



January 11, 2016

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

Dear Chair Brezenof and Board Members:

The Children's Defense Fund – New York (CDF-NY) is writing in response to the recent publication of the Department of Correction's (DOC) Young Adult Plan Update as well as the posting of two related continued variances to be discussed and voted upon during the January 12, 2016 public meeting of the Board of Correction (BOC). The two variances seek to extend the deadlines by which the Department shall house inmates ages 18 to 21 separately and apart from inmates over the age of 21, as well as the date by which the option to place 18 to 21 year olds in punitive segregation will be eliminated. We appreciate the conditions added by the BOC to the Department's December 15, 2015 variance request that allowed for this additional opportunity for public comment.

Limited Variance on BOC Minimum Standard 1-02(c): Separation of inmates 18-21

The Board voted on September 8, 2015 to approve the DOC's request seeking additional time for the implementation of the Young Adult Plan, extending the deadline by which inmates ages 18 to 21 be housed separately and apart from inmates over the age of 21 from October 15, 2015 to December 31, 2015.¹ Though it had yet to be shared with the public at that time, the DOC's request mentioned that the Young Adult Plan had been recently submitted to the Board:

As extensively discussed in the Department's Young Adult Strategy plan, which was recently submitted to the Board, proper implementation of the plan requires thoughtful assessment of housing allocations best suited for young adults. This assessment must incorporate classification, tailored programming to suit their educational and behavioral needs, and mandated staffing ratios and training.²

Two months later, on December 15, 2015, the day before the December 16 public Board meeting, the DOC submitted a considerably more detailed limited variance request on the same minimum standard, asking for a longer, six-month extension to begin December 31, 2015. The Department's request outlines a list of concerns that arose from focus groups with frontline staff, but concludes, "While all the issues outlined above are important, the development of a secure unit and the completion of the repair and/or replacement of the cell doors are significant factors in determining when some of the young adults can be transferred to GMDC."³ The structural

¹ City of New York Board of Correction. (September 2015). Record of Variance Action. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20150914/18-21%20Commingling%20Date%20POST.pdf.

² New York City Department of Correction. (September 8, 2015). Re: Variance Request to BOC Minimum Standards Regarding Implementation of the Young Adult Plan: Section 1-02. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20150908/DOC%20Variance%20Request-%20Commingling%20of%20Young%20Adults%20and%20Adults%20-%20Implement...pdf.

³ New York City Department of Correction. (December 15, 2015). Re: Limited Variance Request to BOC Minimum Standards Regarding Implementation of the Young Adult Plan: Section 1-02. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/201512/2015-12%20-%20Six%20Month%20Limited%20Variance%20-Commingling%20of%20Young%20Adults%20and%20Ad....pdf.



security concerns within GMDC cited in the request were not new at the time they were mentioned in the variance and could have been brought to the Board prior to the December public meeting. While we are worried by what seems to be a lack of Department transparency and communication with the BOC, we are encouraged by the steps recently taken by the Board to exercise greater supervision over the Young Adult Plan.

During the December 16, 2015 public Board hearing, the extension was granted only until January 12, 2016, as opposed to the six-month period as requested, to allow for more opportunity to discuss, examine, and evaluate the Department's operational plan. **We oppose the six month delay requested by DOC. If the variance is adopted on January 12, we encourage the Board to again add conditions limiting the length of the extension until the following public Board meeting. DOC should be required to detail monthly all reasons for continued delay to the BOC along with actions taken to remedy barriers to implementation with the opportunity for public comment.**

Limited Variance on BOC Minimum Standard 1-17(b)(1)(ii): Exclusion of 18-21 year olds from punitive segregation

On November 10, 2015, the BOC voted to approve the Department of Correction's request for a limited variance regarding the exclusion of inmates ages 18 through 21 from punitive segregation that extended the deadline from January 1, 2016 to February 29, 2016.⁴ The most recent variance request, dated January 8, 2016, asks for a delay until June 1, 2016.⁵ Justification for the extension includes the need for the establishment of specialized housing and references the newly released Young Adult Plan update:

The Young Adult Plan update outlines the tier response protocol structure that utilizes three levels of progressively more restrictive but more therapeutic alternative housing types for inmates who infract. An inmate's placement in any one of the three housing options will be based on specific criteria that accounts for the severity and persistence of the violent behavior. Young adults placed in any of the three units will be provided with notice and such placement will be subject to periodic reviews to determine the continued appropriateness of the placement and whether a more or less restrictive housing option is appropriate.⁶

Further, the variance request cites the creation of a short-term secure unit pilot program that will be "designated as the most restrictive alternative housing unit" for "only the most serious and persistently violent young adults".⁷ We are disturbed by the Board's discovery in December that

⁴ City of New York Board of Correction. (November 2015). Record of Variance Action. Retrieved from [http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20151110/11.2015%20DOC%20Record%20of%20Variance%20Action%20\(PSEG\)%20POST.pdf](http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20151110/11.2015%20DOC%20Record%20of%20Variance%20Action%20(PSEG)%20POST.pdf).

⁵ New York City Department of Correction. (January 8, 2016). Variance Request to BOC Minimum Standards Regarding Implementation of the Young Adult Plan: Section 1-17 "Limitations on the Use of Punitive Segregation". Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20160112/DOC%20Variance%20-%20Elimination%20of%20Punitive%20Segregation%2018-21.pdf.

⁶ New York City Department of Correction. (January 8, 2016). Variance Request to BOC Minimum Standards Regarding Implementation of the Young Adult Plan: Section 1-17 "Limitations on the Use of Punitive Segregation". Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20160112/DOC%20Variance%20-%20Elimination%20of%20Punitive%20Segregation%2018-21.pdf.

