



May 9, 2016

New York City Board of Correction
51 Chambers Street
New York, NY 10007

Re: Department of Correction Request for Limited Variance

Dear Chair Brezenof and Board Members:

The Children's Defense Fund – New York (CDF-NY) is writing to comment on the April 27, 2016 six-month limited variance request from the Department of Correction (DOC) and, more specifically, to urge the Board to use this opportunity to seek further clarification from the DOC on the details and proposed rollout of Secure Units - new restrictive housing units for young adults. We support the reporting requirements and conditions to be included within a Secure Unit Directive outlined by the Board, however we remain concerned with several unaddressed aspects of the DOC variance request as well as the absence of a directive at the time of the vote.

Although the DOC's April 2016 Young Adult Housing Monthly Progress Report states that a Secure Unit draft directive *may* be ready for BOC review before the end of April, the draft conditions recently posted by the Board imply that the directive has yet to be shared. While we strongly support the elimination of punitive segregation for 18-21 year olds, details on the infrastructure and operations of alternative restrictive housing areas (to manage the population formerly subject to punitive segregation) must be thoroughly vetted by the Board. We recommend that – if the Board has not received the directive with ample time for review prior to the May public meeting – the Board not vote on the DOC's request for a six-month variance. If the Board does consider the variance, we ask that it impose conditions, beyond what has been posted, to bring greater transparency to the unit and ensure that it is effective in its goal of reducing violence while ensuring best practices for youth.

At present, the deadline to complete the components of the Young Adult Strategy plan is set at July 12, 2016. The approved January 2016 limited variance to extend the Young Adult Strategy Plan contained the condition that the Department submit to the Board a written assessment of the piloting of the Secure Unit.¹ When that condition was written, the most recent Young Adult Plan Update stated, "starting in March 2016, DOC will pilot the use of the Secure Unit for the most seriously and persistently violent inmates that previously would have been placed in punitive segregation."² As of April 27, 2016 two of the three tiers of the model have been opened while the opening of the most restrictive tier, the Secure Unit, is dependent on the approval of the limited variance request. We ask that the Board seek confirmation that there will be a "piloting" of the Secure Unit, what "piloting" entails, and how the Secure Unit is expected to be rolled out.

Need for Further Conditions

According to the Rules of the City of New York, the Department may apply to the Board for a limited variance when, despite its best efforts, full compliance with the minimum standards cannot be achieved.

¹ Board of Correction City of New York. (2016, January 12). Record of Variance Action. Retrieved from [http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20160112/POST%2001.2016%20Record%20of%20Variance%20Action%20-%2002\(c\)%20-%20Implementation%20Date.pdf](http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20160112/POST%2001.2016%20Record%20of%20Variance%20Action%20-%2002(c)%20-%20Implementation%20Date.pdf).

² New York City Department of Correction. (2016). Young Adult Plan Update 2016. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20160112/NYC%20Department%20of%20Correction%20-%20Young%20Adult%20Plan%20Update%202016.pdf.



The six-month limited variance request pertains to BOC Minimum Standard 1-05(b) *Involuntary Lock-in*, though the variance does not actually seek to bring the Department into compliance with the existing rule on lock-in, but rather seeks to provide for the creation of restrictive units. The Rules require that an application for a variance shall state, among other things, the efforts undertaken by the Department to achieve compliance by the effective date, the specific facts or reason making full compliance impossible, and the specific plans, projections and timetables for achieving full compliance. **The variance appears to be a placeholder for an amendment to the Rules of the City of New York, and we urge the Board to seek clarification as to the intended future of the Secure Unit and what the expectation is following the six-month duration of the variance.**

We remind the Board that in 2014, DOC submitted a request for a variance to establish Enhanced Supervision Housing (ESH), and the Board decided to consider the request through the CAPA rulemaking process. In its January 2015 decision to approve the creation of ESH, the Board imposed conditions requiring DOC to report every 60 days on the implementation of ESH, and on programming and other services for people housed in ESH. It specifically contained a sunset provision that will allow the Board 18 months after ESH has been implemented to evaluate its effectiveness and whether it should continue, as well as mandated regular reporting on the frequency with which each of the placement criteria is used to support ESH placement. We support the Board's draft conditions to monitor and assess components of the Secure unit outlined in the May 7, 2016 draft record of variance action, such as population and length of stay, and encourage the Board to impose a condition requiring reporting on the criteria used to support placement.

Concerns with the 28-day Review Process

A due process hearing is required prior to placement in the Secure Unit, with a review conducted every twenty-eight days to "evaluate each young adult's progress." It is unclear how placement reviews differ from due process hearings, or whether there is flexibility in the "program plan setting forth the programming offered to facilitate their successful progression in the unit". A blanket 28-day review for all young adults does not align with the "individualized" focus of the received "orientation and program plan" and does not allow for young adults to be housed in the least restrictive alternative. We recommend that the Board reject the arbitrary 28 days between each review and instead impose a condition allowing for the continuous review – or at a minimum more frequent review - of young adults placed in the Secure Unit to better allow for their immediate removal to the least restrictive environment within a time period that is less than 28 days.

