



Prisoners' Rights Project
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President

July 11, 2016

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Chair and Members
NYC Board of Correction
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Re: DOC request for a 6 month “emergency variance” from Minimum Standard 1-17(b)(1)(ii) which required that the DOC exclude individuals aged 18-21 from harmful punitive segregation by October 15, 2015.

Dear Executive Director King, Chair Brezenoff and Board Members:

We are dismayed that the Department of Correction (“DOC”) is requesting an extension of the deadline for complying with this Board’s regulation ending the harmful practice of punitive segregation for young adults held in our City jails. The DOC has ended punitive segregation for 18 year olds. But now, DOC seeks to extend punitive segregation for *six* more *months* for individuals who are between the ages of 19 and 21. They make this request although there are only 9 such individuals in punitive segregation.¹ This is the fourth request for a delay in the closure of punitive segregation for these young persons.² DOC has not provided facts demonstrating that it cannot safely and securely house this small group of individuals in less restrictive settings than punitive segregation. The variance should not be granted.

The current eleventh hour request is shocking due to the extremely recent assertions by DOC that punitive segregation would end for *all* of the 18-21 year olds by June 30. Even as late as June 28th, the DOC stated that the goal of July 1 would be met during a public tour of the newly completed Secure Unit by community members of the Adolescent and Young Adult Advisory Board. Commissioner Ponte’s letter to the Board dated June 27th explicitly states “[t]he

¹ DOC Limited Variance Request Letter, June 30, 2016 at page 4.

² There have been prior variances extending the January 1, 2016 deadline: the deadline was extended to February 29, 2016 on November 10, 2015; it was extended to June 1, 2016 on January 12, 2016, and it was subsequently extended to July 1, 2016 on May 26, 2016.

Department needs to slow down consolidation of young adults into GMDC, which *will not impact the ending of punitive segregation for this population*, but may delay the ending of comingling of young adults at this time.” (Emphasis supplied.) Yet two days later came this complete reversal of these statements. Even more disturbing, the variance request is for an additional 6 month period although there are only 9 young adults housed in punitive segregation.

The June 30, DOC Limited Variance Request Letter does not explain why the present circumstances, with such a small number of affected individuals held in punitive segregation, justify a six-month postponement of implementation of this Board’s rules to end the torture of punitive segregation. The harm to these young people cannot continue unabated as it has for many months. It is time to remove the last young adults from punitive segregation and move them to the Secure Unit at GRVC.³ The Secure Unit remains a work in progress and we do not think it should house 32 individuals at its outset, or perhaps ever. However, the number of people is low enough now to place the individuals currently in punitive segregation into the Secure Unit so that they can receive the programming, staffing and counselling designed as a necessary alternative to harmful punitive segregation.

The June 30, DOC Limited Variance Request Letter reports on various efforts by DOC that failed to maintain initial successful progress in moving the young adults to GMDC. The letter blames the failure to maintain success on the transfer of high-risk young adults that occurred towards the end of June. Familiarity with the history of implementing changes in DOC includes numerous examples of resistance to reform efforts by DOC staff. The increase in alarms, in lockdowns and in service disruptions at GMDC is more than likely at least partially attributable to DOC staff including DOC management who oppose the end of punitive segregation. The increases most definitely cannot be attributed solely to the requirement to transfer 9 young adults from punitive segregation.

Punitive segregation is not a “meaningful tool.” DOC Limited Variance Request Letter, June 30, 2016 at page 4. In New York City there is no correlation that increased use of punitive segregation reduces violence. Punitive segregation is a failed practice, increasingly discredited and limited by the world community,⁴ and determined to cause damage to developing brains in young persons and young adults.⁵

³ Placement in Secure or into the other alternative housing areas - Second Chance Housing Unit (SCHU) or Transitional Restorative Unit (TRU).

⁴ The U.N. Special Rapporteur on Torture has defined any use of solitary beyond 15 days to amount to torture or cruel, inhuman or degrading treatment. See Interim report prepared by the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E.Méndez, available at: <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>. The UN Standard Minimum Rules on the Treatment of Prisoners were re-named the “Mandela Rules.” Rule 43 of the Mandela Rules prohibits prolonged solitary confinement, Rule 44 defines prolonged solitary confinement as solitary time in excess of 15 consecutive days, and Rule 45 restricts the use of solitary confinement to “exceptional cases as a last resort for as short a time as possible.” and prohibits its use “in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.” The Mandela Rules are available at: <http://www.penalreform.org/wp-content/uploads/2015/05/MANDELA-RULES.pdf>.

⁵ See New York Advisory Committee to the U.S. Commission on Civil Rights at page 31 (isolated confinement hinders brain development which continues through the age of 25), available at: <http://www.usccr.gov/pubs/NY-SAC-Solitary-Confinement-Report-without-Cover.pdf>

We request that the Board deny the variance.

Sincerely,

Sarah Kerr
Staff Attorney
Prisoners' Rights Project
Legal Aid Society

We request that the Board deny the variance.

Sincerely,

A handwritten signature in blue ink that reads "Sarah Kerr". The signature is fluid and cursive, with the first name "Sarah" and last name "Kerr" clearly distinguishable.

Sarah Kerr
Staff Attorney
Prisoners' Rights Project
Legal Aid Society