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Re: Comments and Recommendations in Response to the Department of Correction (DOC) Delay in Implementation of the Young Adult Plan

Dear Chair Brezenoff and Members of the Board:

We write to comment on the current young adult plan and to urge the Board to monitor and limit the use of all forms of restrictive housing for the young adult population (18-21 year olds) while the Department completes its plan to provide appropriate housing, treatment, and programming and to eliminate the use of punitive segregation, for this population of young persons in our City jails.

The Department's delay in implementing young adult housing and eliminating the use of punitive segregation for these young people is unfortunate. It indicates that the Board must set specific time frames and assist the Department in implementation and meeting set goals. During this period, the Board should monitor the Department's compliance with Board conditions on limiting the use of *all* forms of restrictive housing, and provide expert assistance in designing appropriate, less restrictive alternatives that will reduce violence and provide for humane housing of young persons, and that provide due process protections including frequent review so young adults can be returned as quickly as feasible to less restrictive confinement. The Board should require that the Department have written policies in place concerning the operation of any proposed restrictive units, that are consistent with Board Standards and conditions, *before* there are any transfers of young adults into these settings.

The Board Must Not Retreat From Reforms to Punitive Segregation

The Board has recognized that confinement in restrictive settings such as punitive segregation and enhanced supervision housing "presents a serious and unacceptable threat to the physical and mental health of certain categories of inmates, namely inmates of certain ages and those who suffer from serious physical or serious mental disabilities or

conditions.”¹ Last January’s amendments to the Standards required that the Department exclude inmates ages 18 through 21, provided that sufficient resources were made available to the Department for necessary staffing and implementation of necessary alternative programming. Standard § 1-17 (b)(1)(ii).

The Board must not stand by while the plan to end punitive segregation is turned into a plan to recreate the same kind of torturous conditions and same failure to reduce violence under the guise of classification. The proposed use of the North Infirmery Command (NIC) areas is wholly inappropriate for the young adult population; it is extremely restrictive, extremely isolating and has previously been used for classifications that do require due process protections.² “Out-of-cell” time is time spent in an only slightly larger cell with one or two others, recreation is in individual cages such as those used in punitive segregation. The requirement of cuffed and escorted movement is a notorious hindrance to accessing attorney visits, medical and mental health care, and similarly restricts access to phone calls and other services. Lockdowns compound these problems with access to services. There is a lack of program space, classroom space and day room space. The Department’s assertion that these areas are general population and comport with the Board’s Standards does not reflect the reality of their operation and their lack of suitability for the purpose of housing young adults and implementing programs.

The reported installation of more extreme punitive restraining tools at NIC – to utilize shackling by the arm and/or feet in program and other areas – is extremely disconcerting and exhibits an abandonment of plans to end harmful extremely restrictive and isolating conditions for young adults. Such mechanical devices are emblematic of disrespect for the humanity of the individual. The Board must ensure that this does not happen and that plans to implement sound violence reduction and de-escalation techniques for the young adult population are realized.³ The Board’s experts, Drs. James Gilligan and Bandy Lee, made these points in 2013:

We cannot overemphasize the importance, in the treatment both of the mentally ill and of those who have become violent, of treating them with respect, and providing them

¹ Board 2015 Amendments to Minimum Standards, Statement of Basis & Purpose at p. 2 available online at: http://www.nyc.gov/html/boc/downloads/pdf/BOCRulesAmendment_20150113.pdf.

² These areas have been used for high security Centrally Monitored Cases “CMC max”, and enhanced restraint/Red I.D. status inmates. The DOC directives for these classifications require due process protections. See e.g. DOC Directives 4505R (Centrally Monitored Cases), 4518 (Red ID Status and Enhanced Restraint Status Due Process). See also Directive 6006R Close Custody Housing (former Close Custody placement required due process protections), Directive 6007R Protective Custody (even involuntary protective custody provides for due process procedures to challenge such placement), and *Benjamin v. Fraser*, 264 F.3d 175, 188 (2d Cir. 2001) (holding use of restraints against detainees believed to have used or possessed weapons required due process protection).

