

July 1, 2026

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Re: Proposed Changes to Chapter 12 of Title 29 of the DCMR

Dear Ms. Braithwaite-Flucker,

The undersigned individuals and organizations work on behalf of court-involved youth and related populations. We strive to make this city's juvenile legal system one that protects the rights of youth, strengthens family ties, ensures robust rehabilitative services, and minimizes the incarceration of children in favor of community-based supports and services.

On May 22, 2026, DYRS published proposed changes to the District of Columbia Municipal Regulations ("DCMR") Title 29, Chapter 12, which govern the agency's conduct when it seeks to place committed youth who are in DYRS's care at a more secure level of confinement through the process of a Community Status Review Hearing ("CSRH").¹ Unfortunately, the proposed changes reflect a troubling shift away from fundamental principles of fairness and due process. As written, the regulations undermine constitutional due process protections in numerous ways, including by creating inadequate notice to youth of the hearing and the charges against them, removing judicial oversight from the probable cause determination and CSRH decision, and by creating a wholly unfair appeals process. The proposed regulations also expose youth to more secure confinement by adding inappropriate bases for revocation and allowing for prolonged detention during the pendency of the CSRH, all while trying to circumvent the right to petition the court for a remedy against unlawful confinement. These reforms will increase the secure confinement of youth but will not advance rehabilitation or public safety.

As written, the proposed regulations ignore extensive, evidence-based research on adolescent brain development and the harms of detention and are in conflict with the purposes of the District's juvenile legal system.² Namely, these regulations depart from the District's enumerated goals to place youth in the least restrictive environment consistent with public safety, to preserve families and integrate parents and caregivers, and to serve youth in their own communities. Fair hearings that recognize constitutional and other legal rights of our young people are also central to the juvenile court's purpose,³ yet this is lacking in these proposed regulations.

¹ On June 5, 2026, the Office of Documents and Administrative Issuances issued an Errata Notice to correct the omission of instructions for submitting comments on the proposed regulations. The Errata Notice further extended the comment period to July 1, 2026, forty (40) days after the regulations were originally published on May 22, 2026. See 73 D.C. Reg. 008253 (June 5, 2026).

² D.C. Code § 16-2301.02 (2026).

³ *Id.* at § 16-2301.02(1).

Given DYRS’s decision to exclude advocates, youth, and families from the drafting process, we respectfully request that DYRS defer implementation of the proposed regulations as final until the agency has thoroughly addressed the concerns outlined in this letter⁴ and in our attached redlined version of the proposed regulations. We also hope for an opportunity to meet with DYRS to collaboratively develop regulations that align with constitutional due process, promote fairness, and reflect the District’s goals to rehabilitate youth in the least restrictive environment consistent with public safety. Our specific objections and concerns are outlined below.

1. DYRS’s Exclusion of Youth Advocates Departs from Precedent and Threatens Procedural Fairness

Under the current DYRS administration, advocates have been denied the opportunity to participate in the agency’s promulgation of the new CSRH regulations. This is a stark departure from previous DYRS administrations that invited youth advocates to the table for the process of developing, editing, and publishing new regulations. For example, a few years ago, some of the undersigned signatories participated in a working group facilitated by DYRS Administrative Law Judge Charles Thomas to create a collaborative draft of new CSRH regulations. Even without agreement on every aspect of the draft, this collaboration produced substantially fairer and more balanced draft regulations.⁵

DYRS’s deliberate investment in collaboration invited a crucial perspective: youth advocates have unique expertise in DYRS administrative proceedings and adversarial court proceedings. They also are in close proximity to impacted youth in the District and have a deep understanding of how CSRHs can shape outcomes and experience in the process for young people. The willingness of previous DYRS administrations to collaborate with youth advocates not only resulted in drafts that ensured critical due process safeguards for youth, it also allowed advocates to share with DYRS important youth and family perspectives.

Regrettably, the current DYRS administration has completely excluded youth advocates from the drafting process, shifting the collaborative effort to one that is more adversarial and completely opaque.⁶ Not only does DYRS’s change in position fail to account for critical legal expertise and experience in the field, but it also ignores youth voices that were shared by advocates.

⁴ This letter incorporates many of the concerns already raised with DYRS in July 2015, June 2016, October 2019, and November 2021 after the agency’s previous notices of proposed changes.

⁵ DYRS published that draft on November 18, 2022, but subsequently withdrew it. *See* 69 D.C. Reg. 014279 (Nov. 18, 2022).

⁶ During the Fiscal Year 2025 Performance Oversight Hearing on February 9, 2026, DYRS Director Sam Abed testified before the Council on Youth Affairs that DYRS has “strengthen[ed] partnerships and amplif[ied] youth voices.” DYRS’s refusal to include advocates and other partners in the drafting of CSRH is in stark contrast to the Director’s public statements.

