



NEW YORK CITY DEPARTMENT OF CORRECTION
Joseph Ponte, Commissioner

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June 30, 2016

Stanley Brezenoff, Chair
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

Re: Limited Variance Request to BOC Minimum Standards Regarding Implementation of the Young Adult Plan: Section 1-02(c)(1) and Section 1-17(b)(1)(ii)

Dear Mr. Brezenoff:

The New York City Department of Correction (“Department”) has ended the practice of punitive segregation for all 18 year old inmates, which complements the Department’s past elimination of the practice for inmates ages 16 through 17. This is in addition to continued reductions in the use of punitive segregation with the broader overall population, reducing the number of inmates in punitive segregation from around 600 when I took my position as Commissioner to roughly under 140 as of a few days ago. The Department has done this rapidly, and, with considerable measure to ensure such efforts are done safely.

Pursuant to §1-15(b) of the New York City Board of Correction’s (“Board”) minimum standards, the Department writes to request two six (6) month limited variances from BOC minimum standards. First, from §1-02(c)(1) which as of July 12, 2016¹ requires inmates ages 18 through 21 be housed separately and apart from inmates over the age of 21. Second, from §1-17(b)(1)(ii), which requires, as of June 30, 2016², the exclusion of inmates ages 18 through 21 from punitive segregation. While the scope of the BOC minimum standards §1-02(c)(1) and §1-17(b)(1)(ii) are applicable to young adults ages 18 to 21 inclusive, the Department is seeking these variances only for young adults ages 19 to 21 years old. As noted above, the Department has already ended punitive segregation for the 18-year old population.

Over the last several months, the Department has thoughtfully initiated the transition and consolidation of young adults into the George Motchan Detention Center (GMDC), and in support of its plan to end the use of punitive segregation for this population, created appropriate, safe housing alternatives developed through a tiered response protocol designed and utilizing three (3) progressively more therapeutic and more structured housing options geared towards incentivizing positive behavior with heightened programming, inmate engagement, and staffing. To date, all three (3) housing types -- Second Chance, Transitional Restorative Unit (TRU), and most recently Secure Unit -- have been stood up and operationalized. All along, the plan has contemplated a sequencing

¹ Based on variances granted by the Board on September 8, 2015, December 16, 2015, and January 12, 2016 extending the October 15, 2015 deadline for the housing of inmates ages 18 to 21 separately and apart from inmates over the age of 21.

² Based on variances granted by the Board on November 10, 2015, January 12, 2016, and May 26, 2016 extending the January 1, 2016 deadline for the exclusion of inmates 18 to 21 years of age from punitive segregation to June 30, 2016.

whereby the Department is able to utilize the Secure Unit while punitive segregation remains operational, test the Secure Unit's effectiveness, and appropriately move young adults out of punitive segregation into a safe alternative.

As we moved towards both ending the use of punitive segregation and eliminating comingling of all young adults (18 to 21 years old), maintaining the safety and security of staff and inmates has been paramount. Over this month, June 2016, the Department monitored Second Chance and TRU, and moved young adults out of punitive segregation placement to these units or to other housing options. Initially, GMDC saw continued success and safe outcomes with these efforts.

However, as noted by the Board's tours and communications with the Department regarding GMDC, concurrent with the Department's own observation of the situation, a marked shift occurred shortly after the first week in June when the Department started to increase the number past 700 of young adults housed together in GMDC. In particular, this included an exceptionally high increase in the number of high-risk young adults (young adult inmates with particularly violent histories or strong gang involvement) that were transferred into GMDC surging from 40 to 76 from the last week of May to the second week of June. The Department had been trying to slowly transition such high-risk young adults into the facility, averaging 6-10/week. Prior to GMDC's young adult population reaching 700 and increasing the number of high-risk young adults, GMDC averaged 5 to 6 alarms per day. After, the average number of alarms doubled to 12 per day. One day during this period, alarms increased to 26, more than one per hour. When daily alarms remain low, they can be addressed without significantly affecting day-to-day operations, however as the number of incidents and alarms increased exponentially it had a facility-wide impact.

Since the beginning of June 2016, there was a pronounced spike in the number of incidents, particularly concerning, the rise in serious and violent incidents. This rise in incidents -- ranging from inmates refusing orders to slashings -- has been attributed to the increased number of "high risk of violence" young adults moved to GMDC in early June. The Department rapidly responded to the issues, identifying and initiating a comprehensive evaluation of the overall young adult plan and remedial action, as discussed in greater detail in the Department's June 27, 2016 letter to the Board. While this uptick alone could be reason enough to counsel that the Department should slow down both the elimination of comingling of 18 to 21 year olds with inmates ages 22 and older and the end of punitive segregation for young adults, it is not the only factor weighing in favor of these variance requests.

