



July 11, 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: 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 Executive Director King, Chair Brezenoff, and Board Members:

We are concerned that the Department of Correction (DOC) is again requesting an extension of the deadline for ending the harmful practice of punitive segregation for those in City jails between the ages of 19 and 21. This is the fourth request to delay the closure of punitive segregation for the young adult population:

- (1) On November 10, 2015, the January 1, 2016<sup>1</sup> deadline was extended to February 29, 2016;<sup>2</sup>
- (2) On January 12, 2016 that deadline was extended to June 1, 2016;<sup>3</sup>
- (3) On May 26, 2016 that deadline was extended to June 30, 2016.<sup>4</sup>

At this time, we are writing to ask that the Board require a clearer explanation for the extension and that the Board closely monitor the DOC's progress in remedying all barriers to expedite the elimination of punitive segregation for young adults. The DOC has written that, as of June 30, 2016, nine 19-21 year olds are housed in punitive segregation. We recommend that the Board direct the DOC not to increase that population, and that the young adults currently held in punitive segregation not remain for the duration of any additional extension granted through the use of overrides. More specifically, we have various concerns with the claims being relied upon to justify the continuation of the use of punitive segregation.

**Claim 1: Punitive segregation must exist while Secure is piloting.**

In May, many advocates, including CDF-NY, testified before the Board asking that the limited variance for the establishment of the Secure Unit not be approved for the full six-months as requested by the DOC. During the Board's discussion of an amendment to limit the variance to a duration of 2 rather than 6 months, which did not pass, a member of the Board shared:

I am in support of six months but that's also under the condition that we really are going to be ending punitive seg within like a thirty-day. I don't want to see that there's going to be a six-month trial of punitive seg and Secure and I think that that is probably a great concern of the advocates and the Board.<sup>5</sup>

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<sup>1</sup> City of New York Board of Correction. (2015, January 13). Open Meeting. Retrieved from [http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20\(1.13.15\).pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20(1.13.15).pdf). See - "Inmates ages 18 through 21 [will be excluded] provided that sufficient resources are made available to the Department for necessary staffing and implementation of necessary alternative programming."

<sup>2</sup> Board of Correction City of New York. (2015, November 10). Record of Variance Action. Retrieved from [http://www1.nyc.gov/assets/boc/downloads/pdf/DOC%20Record%20of%20Variance%20Action%20\(PSEG\)%20POST.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/DOC%20Record%20of%20Variance%20Action%20(PSEG)%20POST.pdf).

<sup>3</sup> Board of Correction City of New York. (2016, January 12). Record of Variance Action. Retrieved from [http://www1.nyc.gov/assets/boc/downloads/pdf/01.2016%20%20Record%20of%20Variance%20Action%20-%201-17\(b\)\(1\)\(ii\)%20-%20Exclusion%20from%20PSEG.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/01.2016%20%20Record%20of%20Variance%20Action%20-%201-17(b)(1)(ii)%20-%20Exclusion%20from%20PSEG.pdf).

<sup>4</sup> Board of Correction City of New York. (2016, May 26). Record of Variance Action. Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/2016.05.26%20-%20Record%20of%20Variance%20Action%20-%201-17%28b%29%281%29%28ii%29%20-%20Exclusion%20from%20PSEG%20final.pdf>.

<sup>5</sup> NYC Board of Correction. (2016, May 11). "BOC Meeting 05 10 16 HD." YouTube. 1:25:31 / 2:55:42. Retrieved from <https://youtu.be/YnUoRF1J0Kk?t=5131>.



Because of the DOC's history of delaying this reform, it is imperative that any additional variance requests be considered at frequent, consistent intervals and that they include new information and reasoning relevant to the circumstances present at the time of the request. We ask, in support of the Board's laudable efforts to increase transparency, that the limited variance not be approved for the full 6-months and that the DOC be required to once again submit a substantive request for a limited variance in time for the September public meeting.

According to the DOC's June 27<sup>th</sup> letter to the Board, "The Department needs to slow down consolidation of young adults into GMDC, *which will not impact the ending of punitive segregation for this population.*" It is our understanding that three days later, in the June 30<sup>th</sup> variance request, that the DOC changed course. This is a continuing pattern. In May of 2016 we were assured that the DOC still planned to eliminate punitive segregation for young adults by June 1<sup>st</sup> 2016, even as the DOC emphasized the importance of continuing punitive segregation for some period of time after the Secure Units open<sup>6</sup> to "demonstrate to staff that these Units are a safe alternative to punitive segregation." However, in late May, the DOC asked for an additional 30 days of punitive segregation, with the explanation that construction of the Secure Units was ongoing.<sup>7</sup> Today, it is our understanding that the Secure Units have opened, and instead of again requesting a 30 day extension as has been the trend, the DOC is asking for what could become 180 days. We would appreciate greater clarity on why the six-month duration is necessary.

### **Claim 2: Due to an uptick in incidents, punitive segregation cannot end.**

We further ask that the Board require the DOC to provide an explanation of the need for a 6-month variance that goes beyond using language that "a marked shift occurred" or "alarms increased" in the month of June. In the letter from DOC, dated June 27, 2016 and titled "Re: GMDC update," the DOC writes:

The overall uptick [in violence] has coincided with the Department's rapid efforts to make final moves that consolidate young adults into the facility. This has included, in particular, a significant increase in the number and concentration of 'high risk for violence' young adults, who were located outside of the facility until recently. These high-risk young adults grew from 44 the last week of May to 76 by the end of the first week of June.