Research shows that youth's perceptions of fairness and procedural justice are largely rooted in an ability to have a voice in procedures.⁷ Further, when youth feel the legal process is fair and just, they are more likely to participate and comply with rules and restrictions, resulting in positive outcomes for youth and for public safety.⁸ By removing youth advocates *and* therefore youth and their families from the process, youth may lose faith in the fairness and legitimacy of the system, which would result in less buy-in, less compliance, and more negative outcomes. DYRS's exclusion of key participants has resulted in draft regulations that violate due process, skew heavily in favor of DYRS obtaining the hearing outcome it pleases, and threaten youth perceptions of fairness and justice.

2. The Proposed Regulations Deprive Youth of Their Constitutional Due Process Rights

The Fifth Amendment to the U.S. Constitution states that no person can be “deprived of life, liberty, or property, without due process of law[.]” The scope of procedural due process protections depends “on the extent to which the individual will be condemned to suffer a grievous loss.”⁹ The question of whether an individual will suffer grievous loss examines both “the weight of the individual's interest” and “whether the nature of the interest is one within the contemplation of the ‘liberty or property’ language of the Fourteenth Amendment.”¹⁰ A CSRH determines whether a youth will be removed from a community placement and placed in a more secure setting. Just like the parolee in *Morrissey v. Brewer*, a youth facing the revocation of his community placement status is facing a loss of liberty.¹¹ As a result, the revocation of a child's community placement status will inflict a “grievous loss,” and therefore requires procedural protections. Protections such as written notice, a neutral and detached hearing body, timely opportunity to be heard, and meaningful review should equally apply to CSRHs.¹² These protections are enshrined in the current regulations yet completely removed in the proposed regulations and without reason.

A. Lack of Adequate Notice to Youth

As proposed, § 1206.3 requires notice of the CSRH only to the youth's counsel and the DYRS Case Manager. Notice to the youth is not required under the proposed regulations. This

⁷ See Jeffrey Fagan & Tom Tyler, *Legal Socialization of Children and Adolescents* 221–22 (Columbia Pub. L. & Legal Theory Working Paper, Paper No. 05-94, 2005), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2387&context=faculty_scholarship.

⁸ *Id.* at 233–35.

⁹ *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (citations omitted).

¹⁰ *Id.*

¹¹ *Id.* at 482. (“We see, therefore, that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a “grievous loss” on the parolee and often on others. It is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a “right” or a “privilege.” By whatever name, the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment. Its termination calls for some orderly process, however informal.”); see also *R.O. v. Dep't of Youth Rehab. Servs.*, 199 A.3d 1160, 1164 (2019) (finding that the community status review regulations explicitly provide youth with a host of procedural rights, including: (1) to notice of the hearing; (2) to review certain evidence in DYRS's possession; (3) to have counsel present; (4) to have DYRS provide witnesses who are within DYRS's control; (5) to present witnesses, question witnesses, and challenge documents; (6) to a preponderance-of-the-evidence standard; and (7) to written findings) (citations omitted).

¹² *Morrissey*, 408 U.S. at 488–89.

represents a significant departure from the current regulations¹³ and raises serious due process concerns. Due process at the very least requires notice to the person whose liberty is at stake: the youth.¹⁴ Notice directly to the youth is critical as it allows the youth to effectively assist in their own defense, participate meaningfully in the proceeding, help gather relevant information, identify witnesses, and make informed decisions regarding the hearing.¹⁵

Under the existing rule, actual notice of the CSRH and the basis for DYRS's revocation request must be provided directly to the youth as well as the youth's representative. The proposed regulations provide no justification for eliminating a longstanding safeguard currently contained in the regulations. Inexplicably, the proposed rule weakens, rather than strengthens, these protections despite the significant liberty interests implicated by this hearing.

DYRS's proposed changes are also inconsistent with notice requirements in other proceedings of comparable importance. For example, D.C. Superior Court Juvenile Rule 9 requires notice to be provided directly to the respondent, parent, guardian, or custodian; it does not permit notice to counsel alone to substitute for notice to the child. Thus, D.C. Superior Court does not deem notice to counsel sufficient notice to a respondent. A government agency should not be permitted to adopt a lower notice standard than the courts for proceedings that carry such serious consequences.

Moreover, requiring service solely on counsel creates practical and ethical concerns. The proposed rule interferes with attorney-client privilege and misplaces the government's notice obligation onto defense counsel. These concerns are compounded by proposed § 1206.9, which provides that "[i]f the youth is in abscondence, serving the youth's counsel of record is deemed to be constructive notice to the youth." The fact that a youth is alleged to be in abscondence does not relieve DYRS of its obligation to provide notice reasonably calculated to apprise the youth of proceedings affecting their liberty. Indeed, if a youth is difficult to locate, the need for robust notice procedures becomes more important, not less, especially considering the heightened consequences for abscondence hearings—conducted in a youth's absence—under the proposed regulations.

Further, the proposed rule assumes that counsel will have current contact information for a youth in abscondence and will be able to communicate with the youth before the hearing. That assumption is frequently unwarranted. A youth who is not in contact with DYRS may likewise be out of contact with counsel. As a result, the regulation would permit hearings to proceed

¹³ See D.C. Mun. Regs. tit. 29 § 1207.1 (2009) (actual notice of the CSRH and the basis for the agency's revocation must be provided *directly to the youth*, their guardian, as well as to their representative).

