



NEW YORK CITY DEPARTMENT OF CORRECTION
Joseph Ponte, Commissioner

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Derrick D. Cephas, Acting Chair
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

RE: Six (6) Month Limited Variance Renewal Request to BOC Minimum Standards: Regarding Implementation of the Young Adult Plan and Use of Enhanced Supervision Housing (ESH) Section 1-16(c)(1)(ii) for Young Adults (19 to 21 years old) and Amendment to the Limited Variance for the Use of ESH for Young Adults eighteen (18) years of age.

Dear Mr. Cephas:

Pursuant to §1-15(f) of the New York City Board of Correction's ("Board") minimum standards, the Department requests a six (6) month renewal to the limited variance last granted by the Board on October 11, 2016, from BOC Minimum Standards §1-16(c)(1)(ii) which requires that "as of January 1, 2016, inmates ages 18 through 21, provided that sufficient resources are made available to the Department for necessary staffing and implementation of necessary alternative programming" be excluded from placement in Enhanced Supervision Housing (ESH)¹. On October 11, 2016, the Board also granted the Department a six (6) month limited variance from BOC Minimum Standards §1-16(c)(1)(ii) to allow for the use of ESH for eighteen (18) year olds. This variance is set to expire on April 11, 2017. Both variances are applicable to the same provision of the minimum standards and the Department's intention is to utilize ESH and the ESH Entry Unit for all young adults (18 to 21 years old) in the same manner. The Department is, therefore, requesting that the variance granted for the eighteen (18) year olds be amended to conform to the variance application set forth herein. This modification would be instrumental in the advancement of changes that are underway for the use of ESH as part of the evolving young adult plan and the management of this population.

In October 2016, the Department achieved an unprecedented correctional milestone with the complete elimination of punitive segregation for all adolescents (16 and 17 year olds) and young adults (18 to 21 years old) in our custody. The Department's overall punitive segregation reform efforts reflect a seventy-eight percent (78%) reduction in the use of punitive segregation for the overall inmate population. At the beginning of this administration, the number of inmates in punitive segregation was approximately six hundred (600), and that number has been significantly reduced to an average of one hundred and thirty-three (133) as of December 2016. While these changes are indicative of the Department's reform-minded posture, maintaining a safe environment to encourage engagement and promote programming remains paramount.

Providing opportunities for young adults to safely participate and engage in educational services and programming is a central component of the young adult plan. The ESH housing concept is a pathway

¹ On December 27, 2016, the Department submitted a renewal of this variance application for consideration and vote at the January 10, 2017 NYC Board of Correction Public Meeting. The renewal application was not considered at the January Meeting.

towards accomplishing these goals for our most violent young adults and is critical to the success of the overall young adult plan. There are no housing units comparable to ESH to safely house young adults (18 to 21 years old) immediately following a violent incident. Since the Department ended punitive segregation for the 18 to 21 year olds, ESH and specifically the ESH Entry Unit which includes the use of restraint desks, detailed herein, is the only appropriate housing option currently available that maintains the necessary security and separation to effectively address the known risk of serious harm that violent young adults present to others immediately after a violent incident. The Department has repeatedly affirmed that safely ending punitive segregation for 18-21 year olds requires appropriate, safe housing options for those young adults who engage in serious and/or persistent violent behavior. ESH fulfills an overarching Departmental commitment: a unit where young adults' can safely participate and engage in programming and education and where they can be motivated to engage in prosocial behavior.

ESH Level Structure

Since February 2015, when the Department opened the first ESH unit, we have continually instituted operational enhancements that embrace the core principles of the unit: security and control within an environment that promotes positive behavior and rehabilitation while maximizing the level of engagement and interactions with other inmates and staff. This is evidenced by the evolution of ESH into a progressive management approach that promotes positive behavior through the development of a four (4) level structure.

Adult inmates (22 years old and older) may be eligible for placement in the unit in compliance with the criteria as established by minimum standards 1-16(b). Violent adult inmates whose behavior warrants placement in Level 1 would have usually completed a punitive segregation sentence prior to placement in ESH. Young adults' (18 to 21 year olds) eligibility for placement in ESH would be founded on the nature of the act committed and the time period in which it occurred. A young adult who has participated in and/or committed a slashing, stabbing, or serious assault on staff or inmates or has been engaged in serious or persistent violence resulting in serious injury would be considered for immediate placement in an ESH Entry Unit, discussed in further detail below, as a direct response to a violent act. Young adults who have not engaged in a recent violent incident may be eligible for placement in ESH Level 2 based on the criteria set forth in minimum standards 1-16(b).