The June 30 variance request uses noticeably stronger language, saying "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."<sup>8</sup> Within the three day period between the GMDC update and the variance request, violence moved from "*coincided*" with the moves to "*has been attributed to*" the moves. Of the "pronounced spike in the number of incidents," "ranging from inmates refusing orders to slashings,"<sup>9</sup> we have not been provided with any additional information such as the exact number and precise nature of the incidents, or the entirety of factors considered before it was determined what was and was not "attributable" to the moves. We understand that on May 10, 2016 there were 38 young adults held in punitive segregation, whereas the letter describes 9 as of June 30, 2016, and we would appreciate further clarity and evidence before assigning a causal relationship between release from punitive segregation and participation in an act of violence.

<sup>6</sup> NYC Board of Correction. (2016, May 11). "BOC Meeting 05 10 16 HD." YouTube 28:14 / 2:55:42 Retrieved from <https://youtu.be/YnUoRF1J0Kk?t=1694> "June first is the date that is the target the change."

<sup>7</sup> New York City Board of Correction. (2016, May 26). Public Meeting Minutes. Retrieved from [http://www1.nyc.gov/assets/boc/downloads/pdf/2016\\_05\\_26\\_minutes\\_final.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/2016_05_26_minutes_final.pdf)

<sup>8</sup> New York City Department of Correction. (2016, June 30). 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). Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/July-2016/DOC%20Six%20Month%20Variance%20Requests%20Letter%20-%20Elimination%20of%20Punitive%20Segregation%20for%2019-21%20year%20olds%20and%20Housing%20Separately%20and%20Apart%206.30.16.pdf> – Hereafter cited as "Re: Limited Variance Request (2016, June 30)"

<sup>9</sup> Re: Limited Variance Request (2016, June 30)



**Claim 3: Due to needs around “gang separation and classification,” punitive segregation cannot end at this time.**

In the DOC’s “GMDC update,” it is written that “over 30% of the incidents that occurred *could* be attributed to some gang separation and classification issue that required closer investigation and review before movement.”<sup>10</sup> In the limited variance request, the DOC writes:

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.<sup>11</sup>

It is also written that a “daily classification and movement team meeting” has been instituted, based on “the recognition that 30% of June incidents *could* be linked to gang separation and classification issues.” We ask that the Board require the DOC to provide a more comprehensive analysis of the June incidents that assesses the multiple factors which might contribute to participation in violence.

DOC’s comments about staffing also raise legitimate concerns. The DOC states, “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.” There are no circumstances under which punitive segregation should become an acceptable remedy for “continued training requirements from *Nunez*”<sup>12</sup> or matters of overtime relief.

**Claim 4: Punitive segregation can end for 18 year olds, but not 19, 20, or 21 year olds.**

For 19-21 year olds, punitive segregation is described as “a more meaningful tool to manage the most serious and persistently violent,” and the DOC has volunteered a set of conditions for placement that lessen restrictions typically imposed in punitive segregation, calling them “non-traditional punitive segregation offerings:”

- 2 hours of offered recreation;
- Programming at the appropriate restraint status so that young adults can safely and securely attend school or participate in programming on the unit;
- Increased mental health rounds;
- A schedule of dialing rounding for program counselors, and
- Potentially introducing the same journaling program that has proven to be successful in our Enhanced Supervision Housing units.

If the Board chooses to approve the limited variance request, we ask that the DOC also be required to provide 2 hours of *guaranteed congregate* recreation, and, considering that the Secure Unit operates with 10 hours out-of-cell per day, that the DOC make best efforts to offer as much out-of-cell time as is feasible.

It is briefly mentioned that the DOC will be assessing the effectiveness of separating 19-21 year olds from older people, and “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.” In 2014, the idea of bringing together 18-21 year olds was considered based on the agreement that 18-21 year olds shared characteristics such as entitlement to educational services, and that their co-mingling would allow that subset of people access to greater programming.<sup>13</sup> Because young adult access to and participation in schooling has been

<sup>10</sup> New York City Department of Correction. (2016, June 27). Re: GMDC Update. Retrieved from [http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/July-2016/BOC\\_GMDC\\_06272016.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/July-2016/BOC_GMDC_06272016.pdf)

<sup>11</sup> Re: Limited Variance Request (2016, June 30)

<sup>12</sup> Re: Limited Variance Request (2016, June 30)

<sup>13</sup> New York City Board of Correction. (2014, July 8). Public Meeting Minutes. Retrieved from [http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20\(7.8.14\).pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20(7.8.14).pdf).

a theme addressed by the Board,<sup>14</sup> it is our hope that any plan to co-mingle 19-21 year olds with older inmates include increased efforts to guarantee young adults do not face barriers in accessing the optional educational services they are entitled to.



### Conclusion

In consideration of the harm young adults experience through assignment to solitary confinement, we recommend that the 9 young adults currently in punitive segregation be moved to the least restrictive environments, that any approval of the variance request ensure punitive segregation takes on the least restrictive environment, and that no additional young adults be placed in punitive segregation. We strongly support the elimination of solitary confinement for all under the age of 21 as planned. Further, without information that addresses questions raised by the variance request, we cannot support Board approval without stricter limitations on duration.

Sincerely,

Charlotte Pope  
Youth Justice Policy Associate

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<sup>14</sup> New York City Board of Correction. (2016, March 8). Public Meeting Minutes. Retrieved from [http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes\\_20160308.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes_20160308.pdf).