¹⁴ See *Morrissey*, 408 U.S. at 488–89 (requiring written notice and disclose *to the parolee* of evidence against him); See also *In re Gault*, 387 U.S. 1, 26–28 (1967) (holding that youth are entitled to certain due process protections including notice and the right to confront the charges against them and finding that “the condition of being a boy does not justify a kangaroo court”); *Goss v. Lopez*, 419 U.S. 565, 579 (1975) (finding that “there can be no doubt that at a minimum [the words of the Due Process Clause] require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.”); *McCormick v. United States*, 635 A.2d 347, 349 (D.C. 1993) (recognizing that “reasonable notice of a charge and an opportunity to be heard in defense before punishment is imposed are ‘basic in our system of jurisprudence,’” especially when one's liberty is at stake.”) (citations omitted).

¹⁵ See *In re Gault*, 387 U.S. at 33 (“Notice, to comply with due process requirements, must be given [...] so that reasonable opportunity to prepare will be afforded ...”).

based on a presumption of notice where the youth may be entirely unaware that the proceeding is occurring. This concern is particularly acute because abscondence is often the very basis for the revocation request. Under the proposed rule, DYRS could rely on its own allegation that a youth is in abscondence to justify a reduced notice standard, thereby diminishing the procedural protections available to the youth seeking to contest that allegation.

Finally, proposed § 1206.3 requires the Hearing Officer to provide written notice of the hearing only “within a reasonable time period for the parties to prepare.” This vague standard provides no meaningful assurance that youth and counsel will receive sufficient advance notice to investigate allegations, gather evidence, identify witnesses, and prepare an adequate defense.¹⁶

Given the substantial liberty interests at stake, the regulations should establish a clear minimum notice period rather than rely on an undefined standard. The proposed notice provisions should be revised to require notice to the youth and counsel, and require reasonable efforts to provide notice to any youth alleged to be in abscondence, as well as an explicit minimum timeframe for which notice must be given.

B. Biased and Unfair Probable Cause Determinations

- i. The absence of an impartial decision-maker and opportunity to be heard on probable cause violates due process.

The proposed § 1205.2(e) gives the DYRS Deputy Director of Youth and Family Programs unfettered authority to detain youth both prior to and after a CSRH (until the conclusion of the appeals process) in violation of youth’s due process rights. In the context of hearings akin to CSRHs, such as parole and probation revocation proceedings, due process requires, at the very least, a “reasonably prompt informal inquiry” by an impartial decision-maker to determine whether there is reasonable ground to believe the violation occurred.¹⁷ This includes notice of the alleged violations, a detached and neutral decision-maker, and an opportunity for the youth, through counsel, to present evidence and challenge the bases for the removal.¹⁸ Pre-hearing detention typically requires a *judicial* determination of probable cause before an individual is subjected to an extended restraint on liberty,¹⁹ noting that the prosecutor’s assessment of probable cause, standing alone, does not meet the requirements of the Fourth Amendment, and is insufficient to justify restraint of liberty pending trial.

Here, DYRS is the prosecuting agency because the agency is bringing the CSRH petition against the youth. As such, the agency’s own assessment of probable cause cannot in itself warrant pre-hearing detention. As written, the proposed regulations allow for potentially lengthy detention based solely on *agency* allegations that are considered by an *agency* decision maker

¹⁶See *id.* (“Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded...”).

¹⁷ See *Morrissey*, 408 U.S. at 486–87; *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973) (finding the preliminary probable-cause hearing requirement applies to both parole and probation revocations).

¹⁸ *Gagnon*, 411 U.S. at 781–82.

¹⁹ *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).

with no intervening neutral decision-making or opportunity to contest the basis for the detention. This does not comport with the Constitution or the law.

- ii. Danger to self should not warrant pre-hearing detention.

Under § 1205.2 (e) of the proposed regulations, the Deputy Director can find probable cause to detain a youth if there is “a reasonable basis to believe that the youth presents a clear and present danger to *themselves* or others...” Danger to self should not be a basis to detain a youth under any circumstances, and this is, in fact, in conflict with current law. The Comprehensive Youth Justice Amendment Act of 2016 (“CYJAA”) affirmatively changed the detention statute to exclude danger to oneself as a basis for pre-hearing detention.²⁰ DC Code § 16-2319 states, “a child shall not be placed in detention prior to a factfinding hearing or a dispositional hearing unless ... it appears from available information that detention is required ... *to protect the person or property of others from significant harm...*” Drafters of the CYJAA found it counterproductive to detain young people based on risk of self-harm, noting, “where there is a risk that a child may harm themselves, medical intervention is the appropriate response, as secure detention may in fact exacerbate the problem.”²¹ DYRS’s probable cause standard should mirror that of the D.C. Code and should require a reasonable basis to believe the youth may pose significant harm to the person or property of others. Further there is no need to broaden detention in this matter because youth can already be detained in a hospital under the FD-12 process if they are a danger to themselves.

