



January 11, 2016

Stanley Brezenoff, Chair
Board Members
New York City Board of Correction
1 Centre Street
New York, NY 10007

RE: Young Adult Plan and Related Variances

Dear Chair Brezenoff and Members of the Board,

We write to comment on the Young Adult Plan submitted to the Board and made public the evening of January 8, 2016, and the Department's requests for related Variances to the Minimum Standards. Our comments will not be comprehensive due to the extremely short time-frame, and limited information available for review. We appreciate the Board's efforts to require the Department to provide significant details about proposed restrictive housing units and other elements of the plan, and we are frustrated by the Department's failure to comply with Conditions to the Variance granted on December 16, 2015. Without details about the infrastructure and operations of alternatives to isolated confinement, it is not possible to comment substantively. We echo the comments submitted by our colleagues at the Legal Aid Society.

Regardless of what form a final Young Adult plan takes, the Board should closely monitor and report regarding all aspects of implementation including but not limited to physical plant limitations, access to programming, access to healthcare, access to education, the use of lockdowns and the consequent limits on access to services, uses of force, and census and retention data. Close monitoring and required reporting from the Department during any Variance term will allow the Board to make adjustments, and in the long term, craft rules to ensure more humane and safe jails for young people.

Summary of Recommendations

- Delay adoption of any long-term variance pending receipt and publication of more information regarding operations of restrictive units and implementation of young adult plan.
- Reject any plan which involves placement of young adults in highly restrictive units resembling solitary confinement.
- Require DOC to immediately make public more detail regarding restrictive housing units:
 - Placement and retention criteria in restrictive units (TRU/SCHU)

- Description of programming and education to be made available to young adults in restrictive units.
- Description of operations of restrictive units (movement, physical plant, access to medical and mental healthcare, staffing etc.)
- Establish due process requirements for placement in TRU/SCHU
 - Notice to individual and counsel
 - Counsel representation during hearings
 - Right to appeal
 - Frequent (14 days maximum) reviews of placement with presupposition to move to less restrictive settings
- Establish specific deadlines for implementation of elements of an updated Young Adult Plan.
- Require public reporting regarding compliance with deadlines and Minimum Standards, including use of lockdowns.
- Mandate HHC involvement in placement and retention determinations and ensure mental health presence in restrictive units.

Punitive Segregation

The ongoing delays to end Punitive Segregation for young adults are unacceptable. The Board cannot simply continue to grant lengthy Variances to the Department while young people are subjected to the torture of Solitary Confinement in city jails. The Department's failure during the last year to complete basic physical plant repairs, such as fixing inoperable cell doors, demonstrates the need for the Board to require regular reporting from the Department. The Board should work with the Adolescent Advisory Board to delineate clear and detailed deadlines for implementation of the elements of a more robust, humane Young Adult Plan and require public reporting about compliance with those deadlines.

As we have stated on many occasions – we share the concern of the Department and the Board about violent incidents in the jails. However, the use of Punitive Segregation has a well-documented track record of failure in reducing violence. While some incidents are unavoidable, many of the most serious consequences could be avoided through adequate staffing, mission-driven training, appropriate supervision, adherence to existing protocols and compliance with the Minimum Standards. Punitive Segregation must end, and the Board must not tolerate any proposal that simply seeks to carry forth the practice under a new name.

Restrictive Units for Young Adults

The Board must intervene immediately to prevent the creation or use of harsh, restrictive “Secure” units for young adults. The placement of young people in secure units at NIC and West Facility is disturbing and directly contrary to the Board's mission to end the harm of isolation on this particularly vulnerable population. The Department did not provide any details regarding the infrastructure or operations of the unit, as required under the conditions to the Variance granted on December 16, 2015. However, our clients' experiences in Enhanced Restraint and CMC Max units at NIC and West Facility comport with descriptions of the units provided during the December 16, 2015 Board meeting. Learning that areas at NIC are being renovated to be even

more restrictive – to include restraints for cuffs and leg irons in program spaces, and cages for out of cell time – is profoundly disturbing. Equally troubling is the apparent intent of the Department to place individuals in the unit indefinitely and without due process.

Although the Department cites a concern for “brain research,” they provide no information about how this new restrictive unit will mitigate the profound harm isolation causes to the adolescent brain. We urge the Board to remain steadfast in your efforts to end the use of isolation on young people – simply adopting new acronyms for the same harmful practices does not achieve this end.

