



May 9, 2016

Martha King, Executive Director  
Chair Stanley Brezenoff and Board Members  
New York City Board of Correction  
1 Centre Street  
New York, NY 10007

**Re: April 27, 2016 DOC Variance Request, Young Adult Secure Unit**

Dear Ms. King, Chair Brezenoff and Board Members,

I write with regard to the April 27, 2016 Variance request submitted by the Department of Correction, which seeks to establish and operate “Secure Units” for young adults. Brooklyn Defender Services supports the imposition of the conditions included in the Draft Record of Variance Action. The BOC’s Draft Record of Variance Action seeks reporting on some of the most important concerns about the proposal. This information would presumably be in a Draft Directive and should be provided for comment to the BOC and Adolescent and Young Adult Advisory Board (AYAAB) *before* a Variance is granted, not after.

The Department committed nearly a year and a half ago to ending solitary confinement for young adults. For several months, it has been clear during meetings of the AYAAB that the Secure Unit was an intended component of the Department’s plan. Members of the AYAAB including Brooklyn Defender Services have repeatedly requested over the course of several months that the Department provide information about the mission, operations and process regarding this unit, including the opportunity to review a Draft Directive. Despite these requests, the Secure Unit has not been part of the AYAAB agenda for discussion, and no documents have been provided regarding the proposed unit. It is unclear at this juncture the purpose of the Advisory Board if not to discuss issues such as the Secure Unit *before* Variance requests like this are submitted.

Although the Department’s deadline to end solitary confinement for Young Adults eclipsed nearly five months ago, interested parties are expected once again to review vague proposals on the eve of the meeting without adequate information. Compounding the inadequacy of the process in this instance, the Variance was not circulated to interested parties as is typically BOC practice. Additionally, the very nature of the Variance request shifted significantly from an apparently indefinite Variance to a 6 month Variance just one week before

the May 10, 2016 meeting, and the BOC's own Draft Record of Variance Action was published just one business day before the meeting. Consequently, there has not been adequate time for interested parties to formulate meaningful comments as required under Minimum Standard § 1-15(d)(1).

In addition to the information requested in the BOC's Draft Record of Variance Action, other important questions remain that should be elucidated within or supplementary to a Draft Directive. For example, the April 27, 2016 Variance Request and BOC's Draft Record of Variance Action refer in different moments to a "Secure Unit" and "Secure Units." The Board and Department should clarify how many units are under consideration, and the capacity of the units. It is difficult to comment meaningfully on the proposal without a clear sense of the scope of what is being proposed.

Additionally, there is a fundamental conflict in the mission of the proposed units. Although the Department's Variance Request utilizes language that alludes to a therapeutic space, it is also clear that this unit is about punishment and control. The Department has not provided any information about how a restrictive unit with 10 hour lockout schedule comports with therapeutic principals or why it is a "critical management tool." No information has been offered about what interest would be served by denying young people an additional four hours out of their cell each day, except punishment and convenience to correctional staff. Although the Department claims that increased lockout-time will serve as an incentive, no evidence has been provided to suggest that more time spent in a cell each day is shown to improve behavioral outcomes for young people.

Lessons learned from the RHU should inform consideration about this failed approach to lockout time. Individuals who already struggle with following jail rules are *not* more likely to succeed when an ever-increasing set of limitations are placed upon them. Under the guidelines set forth in the Department's Variance Request, like in the RHU, young people would progressively earn more out-of-cell time and release from the unit by meeting an undefined expectation of "consistent satisfactory behavior" during three 28 day phases. A month of perfect behavior is difficult for anyone to achieve, much less a young person already struggling with behavioral challenges who is held in a restrictive and chaotic setting. The indeterminate nature of placements in the proposed Secure Unit would permit the Department to retain a young person in the unit who does not respond to failed behavioral interventions at "Phase I" in perpetuity – a practice characteristic of the RHU for years.

Even for the most successful young people in the unit, the absolute earliest a young person could return to general population is 84 days – a timeframe that would keep many young people in a restrictive setting for the bulk or entirety of their pre-trial detention. We urge the Board to go further to ensure that young people are returned to the least restrictive settings with full access to programming as quickly as possible.

Please refrain from granting the requested Variance at this time and direct the Department to engage with stakeholders and the Board to elucidate the mission and operations of the Secure Unit, as stakeholders have been requesting for months. This engagement is imperative to ensure that any new unit is accompanied by appropriate due process, access to

services, and evidence-based practices. Young people in custody, especially those with behavioral challenges, need spaces that are not just nominally “therapeutic,” but that actually intervene meaningfully to address their needs. We are eager to participate in this process moving forward.

Sincerely,

*Riley Doyle Evans*  
Jail Services Coordinator