

RAISE the AGE | NY

October 25, 2019

Mr. Adam Silverman
Deputy Commissioner and Counsel
New York State Department of Corrections and Community Supervision
1220 Washington Avenue
Albany, NY 12226

Via U.S. mail and email: Rules@DOCCS.ny.gov

RE: DOCCS Proposed Rules: General Provisions, 7 NYCRR Part 1.5 & Special Housing Units, 7 NYCRR Parts 250-321.1 (DOS #: CCS-35-19-00001-P), published in the State Register: August 28, 2019

Dear Deputy Commissioner Silverman:

We write to provide public comment on the proposed rules concerning General Provisions, 7 NYCRR Part 1.5 and Special Housing Units, 7 NYCRR Parts 250-321.1 (the “proposed rules”). While we continue to believe that Department of Corrections and Community Supervision (DOCCS) facilities are inappropriate settings for Adolescent Offenders, we provide this public comment to address our significant concerns with regard to the current regulatory proposals as they apply to Adolescent Offender Facilities. We raised many of these concerns in our letter of July 19, 2019 concerning Adolescent Offender Separation Units.¹ **The proposed rules published on August 28, 2019 continue to permit solitary confinement for youth and pose grave risk to their health and well-being.** Adopting such rules is completely inconsistent with the goals and spirit of Raise the Age, and runs contrary to established best practices and to the Governor’s own commitment to protect teenagers in New York from solitary confinement in any form.

1. *Despite stating that adolescents are “Special Populations,” they continue to be subject to solitary confinement under these proposed rules.*

The proposed rules define Adolescent Offenders as “special populations,” which they are. See Sec. 1.5(w). Research has shown that adolescents are even more vulnerable than older adults to the severe negative effects of solitary confinement, including self-harm, suicidal thoughts, and suicide.² Solitary confinement can also impede brain development and affect long-term cognitive

¹ A copy of our letter dated July 19, 2019 is attached.

² MacArthur Foundation & Models for Change Resource Center Partnership, *Systems Reform in Juvenile Justice, Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System* (2014), at 11. See also:

and social abilities among youth.³ Indeed, Governor Cuomo seemed to understand these risks, announcing in June that these regulations would include a “strict prohibition of placement of vulnerable incarcerated individuals such as adolescents, . . . within a special housing unit for solitary confinement.”⁴ **The proposed rules do not fulfil this commitment to protecting adolescents.**

As drafted, the rules are internally inconsistent. As “special populations” Adolescent Offenders cannot be placed in “segregated confinement” (Sec. 301.1) or “administrative segregation” (Sec. 301.4(g)) “for any length of time.” The draft rules define “segregated confinement” as “the disciplinary confinement of an incarcerated individual in a special housing unit or in a separate keeplock unit.” See Sec. 1.5(x).

But, under a different section of the same rules, Adolescent Offenders *can* be subject to both “disciplinary confinement” in an Adolescent Offender Separation Unit (Secs. 321.1, 321.2), and “administrative segregation,” which “in the case of an adolescent offender, [is] placement in an adolescent offender separation unit.” Sec. 1.5(y); see also Secs. 301.4, 321.2.

Let there be no confusion; the Adolescent Offender Separation Unit (AOSU) is solitary confinement. Under the proposed rules, teenagers can be locked in their cells for 18 to 22 hours a day for months on end. See Secs. 321.2, 301.1. This practice is intolerable to practitioners throughout juvenile justice, including correctional administrators, judges and health care providers, including the Council of Juvenile Correctional Administrators⁵, the National Council on Juvenile and Family Court Judges⁶, the National Partnership for Juvenile Services⁷, as well as the American Academy of Child and Adolescent Psychology.⁸ According to the Council of Juvenile Correctional Administrators, there is no research showing the benefits of using isolation to manage youths’ behavior.⁹

Policy Statement of the American Academy of Child and Adolescent Psychiatry, Solitary Confinement of Juvenile Offenders (April 2012), available at:

https://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx.

³ Anthony Giannetti, *The Solitary Confinement of Juveniles in Adult Jails and Prisons: A Cruel and Unusual Punishment?*, 30 Buff. Pub. Int. L.J. 31, 45-49 (2011-2012).

⁴ Statement of Governor Cuomo, June 21, 2019, available at: <https://www.governor.ny.gov/news/statement-governor-andrew-m-cuomo-majority-leader-andrea-stewart-cousins-and-speaker-carl>.

⁵ Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation (March 2015), at 5, available at: <http://cjca.net/wp-content/uploads/2018/02/CJCA-Toolkit-Reducing-the-Use-of-Isolation-1.pdf>.