³ “One of the commonest mistakes made about punishment is that it prevents or deters violence. On the contrary, more than a century of research on the psychology of punishment has made it clear that punishment, far from preventing violence, is the most powerful tool we have yet created for stimulating violence.” Gilligan, James, “Punishment and Violence: Is the Criminal Justice System Based on One Huge Mistake?,” *Social Research* 67(3):745-772, 2000.

with non-violent means of gaining self-respect (such as education and jobs). We believe that shaming and humiliating people, in all the different ways in which that can be done (disrespecting and dishonoring them, insulting and assaulting them, ridiculing and rejecting them) are among the most potent causes of both mental illness and violence.⁴

We urge the Board to reject any Department plan to use highly restrictive areas in NIC and other City jail facilities for young adults. In addition, the Board should provide specific requirements and limitations on any form of restrictive housing used for young adults.

Requirements and Limits on All Forms of Restrictive Housing for Young Adults

Due Process: Any placement of a young adult into a restrictive setting should include due process protections that are tape recorded and require written findings. Effective jail management requires consistency of process and the accurate communication of standards and consequences. For young people the need to understand the bases of restrictions, reasons for placement, and the ability and process to earn their way to a less restrictive setting is essential.⁵ Moreover, due process protections will permit appropriate monitoring of the consistency and fairness of placement decisions by the Department. There should be notification to the young person, the attorney who represents the young adult, and to the Board. Counsel should be able to participate in the hearing process on behalf of their client.

- Provide due process protections including written notice, opportunity to be heard, assistance in preparation for and completion of a hearing,⁶ a written decision and an opportunity for appeal.

⁴ Gilligan & Lee, *Report to the New York City Board of Correction*, September 5, 2013, p. 14, see also p. 17 (concerning the damaging effects of housing human beings in harsh environments that result in violent behavior), and see MacArthur Foundation & Models for Change Resource Center Partnership, *Systems Reform in Juvenile Justice, Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System* (2014) p. 7 (“[t]he most effective [juvenile justice] programs and services are those that seek to meet youth’s needs and influence their development in a positive way, by promoting contact with prosocial peers and adult role models, actively engaging parents and family members, offering tools to deal with negative influences that youth may face in their communities, and engaging youth in educational programming and employment that will prepare them for conventional adult roles.”).

⁵ See, Council on Accreditation, *Residential Treatment Services* (2014), at RTX 18.02 (Standards for residential congregate care settings for youth require that residents receive: “(a) a positive adult example; (b) nurturance, structure, support, respect, and active involvement; (c) predictable limit-setting; ... (d) guided practice to learn effective communication, positive social interaction, and problem solving skills; and (e) education and skills training specific to risk-taking behaviors, including practice with decision making and anger management.”).

⁶ The majority of the young adults have active representation by counsel. Counsel should be notified so that they may assist their client in opposing placement into a restrictive setting in the jails. Communication with counsel will improve the quality of representation, and will permit counsel to share information that may be relevant to appropriate treatment and classification planning for better jail management.

- Set criteria for placement into a restrictive setting;
 - Set criteria for advancing to a less restrictive setting; and
 - Reviews every 15 days (or less) to assure movement to a less restrictive setting as soon as possible. HHC staff should participate in all reviews and should have the authority to mandate transfer from restrictive settings for their patients.
- Least Restrictive Alternatives – there must be a requirement that movement out of restrictive housing should happen as quickly as possible. The reviews *should* result in transfers to less restrictive housing whenever possible. The Board should identify factors that should be considered at the review, how such factors should be considered and should require a placement in the least restrictive housing that is appropriate for the individual at the time of the review. The conditions should include HHC participation in the review process (including the ability to mandate movement to a less restrictive setting and/or a mental health setting), language that encourages transfers to least restrictive alternatives and a presumption of transfer unless there are current reasons to maintain the young person in restrictive housing. We also recommend that the Board provide for a mandated out-of-cell time, congregate recreation and access to therapeutic programming.