As the Board is aware, throughout the implementation of the Department's plan we have been working to manage the surge in overtime and abate the negative consequences high overtime has on GMDC's ability to successfully manage this increasingly challenging population. Prior to the introduction of new officers from the academy, GMDC averaged close to 1900 hours of overtime each day. And while the introduction of new officers into the facility lowered overtime initially, increasingly high number of incident, related security responses and alarms, and continued training requirements from *Nunez* quickly ate into the initial overtime relief. As part of the overall young adult plan, 160 new officers from the Academy's May 2016 graduating class were posted on duty at GMDC and are working with the young adult population for the first time. These new officers' will contribute to lowering overtime and successfully managing young adults at GMDC in the long run, but in the immediate future demand the attention of peers, senior staff, and managers to train and mentor them.

At each stage of the process the Department has monitored and assessed the advancement of the plan and strategically made adjustments as necessary. As the Department has been working diligently

to establish an alternative housing plan for young adults with the goal of achieving full compliance with the separate housing and elimination of punitive segregation provided by the minimum standards, issues arose which required immediate reevaluation of the plan and the established housing structure. Recent events have revealed that one facility dedicated to young adults may not be viable and alternative, appropriate separation in a different facility may be necessary. GMDC was initially selected as the primary young adult facility due to its school and programming space. In light of recent circumstances and ongoing review, GMDC may lack the structural essentials for needed movement and gang separation with such a population that has historically represented the highest concentration of gang involvement (also influenced by gang activity and violence outside the Department), overall violence (whereby roughly 10% of the Department's population represents roughly 30+% of its violent incidents), and attention. Additionally, there are security concerns with ongoing need for facility repairs – young adults continue to jam materials to prevent and even break cell door closing mechanisms, which will require almost daily review and maintenance. As of last week, 108 cell doors had been compromised because of tampering and required fixing.

To that end, the Department is advancing a combination of immediate and long-term measures for the management of the young adult population that incorporates a more refined housing construct. Generally, 18 year olds will remain housed in GMDC. The housing of 19 to 21 year olds will be based on further analysis as we have noted that when these young adults are co-mingled with adults they are involved in fewer violent incidents than their counterparts housed by themselves in GMDC. At this time, as we refine the plan, approximately 700 of the 872 eligible young adults will be housed within GMDC (continued exceptions for the sentenced population, CAPS and PACE, and other special populations apply). While, thus far, the Department has effectuated the transfer of twenty-five (25) young adults from GMDC to AMKC, the Department has also slowed down the move of the remaining 84 young adults currently housed outside of GMDC and is working on alternative facility placement for a number of those young adults. In general, in some circumstances, the Department has found that some young adults (ages 19-21), who are currently in comingled housing outside of GMDC present few, if any, problems. The Department is assessing the appropriateness of the remaining young adults' housing outside of GMDC, and will make modifications to identify appropriate housing, staffing, and related programming and training to ensure proper management and care for those who might be housed outside of GMDC. Third, we have also instituted a daily classification and movement team meeting to ensure appropriate classification, housing, and gang separation department-wide for this population. This daily meeting stem from the recognition that 30% of June incidents could be linked to gang separation and classification issues.

Taking all these steps, the Department can establish appropriate housing units and separation across a set number of facilities. It will also provide the Department an opportunity to assess the effectiveness of either separating 19-21 year olds from older inmates, or determining that for a certain population, the co-mingling of 19-21 year olds with older inmates is a more effective and beneficial management approach. Should this be the case, the Department would work with the Board to determine if any rule change is necessary to best implement that strategy.

As with the creation of any innovative plan, it is critical to the safety and security of staff and inmates to proceed in a methodical and deliberative mode with sufficient flexibility for modifications as dictated by the circumstances. Since the beginning of June, thirty-six percent (36%) of incidents involved young adults who had been in TRU prior to returning to general population. This has prompted further review of the current housing structure and the need for additional housing options, including continuing the use of punitive segregation for this segment of the population that continues to engage in serious or violent incidents. Due to the concentration of incidents within the high classification population, targeted efforts are being advanced for this population, included but

not limited, to assignment of additional officers, reassignment of Adult Mentors and Program Counselors to provide targeted programming and foster enhanced engagement, and adjustments to recreation schedules, both in the gym and outside yards areas, to expand overall availability. Notwithstanding these efforts, however, recent issues related to GMDC make clear that the Department cannot safely complete the elimination of comingling or end punitive segregation for 19-21 year olds, at this time.