C. Lack of Neutrality and Meaningful Judicial Review

- i. The elimination of the Hearing Officer’s decision-making authority eviscerates all semblance of neutrality and meaningful review.

While proposed § 1208.25 and § 1209 leave the DYRS Hearing Officer with a fact-finding role, they completely eviscerate the neutrality of the CSRH process by diverting the level of restrictiveness determination from the Hearing Officer to the Deputy Director. This violates a critical component of due process—impartial judicial oversight—and creates a wholly unfair, biased, and tilted process.

The current DYRS regulations follow the norms for administrative hearings by having a neutral decision-making body. Under the current regulations, that decision-making body is composed of a three-person panel, a hearing officer or administrative law judge as well as two DYRS employees who together adjudicate the facts to determine whether a violation of the youth’s Community Placement Agreement (“CPA”) occurred. The panel then turns to disposition or sentencing to determine, given the evidence, whether a youth’s level of restriction should be raised.

DYRS’s proposed regulations violate a basic principle of fair hearings as they eliminate the neutral, detached decision-making body or fact-finder. Instead, the proposed regulations

²⁰ D.C. Code § 16-2310.

²¹ Comm. on the Judiciary, Rep. on B21-0683, “Comprehensive Youth Justice Amendment Act of 2016,” at 9 (Oct. 5, 2016).

remove the disposition—the level of restrictiveness decision—from the Hearing Officer and gives it to the Deputy Director. Accordingly, as proposed, the process goes like this: a DYRS Case Manager initiates the CSRH process; the Deputy Director determines probable cause for pre-hearing detention; the hearing officer determines only whether the youth is in violation of their CPA (or one of the additional vaguer bases for revocation added in the new regulations); and if so, the Deputy Director then makes a placement determination. This essentially gives the DYRS Deputy Director the ability to determine the outcome at nearly every stage of the process prior to appeal.

However, the Deputy Director is *not* neutral or detached but is in fact just the opposite. The Deputy Director has a clear stake in the outcome, which inherently makes them biased. The Deputy Director manages the Case Manager who originally brings the alleged violations against the youth. And under the new regulations, the Deputy Director makes the initial probable cause determination that the youth should be detained pending a CSRH. It is difficult to imagine a set of circumstances where the Deputy Director would then choose *not* to raise the child's level of restrictiveness after making a probable cause determination earlier in the matter. The decision on restrictiveness is virtually pre-determined by their previous decision to initiate the CSRH *and* to detain the youth prior to the hearing. The Deputy Director's involvement in the CSRH petition, probable cause decision, and *also* the determination of the level of restrictiveness, or disposition of the case, completely tips the scales in favor of DYRS. It allows DYRS to act as both accuser and adjudicator, which is untenable to a basic condition of due process: a fair trial in a fair tribunal.²²

Preserving the Hearing Officer's authority to decide whether the CPA has been violated *and* to determine the level of restrictiveness ensures the fairest outcome based on the evidence. The level of restrictiveness determination comes after a full evidentiary hearing, where both parties present their case through evidence and witness testimony. This evidence goes directly to the alleged CPA violations as well as a full understanding of the youth's circumstances. This in conjunction with the Hearing Officer being neutral and detached to the outcome, as opposed to the Deputy Director, is critical in determining an appropriate disposition or outcome of the case, which is the level of restrictiveness.

The proposed changes to the decision-making authority in the CSRH process seem designed to ensure DYRS prevails in these hearings. Dissatisfaction with a fair and neutral process does not allow DYRS to bend the law or deprive youth of due process so they can achieve the outcome they want. When a youth's liberty is at stake, procedural safeguards, including a detached and impartial fact-finder, are paramount.

- ii. The proposed regulations lack important qualifications for the DYRS Hearing Officer.

Proposed § 1208.7 currently provides only one qualification for a Hearing Officer: the individual must be selected by the Director of DYRS. The regulation contains no requirements regarding licensure as an attorney, training or expertise in juvenile justice, adolescent brain development, or trauma. It likewise contains no provisions requiring neutrality and

²² See *In re Murchison*, 349 U.S. 133, 140–41 (1955).

independence. Decisions that implicate a youth's liberty should be made by a *qualified* and *impartial* decision-maker. At a minimum, the regulations should establish the above qualifications to ensure the neutrality and independence as well as the appropriate level of experience, training, and legal expertise.

Our attached redline outlines the qualifications that should be in place for a position of this importance, including our recommendation that the decision maker be qualified as an Administrative Law Judge. At stake during a CSRH is a youth's fundamental right to liberty, and such important due process questions should be decided by those with a deep understanding of the relevant law, as well as core principles of adolescent development, trauma, and the juvenile legal system.

D. Lack of Meaningful Appellate Review

- i. The proposed regulations have a chilling effect on the exercise of appellate rights.