The operations of the proposed TRU and SCHU should be clearly described, available for public comment and subject to monitoring by the Board. The Department states that placement and retention will be based on an evaluation of severity and persistence of violence, however, the Department does not clearly describe what criteria they will use to evaluate these factors. These criteria should be clearly delineated and public. Anyone subject to placement and retention on one of these restrictive units should have a clear understanding of the criteria, and an understanding of how to earn their way to less restrictive settings. If restrictions are perceived as arbitrary and permanent, the young people subjected to them will see no reason to improve their behavior. Procedural and substantive due process should be protected for individuals placed on these units including written notification to individuals and their attorneys, with clear reasoning for placement based on established criteria, hearings with counsel representation, written decisions, and a right to appeal.

The Department’s intention to review placements every 60 days suggests that they view these units as permanent placements, rather than temporary responses geared toward improving behavior. This is the wrong approach. Placements should be reviewed, at most, every 14 days, with a presupposition that individuals will be removed to less restrictive settings. Any retention on the unit should be based on clearly described reasoning, grounded in established criteria, and subject to appeal.

Due process requirements are not only important for the individuals subject to restrictions, but are helpful in effective jail management. Clear criteria, documentation, representation, and an appeals process will assist jail management to identify problems with over-inclusion, arbitrary or capricious placements, and inappropriate retention. Due process should not be viewed as a hindrance but rather a quality control tool.

Although the Department claims that the units are not nominally punitive, the restrictions imposed may have psychological or physiological consequences for young people. It is encouraging that healthcare staff will have a role in any determination to place a young person in a restrictive setting. However, healthcare staff should be present in restrictive units to monitor if retention is contraindicated, have direct input on retention decisions and treatment planning, and facilitate access to care beyond simple rounding.

Staff Training

We believe that staff training is paramount to the success of any Young Adult Plan. Because of the specific needs of the young adult population, and particularly high demand on staff, all posts in the young adult jail should be steady, and all staff who work with young adults should receive specialized training, including de-escalation. According to our clients, all movement at GMDC for young adults is presently escorted. In many cases, our clients have reported difficulty accessing education and other services due to unavailability of escorts. Steady posts would help to relieve some pressure on staff. Safe Crisis Management and de-escalation training is useful in many circumstances and should be expanded to all staff. Frequently, our clients report that conflicts leading to use of force occur when non-steady staff are on the unit and escalate situations with young people.

Admission Center

We support the creation of a New Admission Center for young adults at GMDC, insofar as such a unit can reduce wait times in intake, do away with unnecessary transfers, and facilitate faster access to programming and permanent housing. We believe this is an opportunity for the agencies to review and improve the intake process. A more comprehensive intake process which would better capture cognitive impairments, individualized education plans and other programmatic needs should be piloted during this process, and if successful, expanded to other jails.

Expanded Programming

We support the expansion of programming to all young adults. The Board should ensure that any placement in restricted housing, including administrative segregation housing, TRU or SCHU, does not preclude access to programming. Furthermore, the Board should monitor the impact of lockdowns on program participation and success. Additionally, the Board should evaluate the success of programs based on participation, retention, completion and re-entry outcomes. Programs should be diverse in scope, duration and mission in order to reach a large number of people.

Conclusion

The Young Adult Plan submitted on January 8, 2016 was extremely brief and general. It did not comply with conditions established by the Board when it granted the Variance on December 16, 2015. It is difficult to provide detailed comments about this plan. We urge the Board to establish strict deadlines on the Department to provide more details. The Board should take immediate steps to stop the creation of any secure unit for young adults that resembles solitary confinement. As described above, many concerns about restrictive units remain unresolved and demand clarity. The Board, the Adolescent Advisory Board, and interested parties should have the opportunity to review and comment on policies and procedures for restrictive alternatives to solitary confinement. The Board must ensure that any policies comply with Minimum Standards before transfers are made to those units. After approximately one year, the Adolescent Advisory Board, and presumably the Board of Correction, still awaits final

policies and procedures for the Adolescent TRU and SCHU. Such a delay makes effective monitoring impossible and should be resolved promptly.

As the Board and Department pursue a Young Adult Plan, we urge you to take a more aggressive approach to monitoring and regulating the use of restrictive units throughout the jail system, and bring an end to illegal lockdowns, which are commonplace in many of these units. In addition to Punitive Segregation, the Department operates approximately 600 beds in restrictive housing units: 329 in Administrative Segregation, more than 100 in Enhanced Restraint Units, 56 in Centrally Monitored Case (CMC) Max Units, and 100 in Enhanced Supervision Housing. Some of these units require basic due process before admission, others do not. Universally, due process protections should be strengthened beyond basic procedural requirements to include substantive protections. The Board should address the range of restrictive units and ensure that mental health staff is involved in placement determinations; that regular placement reviews are conducted to ensure that people are housed in the least restrictive settings possible. Frequent reporting about compliance with due process requirements, the Minimum Standards, and Department Directives should be mandated. Thank you for your consideration of our comments.

Sincerely,

Riley Doyle Evans
Jail Services Coordinator