All inmates placed in ESH can advance through each level with consistent productive program participation and good behavior. Inmates earn additional privileges with successful completion of each level. Each level is designed to foster rehabilitation through the provision of necessary programming and related resources. An inmate's progression from level to level is based on a collaborative determination by all stakeholders and staff working on the unit.

ESH has never been a replacement for the previous correctional practice of twenty-three (23) hour lock in within a cell. ESH is a safe management approach that provides for out of cell hours which incrementally increase through the levels going from seven (7) to ten (10) to fourteen (14) hours lock out a day. The key to this management approach is the maintenance of safety and security of staff and inmates within a controlled setting that utilizes proportionate enhanced security measures dependent on the inmates' actions and histories. The inmates are placed in Level 1 or Level 2 dependent on the severity of the inmate's behavior, with Level 1 representing the most restrictive level of security for the management of the most violent and difficult to manage inmates in DOC custody. They can progress through Level 4, the least restrictive level for the housing of inmates who have successfully completed the prior levels. The security protocols instituted at each level is directly related to the safety concerns associated with the inmates placed within that particular housing level. The current level structure facilitates a dual-function: short-term behavioral management founded upon the severity of the violent behavior and long-term rehabilitative behavior modification. As of February 2, eleven (11) young adults are currently in a Level 2 unit.

ESH Entry Unit – Young Adult Housing (18 to 21 years old)

In furtherance of addressing the unique needs of the young adults, the Department will place young adults (18 to 21 years old) in an ESH Entry Unit to provide an immediate response to violent acts. This unit is separate and apart from the ESH Level 1-4, with a limited set of placement criteria both related to the recent act committed and the young adult's behavioral history. The criteria for placement in the Entry Unit is more narrowly tailored than that which is currently permissible in the provisions of the minimum standards set forth under 1-16(b).² The Entry Unit is for the housing of eligible young adults immediately following a violent act. The criteria for placement permissible under 1-16(b)(1) and 1-16(b)(2) related to an inmate's gang leadership or active involvement as organizer or perpetrator of a gang-related assault would not trigger consideration for initial placement into the ESH Entry Unit. Violent, high risk young adults who have committed or participated in serious infractions involving slashings, stabbings and serious assaults on staff and other inmates or engaged in serious or persistent violence resulting in serious injury would be among those considered for initial placement in the Entry Unit. It is important to note that the Department will continue to consider young adults (18 to 21 years olds) whose actions and behavioral history meet the established criteria of minimum standards 1-16(b), for direct, initial placement in ESH Level 2, a unit in which restraint desks are not utilized.

The Entry Unit is a housing unit that enables the Department to conduct a comprehensive assessment and information gathering, within a thirty (30) day period, to determine the scope of the situation and the most appropriate housing placement for the young adult. As part of the evaluation, factors such as continued violent behavior, specific triggers that are attributable to young adults' engagement in violent acts, and possible motivating influences that could be used to inspire the young adult towards positive behavioral changes will be contemplated. On or before thirty (30) days, the young adult will be placed in the most appropriate ESH level, Secure Unit, or other suitable housing unit based on the recommendation of the ESH Entry Unit Review Committee and final determination of the Chief of the Department. The role of the inter-disciplinary team, consisting of stakeholders, is to review and discuss the profile and progress of each young adult in an effort to determine and identify the most appropriate housing placement. If a young adult is transferred from the Entry Unit to an ESH Level he will be subject to the forty-five (45) day review administered for all inmates within ESH. The forty-five (45) day review is instrumental in gauging an inmate's long-term rehabilitation, program engagement and adherence to unit rules; and ultimately the continued appropriateness of their placement in ESH.