Proposed §§ 1210.6, 1210.7, and 1210.8 authorize the DYRS Director to impose an upward departure from the CSRH outcome if the Director disagrees with the decision of the Hearing Officer or Deputy Director. This effectively allows the appellate process itself to operate as a mechanism for increasing the restrictions on a young person's liberty.

Of grave concern is the chilling effect the proposed regulations have on the exercise of appellate rights. Exposing youth to the risk of an increased level of restriction upon appeal will inevitably deter youth from exercising their due process right to appellate review. That right is undermined when an appeal carries the potential for greater punishment or more restrictive confinement. For example, where a Hearing Officer increases a youth from a low to a medium classification, the youth may be dissuaded from appealing that decision, even if the Hearing Officer made a blatant error, out of concern that the Director, on review, could further increase the classification from medium to high.

The proposed provisions should therefore be revised to ensure that youth may seek review without fear that doing so would expose them to additional punitive consequences.

- ii. The short timeline for appeal threatens meaningful appellate review.

Proposed § 1210.1 requires a party to file an appeal within three (3) business days of receiving the written decision of the Hearing Officer or DYRS Deputy Director. This timeframe is unreasonably short given the significant liberty interests at stake and does not provide a meaningful opportunity to seek review. Three business days is insufficient for counsel to review the written decision, consult with the youth, conduct relevant legal research, review the record, and identify and articulate appealable legal and factual errors from the CSRH. A fair process requires sufficient time for youth and counsel to prepare a reasoned appeal.

The current regulations provide seven (7) business days to file an appeal, which is a more reasonable period of time for appellate review.²³ The proposed rule cuts that timeframe by more

²³ D.C. Mun. Regs. tit. 29 § 1211.7.

than half without justification. The compressed three-day deadline, in conjunction with the proposal authorizing the Director to give an upward departure from the CSRH outcome, significantly undermines the youth's right to appeal rather than preserving or strengthening protections for youth facing a significant loss of liberty.

- iii. Granting DYRS the ability to appeal the CSRH decision effectively guarantees the agency will prevail in all circumstances.

Proposed § 1210.1 newly grants DYRS the ability to appeal the hearing officer's determination *and* the Deputy Director's determination. This all but guarantees that the agency will receive the outcome that it desires in each case. As proposed, the process allows the Deputy Director to determine whether the youth will be held in detention prior to the hearing. Then a DYRS-appointed Hearing Officer determines whether the youth violated their CPA (or one of the additional vaguer bases for revocation added in the new regulations). If so, the Deputy Director then makes a placement determination; and if at the end of that agency-controlled process, the agency *still* does not like the result, they can appeal it to the DYRS Director. This is a veneer of due process that essentially gives the DYRS Director the ability to determine the outcome *in all cases*.

It is the youth's liberty that is at stake during the CSRH. Therefore, *the youth* should be the only party that can appeal an adverse decision.

3. The Proposed Regulations Unnecessarily Expand the Use of Secure Detention and Fail to Account for Established Research on the Harms of Over Detention

A. Expansion of Bases to Remove Youth from the Community

Proposed § 1203.3 unfairly expands DYRS's authority to remove youth from the community by adding additional rationales for revocation beyond alleged CPA violations. Specifically, this provision allows DYRS to also seek revocation for a youth "unsuccessfully discharged from a community placement" or when "the behavior of the youth in the community placement poses a risk to public safety. This greatly expands DYRS's authority to revoke a youth's community placement even when the youth is not alleged to have violated any of the terms of their CPA.

The CPA is a contract between the youth and DYRS and its terms are clear: If a youth fails to comply with the precise terms outlined within the CPA, they face repercussions, including a potential CSRH. As such, youth are on notice that if they violate the terms outlined in their CPA, they are at risk of revocation. Adding bases for removal outside of the terms outlined in the CPA contract does not provide fair notice of what conduct could result in revocation. Youth under community supervision should not be expected to navigate ambiguous standards governing their liberty.

Significantly, DYRS's proposal completely ignores well-established research of the adolescent brain. It is well understood that adolescents differ from adults in ways that affect

judgment, decision-making, planning and the ability to anticipate consequences.²⁴ This makes clear, objective, and consistently applied rules especially important. Vague or shifting standards make it far more difficult for youth to understand what conduct is expected of them and how to successfully remain in the community. Clear expectations are essential to promoting compliance and ensuring fundamentally fair proceedings.

Behavior that poses a “risk to public safety” is far too vague and overly broad²⁵ to allow youth any reasonable understanding of how to comply and avoid revocation. For example, under the proposed language, DYRS could try to revoke a youth for jaywalking or getting in a verbal argument simply because DYRS believes the conduct poses a risk to public safety. It also allows DYRS to provide uncorroborated, unauthenticated information, equipping DYRS with unbridled discretion to revoke a youth’s community status.

