



Prisoners' Rights Project  
199 Water Street  
New York, NY 10038  
T (212) 577-3530  
F (212) 509-8433  
www.legal-aid.org

Blaine (Fin) V. Fogg  
*President*

Seymour W. James, Jr.  
*Attorney-in-Chief*

Justine M. Luongo  
*Attorney-in-Charge*  
Criminal Defense Practice

John Boston  
*Project Director*  
Prisoners' Rights Project

May 25, 2016

Martha King, Executive Director  
Chair and Members  
NYC Board of Correction  
1 Centre St.  
Room 2213  
New York, NY 10007

**Re: DOC request for an additional 30 day limited 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 June 1, 2016 deadline for ending the harmful practice of punitive segregation for the individuals in our City jails who are between the ages of 18-21. The time extension for ending this practice is not long, a request of an additional thirty (30) days. However, this is at least the fourth request for a delay in the closure of punitive segregation for these young persons.<sup>1</sup>

In this fourth request for additional time, the DOC indicates that “the initial four Secure Units are currently under construction at GRVC” and that they must “properly vet and gain construction design approval from the New York State Commission of Correction.” This is very troubling given the statements made earlier this month at the Board’s May 10, 2016 meeting. At that meeting it was reported that construction of the Secure Units was under way and, contrary to yesterday’s variance request, that the SCOC had *already* provided their approval of the plans.<sup>2</sup> DOC also stated that they would need time to simultaneously run the Secure Units while continuing to run punitive segregation in order to operationalize the new Secure Units properly. Based on ongoing construction and the fact that no Secure Unit has yet opened, this requested extension of time for 30 more days seems likely to repeat itself at the end of June, if not beyond. This perpetual failure to end the torture of 23 hour lock in for these young people cannot

---

<sup>1</sup> There have been prior variances extending the October 15, 2015 deadline: the deadline was extended to January 1, 2016 on October 13, 2015; it was extended to February 29, 2016 on November 10, 2015; and it was subsequently extended to June 1, 2016 on January 12, 2016.

<sup>2</sup> See Video, May 10, 2016 Board of Correction meeting, statement by DOC at 16:03-16:06, available online at <https://www.youtube.com/watch?v=YnUoRF1J0Kk&feature=youtu.be>.

continue unabated as it has for many months. The Board must take action that will ameliorate the harmful impact of punitive segregation now.

The Board of Correction should not grant the 30 day limited variance absent conditions that will provide immediate amelioration of harmful isolation by providing additional out-of-cell time to all 18-21 year olds held in punitive segregation. We recommend the following requirements be implemented by the Board as conditions for the grant of the variance. For all 18-21 year olds held in 23 hour lock-in punitive segregation past June 1, 2016, the DOC must:

- Provide at least 7 hours out-of-cell per day;
- Provide congregate recreation;
- Begin to utilize the program counselors;<sup>3</sup>
- Provide other interim initiatives including introducing CBT and other program initiatives planned for the Secure Units.<sup>4</sup>

We believe that these conditions are very reasonable considering that the DOC intends to provide ten hours out-of-cell time to this population by June 30<sup>th</sup>.

The May 24, 2014, variance letter raises additional questions about the need for this time extension and about the need for the proposed 56 beds of Secure Unit placement. The DOC asserts that they have reduced the population of 18-21 year olds in punitive segregation to 32. They also stated that they can reduce the population in need of a placement into a Secure Unit to 12. These numbers are both encouraging and alarming. If there are 20 young persons who do not require a placement into the Secure Units, then they should be moved out of punitive segregation now. If there are only 12 young person who require a placement into a Secure Unit, the DOC should not be building 56 beds in Secure Units.<sup>5</sup>

In addition to the above conditions and concerns, at the May 26, 2016 meeting, the Board should ask the DOC for the following information:

- An accurate report on the status of the Secure Unit construction and approvals;
- A detailed schedule regarding construction completion;
- Any plan to run the Secure Units simultaneously with punitive segregation and how they will accomplish needed transition by June 30.

We also ask that the Board either post, or require DOC to post, the materials and reports that were required as conditions to the variance granted on May 10, 2016 (variance to Standards

---

<sup>3</sup> These are reported by DOC to “already be in place” for the Secure Units. See Video, May 10, 2016 Board of Correction meeting, statement by DOC at 16:30-16:35, available online at <https://www.youtube.com/watch?v=YnUoRF1J0Kk&feature=youtu.be>.

<sup>4</sup> Programming initiatives were described at the May 10, Board of Correction Meeting. See Video, May 10, 2016 Board of Correction meeting, statement by DOC at 16:30-16:55, available online at <https://www.youtube.com/watch?v=YnUoRF1J0Kk&feature=youtu.be>.

<sup>5</sup> Seven Secure Units of 8 beds each were reported by DOC. See Video, May 10, 2016 Board of Correction meeting, statement by DOC at 15:19-15:30, available online at <https://www.youtube.com/watch?v=YnUoRF1J0Kk&feature=youtu.be>.

§ 1-05(b) requiring a minimum of 14 hours out-of-cell and § 1-08(f) requiring access to the law library).<sup>6</sup> It is essential that information is shared that will permit interested parties in providing valuable substantive comments on the implementation of the Secure Units.

The Board should not take action without imposing conditions that ameliorate punitive segregation for the 18-21 year olds in our City jails. The process of implementing alternatives to punitive segregation for young adults, identifying least restrictive alternatives that are effective in promoting rehabilitation and reducing violence, and do not reduce out-of-cell time without justification, must not be further delayed.

Sincerely,

Sarah Kerr  
Staff Attorney  
Prisoners' Rights Project  
Legal Aid Society

---

<sup>6</sup> The record of variance action includes the conditions that were imposed and is available online at: [http://www.nyc.gov/html/boc/downloads/pdf/Variance\\_Documents/20160510/2016.05.10%20-%20Record%20of%20Variance%20Action%20%28Secure%20Housing%29.pdf](http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20160510/2016.05.10%20-%20Record%20of%20Variance%20Action%20%28Secure%20Housing%29.pdf).

§ 1-05(b) requiring a minimum of 14 hours out-of-cell and § 1-08(f) requiring access to the law library).<sup>6</sup> It is essential that information is shared that will permit interested parties in providing valuable substantive comments on the implementation of the Secure Units.

The Board should not take action without imposing conditions that ameliorate punitive segregation for the 18-21 year olds in our City jails. The process of implementing alternatives to punitive segregation for young adults, identifying least restrictive alternatives that are effective in promoting rehabilitation and reducing violence, and do not reduce out-of-cell time without justification, must not be further delayed.

Sincerely,



Sarah Kerr  
Staff Attorney  
Prisoners' Rights Project  
Legal Aid Society

---

<sup>6</sup> The record of variance action includes the conditions that were imposed and is available online at: [http://www.nyc.gov/html/boc/downloads/pdf/Variance\\_Documents/20160510/2016.05.10%20-%20Record%20of%20Variance%20Action%20%28Secure%20Housing%29.pdf](http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/20160510/2016.05.10%20-%20Record%20of%20Variance%20Action%20%28Secure%20Housing%29.pdf).