Medical and Mental Health Access: In areas where individuals are housed in restrictive and isolating settings in the jails, there must be easily accessible medical care and mental health treatment. Presence of mental health staff is essential in restrictive settings to monitor and assess changes in psychiatric condition and stability that is known to occur in isolated confinement settings. The Board should require that mental health staff do more than daily “rounds” of restrictive housing units. Individuals, including the young adult population, housed in restrictive settings should have access to confidential, out-of-cell meetings with mental health staff including routine mental health assessments on a regular basis, in a private therapeutic setting. Medical care through sick call must also be provided. The Board should require sufficient escort staff to provide access to medical clinics and close proximity of clinical space to restricted housing areas.

Require Public Reporting and Monitor Conditions: The Board should carefully monitor conditions in young adult housing during the term of these variances. This should include observation of the suitability of space in proposed areas for young adult housing including alternative secure housing units, ability to comply with Board Standards (and variance conditions) in these units and the Departments progress in reducing the use and length of lockdowns, reducing the number of use of force incidents and improving the availability of trained, steady security staff and supervision. In depth analysis and review of incidents should be conducted that include a review of security breaches, staff nonfeasance and malfeasance, in order to improve security and safety for young adults and Department staff. The Board should require that the Department report on implementation of the young adult plan and should publish results of its observations and monitoring to the public.

The DOC Young Adult Plan Update

We appreciate the Board's action at the December 16, 2015 meeting to grant only a short variance on the time frame for the young adult plan. The Board granted the variance on conditions that required that the DOC provide information on an operational plan by January 7 including: a description of the physical layout of all housing for young adult inmates with photos of cells, recreation areas, classrooms and other program space; information on inmate access to outdoor and indoor recreation, law library, classrooms, medical and mental health services, religious services, and programmatic services; restrictions to be imposed on individual inmates including visiting; and programmatic services for inmates.⁷ The plan was required to include a description and discussion of secure housing alternatives to punitive segregation.

DOC did not comply with those requirements. A short, 3¼ page, plan was posted late in the afternoon on January 8th. The plan contains promising elements including the inclusion of HHC in program development and operation. However, it does not provide the detail required by the Board conditions set on December 16th. The lack of information in the plan makes it difficult to provide valuable specific input into this process. The community should have access to all of the operational plans or draft operational plans in order to provide more substantive comment than the short time limit and brief description permit today.

Comments on the Department's Young Adult Plan Update ("YA Plan"):

- Extension of Punitive Segregation – The Department “seeks an extension of time to completely eliminate punitive segregation until the core components of the Young Adult plan have been implemented and alternative housing units have been shown to be safe for managing the small number of seriously violent young adult inmates.” (YA Plan, p. 1.)

It is unrealistic to expect that there will be no setbacks and no incidents in the jails. It is inappropriate and unacceptable to suggest that reliance on punitive segregation is the appropriate response to such safety concerns. Increased use of punitive segregation has never resulted in a reduction in violence in the City jails.⁸

⁷ Board member Bryanne Hamill requested the information and proposed the condition because inconsistent and inaccurate information had been reported to the Board concerning the areas in North Infirmery Command (NIC) and West Facility where young adults had been transferred and where the Department was planning to house young adults. See video 12/16/15 Board Meeting at 1:44 (intent to house up to 25 young adults at NIC) and 1:45:30 (inconsistent and inaccurate information from the Department).

⁸ The number of solitary confinement beds increased in number from 614 in 2007 to 998 in 2013. Gilligan, Lee, *Report to the New York Board of Correction* (Sept. 2013) at p. 3. Yet from fiscal year 2010 to fiscal year 2013 uses of force increased by 59 percent (1,871 to 2,977), slashing and stabbing incidents increased by 30% (34 to 68), assaults on staff increased by 30% (500 to 646). Statement of Joseph Ponte, Commissioner, NYC Department of Correction to New York City Council Committee on Fire and Criminal Justice Services, June 2, 2014.