Use of Restraints (ESH Level 1 and ESH Entry Unit)

The Department's limited utilization of restraint desks within ESH is specifically for violent inmates adjudicated for placement in ESH Level 1 or the Entry Unit. The use of restraint desks is correctional practice in states such as Colorado, California, New York State, and Washington State, where its use has facilitated the provision of programming and other idleness reduction activities in a safe manner. These jurisdictions often use restraint desks in punitive segregation units, where the inmate is either in their cell or placed in the restraint desk during out-of-cell time. As stated in extensive detail in the January 13, 2017 emergency variance letter, the Department first used restraint desks in the Secure Unit during therapeutic, educational, and programming sessions in a classroom setting. Restraint desks allow for young adults to

² Minimum Standards 1-16(b) sets forth the criteria for placement in ESH:

(b) *Policy.* An inmate may be confined in ESH if the inmate presents a significant threat to the safety and security of the facility if housed elsewhere. Such a determination shall only be supported by a finding that one of the following has occurred: (1) the inmate has been identified as a leader of a gang and has demonstrated active involvement in the organization or perpetration of violent or dangerous gang-related activity; (2) the inmate has demonstrated active involvement as an organizer or perpetrator of a gang-related assault; (3) the inmate has committed a slashing or stabbing, has committed repeated assaults, has seriously injured another inmate, visitor, or employee, or has rioted or actively participated in inmate disturbances while in Department custody or otherwise incarcerated; (4) the inmate has been found in possession of a scalpel or a weapon that poses a level of danger similar to or greater than that of a scalpel while in Department custody or otherwise incarcerated; (5) the inmate has engaged in serious or persistent violence; or (6) the inmate, while in Department custody or otherwise incarcerated, has engaged in repeated activity or behavior of a gravity and degree of danger similar to the acts described in paragraphs (1) through (5) of this subdivision, and such activity or behavior has a direct, identifiable and adverse impact on the safety and security of the facility, such as repeated acts of arson. Provided, however, that, where the Department is permitted to consider an inmate's activity occurring or actions committed at a time when the inmate was incarcerated, such activity or actions must have occurred within the preceding five (5) years. Where the Department is permitted to consider an inmate's activity occurring or actions committed at a time when the inmate was not incarcerated, such activity or actions must have occurred within the preceding two (2) years.

safely participate in programming and practice prosocial interactions with their peers. Most importantly, restraint desks enable young adults to interact with each other in a secure, controlled environment that in their absence, could not be accomplished safely. Previously, had a young adult committed a slashing, stabbing, or serious assault against staff or other inmates, he would have been eligible for punitive segregation and possibly confined to a cell for twenty-three (23) hours. With the elimination of punitive segregation and the current utilization of ESH for young adults, we can now safely reduce isolation, minimize and/or eliminate cell study and increase programming opportunities for our most violent youth. Currently, thirty-eight (38) restraint desks are being used Department-wide. Department procedures for the use of restraint desks maintain adequate safeguards to ensure that young adults have an hourly opportunity to be removed from the restraint desk for such purposes as placing a phone call, using the bathroom, or returning to their cell. Over the past few months, the Department's use of ESH for the young adults, has permitted more safe, secure and productive instruction of potentially disruptive inmates, and supports the goal of behavior modification and transition to a lower level of restriction.

An alarming example of the critical importance of maintaining the use of restraint desks within ESH Level 1 and the ESH Entry unit is illustrated by a recent incident in the ESH unit for young adults. During programming services, while the young adults were in the restraint desks, one young adult, without warning, attempted to reach over to one of his peers to slash him. The young adult was unsuccessful and no injuries were sustained. It is not difficult to imagine how this incident would have concluded in a dramatically different way had the young adults been engaging in group programming without the heightened security afforded through the use of restraint desks. Had the young adults not been in restraint desks, the targeted young adult would very likely have sustained serious injuries. The value of educational services and programming for this population is instrumental to their advancement and rehabilitation. Approximately, ninety percent (90%) of ESH participants were previously high school drop outs. The success of our rehabilitative and educational efforts for the young adults, particularly those in the most restrictive housing units such as the Secure Unit and ESH, is dependent upon establishing an atmosphere conducive to learning and engagement. If young adults are fearful for their safety and concerned that attending educational services will result in bodily harm, they will either choose not to participate or their participation will be hampered by preoccupation over safety.