Additionally, allowing revocation simply for an “unsuccessful discharge” from a placement²⁶ ignores the complexity and range of reasons for an “unsuccessful” discharge. For example, a client may be “unsuccessfully” discharged from a foster care placement simply because the child and the family were not a good fit but not because the child violated a provision of their CPA. Under the proposed rule, even if the youth is not in direct violation of their CPA, the resulting “unsuccessful” discharge could expose the youth to a level increase. Moreover, the regulations do not define “unsuccessful discharge” or address who makes the determination as to whether a discharge was unsuccessful.

Adding these new bases for revocation gives DYRS unbridled discretion to define these terms without oversight and as the agency pleases. It also risks arbitrary and inconsistent enforcement because similarly situated youth may be revoked based on different, evolving, and unwritten standards. DYRS’s proposal not only departs from well-established conclusions about the adolescent brain, but also from the Family Court’s framework governing probation.²⁷ It undermines fundamental notice principles, create substantial risks of arbitrary enforcement, and vests DYRS with broad, standardless discretion to determine when revocation is warranted.

B. Expansion of Time in Secure Detention

- i. The lack of a standard timeline by which a hearing must occur exposes youth to indeterminate and potentially lengthy pre-hearing detention.

In a significant departure from the current regulations, DYRS’s proposed § 1206.2 has *no* time limit at all for when a hearing must occur when a youth is held in detention pending a hearing. The current regulations require DYRS to conduct the CSRH within five calendar days of a youth’s removal from the community or return from abscondence.²⁸ This five-day timeline

²⁴ See generally, *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012).

²⁵ See *Giaccio v. Pennsylvania*, 382 U.S. 399, 402–03 (1966).

²⁶ 73 D.C. Reg. 007932 (proposed May 22, 2026) (to be codified at D.C. Mun. Regs. tit. 29 § 1203.3(a)(2)).

²⁷ D.C. Super. Ct. R. Juv. 32(i).

²⁸ Youth Services Administration 1981 aftercare regulations required a hearing within 72 hours of a youth being taken into secure detention pending a hearing. The 2009 rules increased this timeline to five calendar days. See D.C. Mun. Regs. tit. 29 § 1208.10 (2009).

has remained a helpful motivator to prompt staff to act quickly when the agency decides to incarcerate a youth before a hearing, and to ensure that youth do not sit unnecessarily in detention while the agency decides what to do with them. Even a week (or longer during legal holidays) is a long time for a child to sit in detention waiting for a hearing, and is certainly long enough to disrupt the child's school placement, job, and community-based services.

As proposed, § 1206.2 requires only that the hearing occur “within a reasonable time period after the date the petition is filed,” leaving the timeline at the complete discretion of the Hearing Officer and at the whim of bureaucratic scheduling challenges. This potentially exposes youth to significant pre-hearing confinement without any oversight. This issue is further exacerbated by proposed § 1206.4, which allows either party to request a continuance *ad infinitum*. This language allows for a complete lack of consensus as to what a *timely* hearing is and strips youth of any recourse or mechanism to request a timelier hearing. In the end, then, a youth may remain in pre-hearing detention for prolonged and undefined periods of time.

- ii. The proposed regulations circumvent youth's ability to seek judicial review of detention.

Proposed §§ 1205.2(e), 1208.23, 1209.3, 1209.9, and 1210.3 allow DYRS to continue detaining youth during the pendency of the entire administrative process through appeal *and* while they are awaiting placement (either to the same or new placement within the same level of restrictiveness as their original placement). This means regardless of a favorable outcome at the CSRH, DYRS has authority to detain a child from the start of the CSRH for an indeterminate, prolonged period of time. DYRS has not only given itself virtually unrestrained and unilateral power to revoke a youth's community status, but it has also authorized itself to move slowly and delay placement, all while avoiding accountability and judicial oversight. By “pre-approving” any and all delays that DYRS may invoke when postponing a youth's placement determination, the proposed regulations completely gut a foundational constitutional right to challenge unlawful detention by way of a petition for habeas corpus to the Family Court.²⁹

DYRS's goal to avoid judicial review of its process and procedures is further evidenced in § 1201.2, which states, “DYRS shall have sole discretion to make specific placement decisions for youth committed to its custody.” This is a clear attempt to avoid transparency, oversight, and judicial review. In sum, DYRS's proposed regulations eliminate time limits on pre-hearing detention, expand bases to remove youth, and grant DYRS authority to detain youth through the entirety of the administrative process without any outward limit or avenue for relief.