⁶ National Council on Juvenile and Family Court Judges Resolution regarding Reducing the Use of Solitary Confinement for youth (August 2016), available at: http://www.ncjfcj.org/sites/default/files/Final_SolitaryConfinementResolution_8_6-2016.pdf.

⁷ Position Statement of the National Partnership for Juvenile Services on the Use of Isolation (October 2014), available at: <http://npjs.org/wp-content/uploads/2012/12/NPJS-Use-of-Isolation.pdf>.

⁸ Policy Statement of the American Academy of Child and Adolescent Psychiatry, Solitary Confinement of Juvenile Offenders (April 2012), available at:

https://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx.

⁹ See note 5, at 4.

2. *The same protections should apply in all settings where youth are held.*

The proposed rules are especially egregious because they codify practices that are impermissible under other state rules for youth of the same age. New York's Office of Children and Family Services (OCFS) facilities that currently house adjudicated 16 and 17-year-olds do not permit the prolonged isolation of youth for 18 to 22 hours a day.¹⁰ Moreover, Specialized Secure Detention (SSD) facilities established under Raise the Age for Adolescent Offenders who are held pre-trial, and are subject to both New York State Commission of Correction and OCFS regulations, prohibit units like AOSU, allowing only for highly limited room confinement "with the goal of releasing the youth from confinement as soon as possible." Under these regulations, confinement cannot be used for punishment or discipline.¹¹

It is shocking and absurd that adolescents can be protected from solitary confinement one day, and then subject to it the next, based on which state agency is managing their custody. Protections for Adolescent Offenders should not depend on whether they are being held pre- or post-disposition, or relate to the location or duration of their sentence.

Provisions related to the use of AOSUs should be withdrawn, and the regulations should parallel the rules established for Adolescent Offender Specialized Secure Detention Facilities. See 9 NYCRR Secs. 180-3.17 (room confinement) and 3.12 (behavioral support system).¹² This approach would be consistent with the language of the Raise the Age law, which requires the Office of Children and Family Services to play a role in administering Adolescent Offender Facilities. See COR Law Sec. 77 (such facilities "shall be managed by the department with the office of children and family services assistance, and services or programs") (emphasis added). OCFS is also part of a council that is mandated to "assess the operation of the facility." See *id.* The law also requires that OCFS designate an assistant commissioner "to assist the department, on a permanent basis, with programs or services provided within such facilities." See *id.* OCFS is further required to jointly establish with DOCCS "a placement classification protocol to be used to determine the appropriate level of care for each youth" in the facility. See *id.*

3. *The proposed rules also fail to adequately protect other people in DOCCS custody from the harm of solitary confinement.*

The proposed regulations continue to permit people to be locked in solitary confinement for years through consecutive cycles of "time-limited" isolation. They also fail to see the urgency of the issue, taking years before imposing necessary limitations on how long a person can be subjected to solitary confinement, and continuing to permit extended periods of in-cell isolation for non-violent behavior. We echo the #HALTsolitary Campaign's position that these proposed

¹⁰ 9 NYCRR Sec. 168.2.

¹¹ See 9 NYCRR Sec. 180-3.17. Adolescent Offenders can also serve their sentences in Specialized Secure Detention facilities.

¹² See, e.g., regulations for Specialized Secure Detention (9 NYCRR Sec. 180-3.17), Secure Placement (9 NYCRR Secs. 168.2, 168.4), and Secure Detention (9 NYCRR Sec. 180-1.9), which prohibit the use of room confinement for disciplinary purposes, and place extreme restrictions on the length of confinement.

rules are inadequate, and that New York must adopt all the provisions of the HALT Solitary Confinement Act.¹³

Sincerely,

Assemblywoman Ellen Jaffee, Chair, Committee on Children and Families
Assemblyman Joseph R. Lentol, Chair, Committee on Codes
Assemblyman David I. Weprin, Chair, Committee on Correction
Campaign for Youth Justice
Center for Children's Law and Policy
Center for Community Alternatives
Children's Defense Fund-New York
Children's Rights
Citizens' Committee for Children of New York, Inc.
Covenant House New York
Disability Rights New York
Empowerment Collaborative of Long Island, Inc.
Families Together in New York State
Girls for Gender Equity
Justice Policy Institute
Lawyers for Children
Monroe County Public Defender
NAACP New York State Conference
National Juvenile Justice Network
New Hour for Women and Children – Long Island
R Street
Schuyler Center for Analysis and Advocacy
Stop Solitary for Kids
The Children's Agenda
The Legal Aid Society
Unchained
Westchester Children's Association
Youth Represent

cc: Sheila Poole, Acting Commissioner, Office of Children and Family Services (via email)

¹³ A.2500 / S.1623.