

RAISE the AGE | NY

June 20, 2019

Governor Andrew M. Cuomo
Office of Governor Andrew M. Cuomo
State Capitol
Albany, NY 12224

Acting Commissioner Sheila J. Poole
Office of Children and Family Services
52 Washington Street
Rensselaer, NY 12144

Commissioner Thomas Loughren
New York State Commission of Correction
Alfred E. Smith State Office Building
80 South Swan Street 12th Floor
Albany, NY 12210

Commissioner Ann M. Sullivan
Office of Mental Health
1425 Madison Ave
New York, NY 10029

Attorney General Leticia James
Office of the Attorney General
The Capital
Albany, NY 12224

Dear Governor Cuomo, Commissioners Loughren, Poole and Sullivan, and Attorney General James:

We write demanding an immediate end to the use of solitary confinement (also known as the Adolescent Offender Segregation Unit (AOSU)) in Adolescent Offender facilities for all youth, and call for Adolescent Offenders sentenced to incarceration under Raise the Age (RTA) to be placed in Office of Children and Family Services (OFCS) facilities rather than those operated by New York State Department of Corrections and Community Supervision (DOCCS).¹ Current conditions within DOCCS-operated Adolescent Offender Facilities pose grave risks to youth who come to the justice system with significant vulnerabilities, including high rates of mental illness and cognitive deficits.² Continuing to expose adolescents to these conditions is both intolerable and inconsistent with the purpose of RTA reforms.

A recent media report described the horrific experience of a severely mentally-ill seventeen-year-old boy who was subjected to confinement in the AOSU at the Hudson

¹ Under current law, Adolescent Offenders, sentenced to incarceration must enter facilities operated and managed by the Department of Corrections with the assistance of the Office of Children and Families Services. COR § 77.

² Lee A. Underwood and Aryssa Washington, *Mental Illness and Juvenile Offenders*, Int J Environ Res Public Health, 3 (2016).

Correctional Facility, the DOCCS-operated Adolescent Offender facility established under RTA.³ He was moved to AOSU for “pretending to swallow his medication” where he remained for seven months.⁴ As a result of his placement, he “react[ed] with self-mutilating behavior, cutting himself on the arm.”⁵ During this period, “he was locked up in the cell for 24 hours straight with no reprieve.”⁶ A federal judge issued an emergency order demanding that he be removed from the AOSU at the Adolescent Offender facility last week, finding that “his severe isolation was a major factor in his deteriorating mental health.”⁷ The boy in DOCCS custody reported fear and anxiety, having panic attacks, wanting to hurt himself, and having trouble sleeping while in AOSU. While locked in his cell for 18 hours a day he wrote “I need a doctor” and “help me” on the walls of his cell.⁸

While cruel and shocking, this child’s experience is also entirely predictable. Because brain development is underway, adolescents are more vulnerable than older adults to the negative effects of solitary confinement, including increased risk for: mental illness or worsened mental illness; anxiety; rage; insomnia; self-mutilation; suicidal thoughts; and suicide.⁹ In addition to the immediate harm inflicted, solitary confinement can impede brain development and affect long-term cognitive and social abilities.¹⁰ As a result of City regulations, and a settlement agreement pursuant to litigation, both of which rely on the consensus around the risks associated with the practice, youth through age 21 are prohibited from being placed in solitary confinement in NYC Department of Correction facilities. A report issued by the New York Advisory Committee to the U.S. Commission on Civil Rights affirms the threat that solitary confinement poses adolescents and young adults and calls for its prohibition for all young people up to age 25.¹¹

Despite the clear evidence of injury to youth, current policies and practices used by DOCCS in Adolescent Offender facilities include locking youth in cells for up to 18 hours per day, strapping youth to a chair bolted to the floor for three hours per day, and restricting recreation

³ *Cruel Confinement: Judge halts use of solitary cell for mentally-ill teen; says 17-year-old suffered ‘irreparable harm’*, Leonard Greene, Daily News, Jun. 19, 2019, available at: <https://www.nydailynews.com/new-york/ny-solitary-confinement-injunction-20190619-wotutt2msvbsfegpbdyj232zsu-story.html>. A copy of this article, which includes photographs from the youth’s cell, is enclosed.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Memorandum-Decision and Order, *J. Sannes, Paykina v. Lewin, et al.*, 9:19-cv-00061-BKS-DJS (NDNY), Doc. No. 65 filed 5/31/2019.

⁸ Ibid.

⁹ *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.

¹⁰ 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).

¹¹ New York Advisory Committee to the U.S. Commission on Civil Rights, *The Solitary Confinement of Youth in New York: a Civil Rights Violation* (2014), at 31, 56.

to a concrete yard alone.¹² These policies include no limits, apparently, and can be extended indefinitely based on “misbehavior.”¹³

In contrast, OCFS facilities that currently routinely house adjudicated 16 and 17-year-olds do not permit solitary confinement or prolonged isolation of youth.¹⁴ Moreover, RTA Specialized Secure Detention (SSD) facilities, where Adolescent Offenders are incarcerated pre-trial, prohibit solitary confinement and segregation units like AOSU, allowing only for highly limited room confinement “with the goal of releasing the youth from confinement as soon as possible,” and which cannot be used for punitive purposes.¹⁵ In SSD, Adolescent Offenders are not permitted to be attached to furniture, as they are in DOCCS AO facilities.¹⁶

What this seventeen-year-old boy’s story highlights is how inappropriate DOCCS facilities are for adolescents. We should not accept a system where youth who are adjudicated in the youth part of criminal court are subject to conditions of confinement that our State finds intolerable for adolescents the same age who are adjudicated in family court. Experts in youth mental health and corrections have rejected isolation and solitary confinement as a response to adolescent behavior, including mental illness, in facilities.¹⁷ We call on you to end this practice in Adolescent Offender facilities for all youth. We also renew our call for Adolescent Offenders sentenced to incarceration to be served within the system of care best-suited to meet their needs: our existing secure placements.

We would welcome the opportunity to discuss this issue, in light of the pressing safety concerns raised herein.

Sincerely,

Families Together in New York State
Children’s Defense Fund-New York
Citizens’ Committee for Children of New York, Inc.
The Legal Aid Society

Enclosure

¹² Complaint filed in *Paykina v. Lewin, et al.*, 9:19-cv-00061-BKS-DJS (NDNY), Doc. No. 1 filed 1/16/2019.

¹³ *Ibid.*

¹⁴ See 9 CRR-NY §§ 168.2, 168.4

¹⁵ See 9 NYCRR § 180-3.17.

¹⁶ See 9 NYCRR § 180-3.16.

¹⁷ See, e.g., Andrew B. Clark, *Juvenile Solitary Confinement as a Form of Child Abuse*, *J Am Acad Psychiatry Law* 45:350-57, 2017, available at: <http://jaapl.org/content/jaapl/45/3/350.full.pdf>; The National Commission on Correctional Health Care, Position Statement on Solitary Confinement, available at: <https://www.ncchc.org/solitary-confinement>.