⁷ New York City Department of Correction. (January 8, 2016). Variance Request to BOC Minimum Standards Regarding Implementation of the Young Adult Plan: Section 1-17 "Limitations on the Use of Punitive Segregation". Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20160112/DOC%20Variance%20-%20Elimination%20of%20Punitive%20Segregation%2018-21.pdf.



young adults had been placed in the North Infirmary Command's (NIC) highly restrictive units as well as in the extreme isolation of the West Facility, and appreciate the Board's conditions to the limited variance that sought to discontinue that practice.

While that finding demonstrates the importance and necessity of due process, we see no mention in the Young Adult Plan Update of mandatory due process or placement reporting requirements. According to the Board's Ad Hoc Adolescent and Young Adult Committee Update in December, the Board has been provided "inconsistent, inaccurate information as to [NIC and West] and how it would operate."⁸ In January 2015 the Board solidified their acknowledgment of the harms of isolation, as the Minimum Standards were amended to state "punitive segregation represents a serious threat to the physical and psychological health of adolescents"⁹. The Department must continue with the Young Adult Plan and we hope the Board's statement will be expanded to include mention of young adults. **For these reasons we encourage the Board, if this variance is adopted in January, to similarly limit each extension to thirty days to ensure continued accountability and public discussion of the Plan's progress. In addition, we ask that the Department be required to report publicly on the population and criteria for placement of youth adults into the three levels of alternative housing, and that more detailed plans for these units be made public.**

Department of Correction - Young Adult Plan Update 2016

At present, because of a variance in effect until February 29, 2016, 18 to 21 year olds can continue to be placed in Enhanced Supervision Housing (ESH) and punitive segregation. The Board's Minimum Standards indicate that both of those housing units afford specific protections, including but not limited to notification and opportunity for written comment, due process requirements, maximum placement duration restrictions, and consistent scheduled reporting to the Board of Correction. In January of 2015 the Board established that no inmate may be sentenced to punitive segregation for more than thirty days for any single infraction, and no inmate, with few exceptions established following the 2015 rulemaking process, may be held in punitive segregation longer than thirty consecutive days. We hope that oversight of new young adult housing will be relatedly comprehensive.

The Young Adult Plan Update outlines "Specific Criteria, Notification, and Periodic Reviews" for the "three levels of alternative housing for *inmates that infract*":

DOC will adopt specific criteria relating to the seriousness and persistence of the violence in which a Young Adult Inmate is involved to determine placement in these three units... The facility Warden or appropriate Deputy Warden will conduct a 60 day review of all inmates placed in a special designation unit, and every 90 days thereafter. Through these reviews, DOC will determine whether inmates have accomplished the goals set forth in the individualized plans they will receive upon admission into these units and determine whether inmates can be securely stepped down to progressively less restrictive settings.¹⁰

⁸ New York City Board of Correction. "BOC Hearing 12 16 15 HD." Youtube. Online Video Clip, (1:45:28), <https://youtu.be/bREInoRx3fY?t=6329>.

⁹ New York City Board of Correction. (January 2015). Notice of Adoption of Rules. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/BOCRulesAmendment_20150113.pdf.

¹⁰ New York City Department of Correction. (N/A). NYC Department of Correction – 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.



We find that the choice of 60 and 90 day reviews to be too infrequent, and we are concerned that the lack of clarity in the plan leaves room for potential deviation from the Minimum Standards.

The 2014-2015 rule making process established clear criteria for ESH, a process we hope will be afforded to these “Secure Units”. In ESH, the Department is required to hold a placement review hearing within three days of ESH placement, as well as a review every 45 days to determine whether placement is still warranted.¹¹ In regard to the other two young adult units, Transitional Restorative Units (TRU) and Second Chance Units (SCU), during the Board’s Ad Hoc Adolescent and Young Adult Committee Update in October 2015, the Committee shared that they are working with the Department to review specific admissions criteria, due process and placement review for those units.¹² **We ask that the outline of alternative housing models be updated and elaborated upon to explicitly mention those protections for young adults. These housing plans should be made public. Further, when making placement decisions the Department should be required to assign young adults to the least restrictive unit for the least amount of time, and we encourage the Board to consistently oversee compliance in this area.**

In bolded text, the DOC writes in the Young Adult Plan Update, “DOC has been focused on balancing safety and disciplinary concerns with brain research demonstrating that while Young Adults have a greater propensity for impulsivity and rash decision-making, they also have the capacity for behavior change.”¹³ We have been greatly encouraged by the Department’s continuing acknowledgement of the unique needs of older adolescents and young adults, and it is our hope that these new Secure Units will be open to open to public comment over the coming months.

Again, we encourage the Board to oppose the six month variance and to limit the duration of the extension to coincide with each public Board hearing to allow for interested parties to participate in and contribute to monitoring the Young Adult Plan’s implementation process. We thank the Board for their efforts in making public the Young Adult Plan Update, and we hope to continue working collaboratively to successfully eliminate punitive segregation for young adults in 2016.

Sincerely,

Charlotte Pope, Youth Justice Policy Coordinator
Children’s Defense Fund – New York
cpope@childrensdefense.org

¹¹ New York City Board of Correction. (January 2015). Notice of Adoption of Rules. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/BOCRulesAmendment_20150113.pdf.

¹² New York City Board of Correction. (October 2015). 2015/2016 Public Meeting Minutes: October 13, 2015. Retrieved from http://www.nyc.gov/html/boc/downloads/pdf/Minutes/2015/BOCMinutes_20151013.pdf.

¹³ New York City Department of Correction. (N/A). NYC Department of Correction – 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.