Weapon Contraband/Slashing Incidents

The Department's unwavering commitment to facility security and the safety of staff and inmates has remained throughout this administration and woven into the fabric of every initiative advanced. While our efforts have resulted in significant improvements in violence reduction, the prevalence of weapons in our facilities and continual increases in slashings/stabbings incidents persist. From 2015 to 2016, there has been noted reductions in serious Uses of Force by thirty-five percent (35%) and thirty-one percent (31%) for serious assaults on staff. During that time period, slashing incidents continue to increase by twenty-one percent (21%). While efforts to find weapons have been successful with a thirty-seven percent (37%) increase in weapons recovery, the fact that weapons are being found at this rate is indicative of the continued pervasiveness of weapons in the facilities, specifically hard to find scalpel blades.

A recent incident in a facility law library highlights the critical nature of the situation. A small group of inmates were congregating in the law library, when several of the inmates perpetrated a slashing on a peer. The peer sustained serious, multiple lacerations to his face and back. Video surveillance of the incident shows that all the inmates were in possession of weapons at the time of the incident and their post-incident acts of concealing those weapons within their body cavities. These weapons have not been recovered. This incident further illustrates the conditions and dynamics under which the Department must operate and the vital role that restraint desks play in protecting violent inmates once housed together in ESH.

As of February 2, the ESH model has housed forty-two (42) young adults as a means to manage their violent behavior. Thirty-six (36) of the forty-two (42) young adults who have been approved by the Chief of the Department for placement in the unit have committed a slashing and/or stabbing. The remaining young adults

engaged in serious incidents warranting their placement. Preliminary analysis reflects that ESH is a beneficial addition to the management of problematic young adults in need of the unique rehabilitative programming, structure and enhanced security and separation provided.

While initial findings are positive, more time is needed to comprehensively assess and explore the full benefits the use of ESH and the ESH Entry Unit will have on the young adult population. Preliminary indicators reflect that ESH has had a positive impact on the safety of inmates in general population. It is equally important to determine how best to increase safety and security for those inmates placed in ESH. While it is clear that restraint desks provide an enhanced level of safety for staff and inmates in ESH, more time is needed to fully evaluate the impact that restraint desks will have on overall violence reduction within ESH. To that end, the Department will continue to monitor and track metrics and trends related to violence, length of stay, and utilization of programming and educational services.

The Department has made a good faith effort to fully comply with the applicable provisions of the Minimum Standards. However, we are unable to do so at this juncture. The new approach outlined herein demonstrates the Department's deliberative manner and refocused use of ESH for young adults. It is critical that this variance be renewed to allow for additional time to continue the comprehensive analysis of the use of ESH and the ESH Entry Unit for all young adults and determine what refinements to this housing category may be necessary for the safe management of this population. If this assessment continues to validate the effectiveness of ESH for the young adults, the Department will move towards fuller rulemaking related to these alternative housing options.

The Department has prioritized exploration and consideration of national and international correctional practices in finding workable solutions to combat jail violence, sending staff to numerous jurisdictions to gain insight into correctional tools and management options that have been successful in other correctional institutions. During this time when we are working within a challenging correctional environment where slashing incidents continue to escalate, the prevalence of weapons persist, and punitive segregation has been eliminated for all young adults; the need for ESH as a housing option for young adults and the use of restraints desk for those confined in the most restrictive units (ESH Level 1 and ESH Entry Unit) is not only necessary; it is the best solution at this time. It allows the Department to provide programming and engage inmates as meaningfully as possible while keeping them safe.

The Department appreciates the Board's consideration of this six (6) month limited variance renewal to permit the continued use of ESH for young adults (19 to 21 years old), the establishment of the ESH Entry Unit³ and amendment to the current variance for the eighteen (18) year olds to allow for its inclusion into this variance application. The Department has engaged key stakeholders, including the Board, New York City Health + Hospitals, and the Nunez monitor, as we consider revisions to our current ESH policy and the incorporation of significant security enhancements. We will maintain an ongoing dialogue with stakeholders as we move forward with these deliberations. We also look forward to further collaboration with the Board in the successful adoption of the Young Adult Strategy plan and the advancement of related rulemaking.

Sincerely,



Joseph Ponte

cc: Martha King, Executive Director

³ The ESH Entry Unit would be for the housing of eligible young adults (18 to 21 years old).