C. DYRS's Focus on Secure Confinement Ignores Well-Established Research on the Harms of Detention for Youth

Despite the well-documented harms of detaining youth, DYRS's approach expands the bases and amount of time committed youth will be held in secure detention. A report from the Justice Policy Institute found that incarcerating youth can “facilitate increased crime by aggravating the recidivism of youth who are detained,” “pull[] youth deeper into the juvenile and

²⁹ See D.C. Code § 16-1901.

criminal justice system,” “slow or interrupt the natural process of ‘aging out of delinquency,’” “make mentally ill youth worse,” and “put[] youth at greater risk of self-harm.”³⁰

Decades of research show that children experience far more success in community-based programs than in confinement.³¹ Rather than serving as an effective preventative measure, confinement at a young age counterproductively leads to higher recidivism rates and continued incarceration into adulthood.³² In fact, one study found that incarceration was a greater predictor of recidivism than gang membership, carrying a weapon, or having poor familial relationships.³³ Detained youth become twice as likely to re-offend than youth who have never been placed in confinement.³⁴ Even a short period of high-security detention while awaiting a hearing or trial can greatly increase future delinquent or criminal involvement.³⁵

Detention also impedes youth’s educational or vocational progress and success.³⁶ The major life disruption caused by locking up youth results in a reduction of their employment and work time by 25-30%.³⁷ The statistics on the educational setbacks of incarceration are staggering. According to the Federal Interagency Reentry Council, six out of ten students who are incarcerated never enroll back in school upon release or drop out within 5 months of re-enrollment.³⁸

Additionally, confinement causes lasting negative impacts on physical and mental health.³⁹ Some of these impacts include increased likelihood of becoming depressed, leading to higher probability of engaging in self-harm and suicide.⁴⁰ These impacts are especially troubling and heartbreaking for youth who already have experienced trauma,⁴¹ with 75%-93% of children entering the system already experiencing at least one traumatic event.⁴² Compared to the statistics for all youth in the general public, three times as many youth in the juvenile legal system have experienced *chronic* trauma. Notably, the rates of post-traumatic stress disorder

³⁰ Barry Holman & Jason Zidenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, at 4–6, 8–9, Just. Pol’y Inst.(2022), https://justicepolicy.org/wp-content/uploads/2022/02/06-11_rep_dangersofdetention_ji.pdf.

³¹ See Gary L. Hopkins et al., “Decades of Research Shows Adolescents Do Better With Community Service Rather than Incarceration” (2014). Faculty Publications. 25. <https://digitalcommons.andrews.edu/behavioral-pubs/25>.

³² See Holman & Zidenberg, *supra* note 30, at 2.

³³ *Id.*

³⁴ See *The Harms of Juvenile Detention*, Nat’l Juv. Def. Ctr. (2016), <https://njdc.info/wp-content/uploads/2016/10/The-Harms-of-Juvenile-Detention.pdf>.

³⁵ Thomas A. Loughran et al., *Studying Deterrence among High-Risk Adolescents*, Washington D.C. Office of Juv. Just. and Delinq. Prevention, Juv. Just. Bull., NCJ 248617 (2015).

³⁶ R.J. Apel & G. A. Sweeten, Nat’l Inst. Of Just., *Effect of Criminal Justice Involvement in the Transition to Adulthood* (2009), <https://nij.ojp.gov/library/publications/effect-criminal-justice-involvement-transition-adulthood>.

³⁷ See *id.*

³⁸ Hailly T. N. Korman & Lisa Pilnik, *How Does Education in the Juvenile Justice System Measure Up? It Doesn’t*, Education Week (Oct. 25, 2018), <https://www.edweek.org/ew/articles/2018/10/26/how-does-education-in-the-juvenile-justice-system.html>.

³⁹ See Elisabeth S. Barnert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?* PubMed (2017), <https://pubmed.ncbi.nlm.nih.gov/28115536>.

⁴⁰ See *The Harms of Juvenile Detention*, Nat’l Juv. Defender Ctr. (2016).

⁴¹ See Barnert, *supra* note 39.

⁴² See Samantha Buckingham, *Trauma Informed Juvenile Justice*, 53 Am. Crim. L. Rev. 641 (2016) <https://ssrn.com/abstract=2794718>.

(PTSD) in court-involved youth are “comparable to the PTSD rates of soldiers returning from deployment in Iraq.”⁴³ Significantly, youth with marginalized identities, such as Black youth, youth with disabilities, and LGBTQIA+ youth, are heavily overrepresented in the District’s population of committed youth, and are extra vulnerable to the harm caused by carceral environments.

DYRS’s proposed regulations will increase the likelihood of youth confinement and inevitably result in harmful outcomes that befall incarcerated youth, which ultimately will not contribute to safer youth or community. Given DYRS’s purported purpose and statutory mandate to rehabilitate youth and protect public safety, we hope DYRS will reconsider its proposal in favor of more procedural protections and less focus on secure placement.

4. DYRS Fails to Account for the Importance of Graduated Sanctions to Youth Compliance and Rehabilitation

DYRS’s proposal completely lacks any requirement for case management to impose graduated sanctions before a CSRH. According to DYRS’s own Care Planning and Coordination Handbook (“Care Coordination Handbook”), graduated sanctions should be utilized prior to filing for revocation.⁴⁴ Rather than adhering to its own internal policy, DYRS has chosen to make detention and revocation the default response to alleged noncompliance, which is contrary to decades of research on adolescent development and effective juvenile justice practice. National reform efforts have increasingly rejected confinement as a response to technical violations of supervision conditions, recognizing that secure placement should be reserved for new delinquent conduct or genuine threats to public safety.⁴⁵ Positive incentives and graduated sanctions have the potential to encourage compliance and discourage reoffending as opposed to the negative outcomes that have been shown to come from more extreme sanctions, like confinement.⁴⁶

Evidence increasingly supports systems that utilize incentives and graduated responses rather than immediate confinement. A recent peer-reviewed evaluation of Pierce County, Washington’s Opportunity-Based Probation model found that aligning juvenile supervision with positive youth development principles and behavioral health practices reduced recidivism and improved youth outcomes.⁴⁷ Maryland likewise reported positive outcomes from its graduated-response framework, concluding that the approach promoted accountability while reducing reliance on more restrictive interventions.⁴⁸

⁴³ See *id.* at 647.