As the Board knows, the current punitive segregation-based model has been correctional practice for decades. Over the last two years, the Department has made significant strides in the management of punitive segregation. Reforms have resulted in an 80% reduction in the number of inmates in punitive segregation and the imposition of length of stay limits. It is equally significant to note that during this period of dramatic reform we also successfully decreased violence. Since last year, the Department has successfully decreased UOF with serious injuries by 50%, and UOF total have declined 2%. In addition, assaults on staff overall are down 22% and assaults on staff resulting in any serious injuries are down even further at a 41% decrease. Overall fights resulting in serious injuries are also down from last year. These successes reflect the critical importance of adhering to a thoughtful and deliberative process in the advancement of ground-breaking correctional practice.

The Department has ended punitive segregation for all 16 to 18 year olds in our custody. The number of young adults in punitive segregation has been significantly reduced, with over 60 young adults already transferred to Second Chance or TRU and successfully managed within those units. The data demonstrates that we have dramatically reduced and effectively ended punitive segregation for the 18 year olds. Currently, only a small number of 19-21 years olds, 9, remain in punitive segregation, compared to 78 young adults in punitive segregation at the beginning of this year. However, requiring the elimination of the use of punitive segregation now, with 19-21 year olds, when the Department has not been able to utilize the Secure Unit simultaneous with punitive segregation or test the Secure Unit's effectiveness, would be detrimental to the success of the plan. This plan is dependent on proper coordination of the numerous factors involved and requires flexibility in order to achieve success.

While a further extension of a previously granted variance is not the outcome we had planned for and worked diligently towards compliance, this variance request is the only appropriate response to the facts and circumstances described herein. Regrettably, punitive segregation for 19-21 year old young adults cannot be safely eliminated at this time. Further, a six-month variance does not mean that the Department's reforms of young adult management or the manner in which the Department currently uses punitive segregation will not continue to advance. To the contrary, throughout the requested extension of time the Department believes it can maintain its current use of punitive segregation as a more meaningful tool to manage the most serious and persistently violent 19-21 year old young adults.

The Department is also committed to exploring and implementing additional, non-traditional punitive segregation offerings to those 19-21 year olds who remain in punitive segregation, similar to those introduced in Secure Unit housing, such as (1) 2 hours of offered recreation, (2) programming at the appropriate restraint status so that young adults can safely and securely attend school or participate in programming on the unit, (3) increased mental health rounds, and (4) a schedule of daily rounding for program counselors, and (5) potentially introducing the same journaling program that has proven to be successful in our Enhanced Supervision Housing units.

As we have stated repeatedly, the young adult plan is unprecedented in the management of young adults in the correctional setting. Continual assessment is essential to effectively establish a

correctional approach that fosters the needs of this population while maintaining the safety and security of staff and inmates. It is imperative that the Department be afforded the time necessary to evaluate the contributing factors that have resulted in the current situation and determine what next steps should be taken prior to any further consolidation or elimination of punitive segregation efforts. The unions have communicated to the Department that they share similar concerns surrounding the impact of the issues of overtime, staff readiness and operational challenges at GMDC, and have promoted the position that the Department needs to make certain adjustments in order to properly and safely manage the facility and implementation of the plan.

The Department has consulted with the *Nunes* Monitor throughout the implementation of the Young Adult plan and has advised the Monitor of the facts and circumstances set forth above. The Monitor and his team of experts - who have experience eliminating the use of punitive segregation in other jurisdictions - have continuously advised the Department on the need to be thoughtful and deliberate in our approach to punitive segregation reforms, and have cautioned that moving too quickly towards the ultimate goal of ending punitive segregation can undermine the success the Department has already achieved through reforms to the management of this population. The Monitor has advised the Department the variance request is consistent with sound correctional practice and that he believes it represents the most reasonable and prudent approach in light of the current facts and circumstances.

The Department has made a good faith effort to fully comply with the minimum standards by the date specified in the previously granted limited variances, but based on the events as detailed above is unable to achieve full compliance with (1) the June 30, 2016 deadline to end punitive segregation for 18 to 21 year olds, and (2) the July 12, 2016 deadline to house young adults ages 18 through 21 separately and apart from inmates over the age of 21. During this six (6) month period, the Department will continue to monitor and assess the effectiveness of the young adult custody management approach with the goal of ending punitive segregation for the 19 to 21 year olds. As noted above, we will also work with the Board to determine the best strategy for safely housing young adults' ages 19 to 21 years old.

The Department appreciates the Board's consideration of the two requested six (6) month limited variances. We look forward to continuing to work together to ensure the successful adoption of the Young Adult Strategy plan.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph Ponte".

Joseph Ponte

cc: Martha King, Executive Director