- Staff Training for Steady Posts – The Department commits itself to training officers assigned to the steady posts in young adult housing. (YA Plan, p. 2.) All posts in young adult housing should be steady posts and training should extend to staff whom fill-in as well. All staff that work with young adults should have the specialized training necessary to provide a consistent and appropriate environment within these housing areas.
- Staff Training – The Department will be providing additional training (beyond Safe Crisis Management) in Cognitive Behavioral Therapy only to those staff working in the alternative housing units. (YA Plan, p. 2.) This training and additional training in de-escalation and conflict resolution should be provided to all staff that will work with young adults on a regular or periodic basis.
- New Admission Center in GMDC – The Department indicates that there will be a new admission center for young adults. Any such unit should be implemented in a manner that will reduce time between transfer to the jails and placement in a housing area. If it will reduce the intake processing time and improve on the conditions in the jail receiving rooms, then it will be an improvement. The inclusion of HHC in developing an intake clinic is appropriate. Communication and cooperation between HHC staff and security staff is vital to improving programming and treatment for the young adults.
- Expansion of Programming – The Department indicates that it is in the process of expanding programming for young adults in the jails. (YA Plan, p. 2-3.) The Board should require a time line for expansion of programming to all young adult housing areas. Board monitoring of programming should include a review of the quality of programming, attendance and participation levels by the young adults, and ability to link programming to reentry initiatives and lowered recidivism.
- Restrictive Alternative Housing Unit Pilots – The Department indicates three levels of alternative housing for inmates who “infract.” Without more information about how these units and an alternative disciplinary system will operate, it is not possible to fully comment on them. The inclusion of HHC in assessments of whether young adults meet criteria for admission is appropriate. However, the failure to include HHC in reviews and decisions about retention is disconcerting and appears to be a failure to appropriately coordinate with mental health staff on making determinations about accomplishing goals set in individualized plans for participants. Also of grave concern is the seeming expectation that individuals will not advance – there is one review at 60 days and then reviews at 90 day intervals thereafter. The use of these long intervals appears to inappropriately assume that young adults assigned to these units will not be capable or expected to advance from secure alternative housing to less restrictive alternatives.

Conclusion:

The Board must take necessary steps to ensure that the young adult plan is implemented in a manner that will result in reduced violence and better, less restrictive conditions in our jails. This requires improved training for staff including training in de-escalation techniques and training to work with a young population; implementation of appropriate staffing plans which permit steady, trained staff to work in units designed to provide safe housing, programming, medical, mental health and supportive services.⁹ The expectation cannot be that there will be no setbacks and no incidents. A realistic expectation is that through effective leadership and management by the Department and oversight by the Board, setbacks can be minimized, incidents reduced in number and severity, and a more therapeutic, less punitive, response to behavior will reduce violence and the culture of violence in the jails.

The Board should take the time necessary to craft appropriate conditions including that the Department provide written policies consistent with Board standards and conditions *before* implementing plans which include transfers of young persons in our jails to restrictive settings. In order to do so, the Board should delay the vote on the variance to extend the time period for ending punitive segregation for young adults. During that time, additional information, written policies and operational plans should be shared with the public. The lack of information in the current draft YA plan makes it difficult to provide valuable specific input into this process. The community should have access to all of the operational plans, draft operational plans and Board conditions, in order to provide more substantive comment than the short time period and draft YA plan permit today.

Thank you for your consideration of these comments and recommendations.

Very truly yours,

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SARAH KERR
Staff Attorney

⁹ Many of these requirements are embodied in the federal consent judgment entered in *Nunez v. City of New York*, 11 Civ. 5845 (LTS)(JCF) available online at: <http://www.clearinghouse.net/chDocs/public/JC-NY-0055-0010.pdf>.