While held in each phase of the Secure Unit, each young adult must demonstrate "consistent satisfactory behavior" for a minimum of twenty-eight days in order to be considered for movement to a less restrictive environment. The presumption here is that upon entry into Phase I of the Secure Unit, the person will stay for a minimum of 28 days in each of the three phases, for a minimum stay of eighty-four days in the Secure unit. (Also, because "young adults' behavior and actions within the unit will directly impact their progress through the phases," people can potentially be housed within Phase I indefinitely.) **We support the draft condition requiring the reporting of the minimum, maximum, median and average length of stay in Phase I, Phase II, and Phase III of the Secure Unit, and ask that the Board include time restrictions for placement in each of the three phases of the Secure Unit.**

During the March 2016 public meeting of the BOC, the Board shared with the public that young adults housed in Second Chance were not attending school. The response from DOC was that "It's voluntary" and "None have agreed to go to school."³ It is imperative that the Board ensure young adults are provided access to services that allow them to exhibit whatever criteria of behavior grants passage through the phases and tiers toward the least restrictive environment. **For these reasons, conditions should be added to the variance that require reporting of programming opportunities, use of programs, and**

³ New York City Board of Correction. (2016, March 11). "Meeting 3 8 16 HD." Online video clip. YouTube. <https://youtu.be/XSM53rNG928?t=1300>.



a demonstration of efforts made by the DOC to move young adults to the least restrictive environment.

Concerns with Criteria for Placement

We understand that the draft conditions require that the Secure Unit directive include “admission criteria,” and we want to emphasize the need for the Board to require the DOC to clearly distinguish between criteria for placement in each of the three housing tiers – Second Chance, TRU, and Secure. The descriptions for eligibility in each tier provided in the variance request are imprecise and overlapping, ranging from “exhibit a pattern of disruptive behavior” to “demonstrate more serious behavioral challenges and involvement in incidents resulting in serious injury.” Mentioned criteria for placement in the Secure Unit in particular utilizes sweeping and subjective language:

- “Young adults who are engaging in serious violence and assaultive behavior;”
- “Young adults who commit serious and persistent acts of violence such as assaults on staff and peers, gang activity, and slashings and stabbings;” and
- “The most challenging of the overall young adult population, as they have exhibited a history of persistent, violent, and/or assaultive behavior.”

From what has been shared of the policy, young adults may be indefinitely housed within the three tiers based on individual discretion and interpretation of very broad criteria. Vague selection criteria make difficult to identify ways to incentivize “satisfactory behavior” by the young adults.

On December 31, 2015, according to the most recently available report on punitive segregation – 46 (or ~33%) of the 141 people in punitive segregation in GRVC and OBCC were between the ages of 18 and 21. Between October and December 2015, 194 (or ~26%) of the 755 people admitted to punitive segregation in GRVC and OBCC were between the ages of 18 to 21.⁴ There were 1,056 young adults in DOC custody as of January 20th, comprising approximately 10-12% of the population.⁵ Almost half of all people who were sent to punitive segregation on overrides were young adults, and ninety percent (n=9) of the ten inmates receiving multiple overrides in the reporting period were young adults.

When considering admissions into the Secure Unit, will those who have already served punitive segregation sentences be vulnerable to placement? The limited variance request has the description, “The young adults placed in the Secure Unit are the most challenging of the overall young adult population, as they have exhibited a history of persistent, violent, and/or assaultive behavior,” yet how much of the young adult’s history is eligible for consideration? We encourage the Board to ask the DOC what the process will look like for moving people into the Secure Unit, and whether those young adults recently released from punitive segregation will exit punitive segregation only to be placed in yet another restrictive housing unit.

As of the March public meeting of the Board, young adults were being selected for placement in Second Chance, with a “contract to take a look at expungement of their punitive segregation time” and “working with the treatment team to develop their program and accepting that in order to get into Second Chance.”⁶ What will the long term selection procedure look like when young adults are no longer eligible for placement in punitive segregation? We encourage the Board to require comprehensive reporting on placement justifications for each of the three housing tiers – Second Chance, TRU, and Secure.

We request further clarity on the criteria for placement and recruitment of young adults into all units, as they exist today, and how they plan to operate until and beyond the July 12 deadline. If the Board does choose to vote on the six-month variance request, and does impose conditions to

⁴ New York City Department of Correction. (2016). Punitive Segregation Quarterly Report: Fiscal Year 2016 October – December. Retrieved from http://www.nyc.gov/html/doc/downloads/pdf/INTRO_292_REPORTING_2nd_QUARTER_FY16_1-20-16.pdf.

⁵ New York City Department of Correction. (2016). Young Adult Housing Monthly Progress Report – February 2016. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20160209/Young%20Adult%20Housing%20Monthly%20Progress%20Report%20February%202016_final.pdf

⁶ New York City Board of Correction. (2016, March 11). “Meeting 3 8 16 HD.” Online video clip. YouTube. <https://youtu.be/XSM53rNG928?t=821>.

bring greater clarity to the Young Adult Plan as well as reporting requirements for monitoring the use of all restrictive housing units, we recommend that the Board provide an additional opportunity for public comment on the Secure Unit directive.



We thank the Board for their efforts in making public the 2016 Young Adult Housing Monthly Progress Reports, and we look forward to continuing to work collaboratively to eliminate punitive segregation for young adults in 2016.

Summary of Recommendations for Conditions

- Include time restrictions for placement in each of the three phases of the Secure Unit;
- Require the continued review of all young adults in each phase of the Secure Unit, as opposed to the 28-day review as written;
- Impose more thorough conditions for the regular reporting of the total young adult population to include the criteria for placement in Second Change, TRU, and Secure;
- Require reporting of programming opportunities, use of programs, and a demonstration of efforts made by the DOC to move young adults to the least restrictive environment;
- Clarify the criteria for placement and recruitment of young adults into all units, as they exist today, and how they plan to operate until and beyond the July 12 deadline.

Sincerely,

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