⁴⁴ See D.C. Dep’t of Youth Rehab. Servs., Care Planning and Coordination Handbook (2017), https://dyrs.dc.gov/sites/default/files/dc/sites/dyrs/publication/attachments/DYRS_Care_Planning_and_Coordination_Handbook_0.pdf.

⁴⁵ Annie E. Casey Foundation, *Eliminate Confinement as a Response to Probation Rule Violations* (2020); Richard J. Bonnie et al., *Reforming Juvenile Justice: A Developmental Approach* 85–92 (Nat’l Rsch. Council, 2013).

⁴⁶ Thomas J. Mowen et al., *The Role of Sanctions and Incentives in Promoting Successful Reentry: Evidence From the SVORI Data*, 45 *Crim. Just. and Behav.* 1288 (2018).

⁴⁷ Kathryn A. Cunningham et al., *Redesigning Juvenile Probation to Align with Behavioral Health and Positive Development Principles: A Quasi-Experimental Study*, 50 *Crim. Just. & Behav.* 6, 18–19 (2023).

⁴⁸ Jill L. Farrell et al., *Assessing the Impact of a Graduated Response Approach for Youth in the Maryland Juvenile Justice System*, Inst. for Innovation and Implementation, Md. Sch. of Soc. Work 3–5 (2020).

Consistent with this understanding, the District has long recognized that ordinary adolescent defiance and noncompliance should not automatically result in confinement. DYRS's Care Coordination Handbook requires the use of a graduated-response system and treated secure custody as a measure of last resort.⁴⁹ The Handbook emphasizes that “non-compliance and even defiance are not reasons to incarcerate youth” and envisions the CSRH only as “a last resort after a series of graduated sanctions.”⁵⁰ The proposed regulations represent a significant departure from both established research and the District's longstanding commitment to developmentally appropriate, rehabilitative responses to youth behavior.

5. The Proposed Regulations Are Wholly Inconsistent with the Purposes and Goals of D.C.'s Juvenile Legal System

The theme of these regulations is to give DYRS expanded authority to place youth in more secure placements. However, DYRS is *statutorily required* to place youth in the least restrictive setting consistent with public safety.⁵¹ The District's juvenile legal system seeks also to “promote youth development,” “preserve and strengthen families,” “serve children in their own neighborhood and communities,” “place a premium on the rehabilitation of children,” and “hold the government accountable for the provision of reasonable rehabilitative services,” all within the “least restrictive settings necessary.”⁵² The system also seeks to meet such goals while providing “due process through which juveniles and all other interested parties are assured fair hearings, during which applicable constitutional and other legal rights are recognized and enforced.”⁵³

DYRS's proposed regulations are a clear departure from this statutory framework. The proposed changes not only codify processes that circumvent fair hearings and violate due process, they also indicate a strong preference to place children in *more* restrictive settings. From the outset, the regulations state, “community placement is an alternative to placement in a hardware secure facility,”⁵⁴ indicating that secure facilities are the first choice while community placement is merely a backup. As outlined in our letter, DYRS's proposed regulations make it far easier to detain youth before, during, and after the CSRH, and thwart advocates' attempts to challenge such prolonged detention. The regulations also provide additional rationales beyond CPA violations for revocation, expanding DYRS authority to detain youth.

DYRS's exclusion of the advocates and youth voice, its attempts to reign in due process protections of youth, and its agenda to expand authority to detain youth in secure placement are all in direct contradiction to the purpose of DC's juvenile legal system and will ultimately lead to harmful outcomes for youth rather than rehabilitation and care.

⁴⁹ See *supra* note 44.

⁵⁰ *Id.*

⁵¹ See D.C. Code §16-2301.02(9); D.C. Code § 2-1515.04(6) (DYRS's duty to “establish[] a system that . . . ensures placement within a continuum of least restrictive settings”).

⁵² D.C. Code §§ 16-2301.02(2), (3), (5), (6), (7).

⁵³ See *id.* at § 16-2301.02(1).

⁵⁴ 73 D.C. Reg. 007932 (proposed May 22, 2026) (to be codified at D.C. Mun. Regs. tit. 29 § 1200.2.)

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We request that DYRS delay finalization of the proposed rule changes in order to consult further with the undersigned advocates to ensure an administrative process that guarantees robust due process protections and procedural fairness to the youth we all care about and serve.

Respectfully submitted,

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ACLU of D.C.

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