenever there is “documented intelligence” of *future* violence. Such a rule is too vague and discretionary to offer any protection to young people, and based on the years of evidence contained in the *Nunez* monitor’s reports, the Department would likely exploit such a rule to keep many youth in RMAS because they have failed to develop the necessary policies and practices to house youth safely in less restrictive settings.⁵ Under the proposed rules, the *shortest time* that a Young Adult could be subject to RMAS confinement is between 60 days and 120 days. The current median length of stay for Young Adults in Enhanced Supervision Housing (ESH), which the proposed rules purports to replace with RMAS, is shorter: 54 days for Level 1, 55 days for Level 2 and only 25 days for Level 3.⁶

Young Adults Will Not Have Meaningful Access to Programming in RMAS Units

The Board has repeatedly acknowledged the need for age-appropriate programming for Young Adults—most recently in the preamble to the proposed rules, stating: “[a]t public meetings during the last quarter of 2020, Board members expressed concern about the

³ See note 1, *Proposed Rules*, dated March 5, 2021 at footnote 5.

⁴ *Id.* at 9.

⁵ See, e.g., the Monitor found that the Department has an “overreliance on Probe Teams and alarms, the use of unnecessarily painful escort techniques, unnecessary and too close use of OC spray, and hyper-confrontational Staff behaviors. This is compounded by lack of accountability due to both uniform leadership’s inability to identify and address the Staff misconduct.” *Tenth Report of the Nunez Independent Monitor*, at 4: <http://tillidgroup.com/wp-content/uploads/2020/10/10th-Monitors-Report-10-23-20-As-Filed.pdf>.

⁶ Department of Correction, January 2021 Young Adult Enhanced Supervision Housing (ESH) variance condition reporting: <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/february-2021-young-adult-esh-and-secure-unit-monthly-report.pdf>.

unacceptably high percentage of young adults housed with adults and their resulting lack of access to young-adult specific programming. They emphasized that it is precisely young adults who have engaged in violence who would benefit the most from such programming.”⁷ The proposed rules create enormous barriers to young people participating meaningfully in programming, creating conditions that restrict access to supports among youth that the Board knows have some of the highest needs.

How could young adults meaningfully participate in programming when they are subject to placement in a cage during out-of-cell time while in RMAS? How could programming, designed to be delivered in a congregate setting with groups of youth be effective if provided to a pair of adolescents through the walls of a cage? The answer is that such a programming model would at best be compromised, and more likely be impossible to administer. Combined with the proposed rules that permit the Department to deliver all programming in-cell, those who need these services the most will have the least access to them. This will serve neither the interests of youth nor the safety of facilities. Testimony from corrections staff during the April 13, 2021 Board hearing included reports that young people on the Island are not receiving their mandated services or minimum standards during the pandemic, and this is driving violence. The predictable result of the proposed rules would be to create housing units where youth who commit infractions are held indefinitely, disconnected from meaningful access to the services and programs they need, and where there is increased risk that violence will continue.

Young Adults Should No Longer be Subject to Desk Shackling

The Department should no longer be permitted to shackle youth to desks. Under New York’s Office of Children and Families Services (OCFS) rules, which apply to the 16 and 17-year-olds removed from Rikers Island in 2018 to Horizon Juvenile Detention Center, young people cannot be attached to furniture with mechanical restraints. (*See* 9 NYCRR Sec. 180-3.16(f) “In no case may a youth be handcuffed or foot-cuffed to any object”.) This is because adolescents in detention are likely to have histories of trauma, and the use of restraints exacerbate feelings of powerlessness, fear, humiliation and pain. The Department staffed Horizon and worked under OCFS rules without relying on so-called “restraint desks” for two years. There is no reason to permit the Department to continue *any* use of restraint desks under the proposed rules.

Young Adults Will Be Subject to Conditions that are Impermissible for Similarly Aged Youth in Other Settings

The proposed rules threaten to lose sight of Young Adults’ unique vulnerability in Department custody. The dysregulation that youth exhibit in detention, their histories of trauma, and their developmentally limited impulse control must be met with age-appropriate responses. It is important for the Board to know that the proposed rules conflict with rules that apply to youth *only slightly younger* in Horizon – where this type of restrictive housing, cage-based

⁷ *Id.*

programming and education, cell-based services, and the use of restraint desks are not legally permitted. *Why is this the right approach for 18-year-olds?*

Nor would these conditions set forth under the proposed rules be permitted for youth *the same age: up to age 21*, who have been sentenced in the adult court and are serving sentences as Adolescent Offenders in upstate secure placement facilities. The discordance between the approaches in facilities that hold youth is difficult to reconcile. It reveals how inappropriate the Board's proposed rules are for Young Adults, and points to how they must be amended.

Young Adult Advisory Board

Many of these provisions could have benefitted from the insight and input of the Department's Young Adult Advisory Board – the body created in 2014 to help implement the Board's reforms intended to reduce violence by meeting the needs of young people and addressing the root causes of their behavior. The Advisory Board brought together service providers, defenders, advocates, and local funders with Department uniform and non-uniform staff to talk through policy and practice, to help align resources, support reform, address issues and promote safety for youth and staff alike. The Board should strongly encourage the Department to reconvene this group, and the Board should consider the Young Adult Advisory Board to be a valuable partner in its oversight and rule-making duties.

Endorsement of Jails Action Coalition Public Comment

Without reproducing the public comment submitted by the Jails Action Coalition (JAC) here, we believe that our concerns related to the Young Adults are consistent with those raised by JAC. We join the JAC public comment with complete support.

Thank you.



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