



NEW YORK CITY DEPARTMENT OF CORRECTION
Joseph Ponte, Commissioner

Office of the Commissioner
75-20 Astoria Blvd, Suite 305
East Elmhurst, NY 11370

718 • 546 • 0890
Fax 718 • 278 • 6022

June 7, 2017

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

RE: Limited Variance Renewal – Secure Unit – Minimum Standards §1-05(b) and §1-08(f) (Revised)¹

Dear Mr. Cephas;

Pursuant to §1-15(f) of the New York City Board of Correction's ("Board") minimum standards, the New York City Department of Correction ("Department") requests a six (6) month limited variance renewal from BOC Minimum Standards §1-05(b) "Lock-in" and §1-08(f) "Access to Courts and Legal Services" for the purpose of maintaining the use of the Secure Unit, in furtherance of the Department's efforts and refinement of the Young Adult Strategy plan. The Department seeks this variance to be effective on June 15, 2017, the date upon which the underlying variance is set to expire.

The Young Adult Strategy plan as it exists today is founded upon continual deliberation, with no other correctional model to reference, the Department has diligently worked to establish a solid foundation in the management of young adults within the correctional setting. The current housing construct consisting of Second Chance, Transitional Restorative Unit (TRU), Secure Unit, and ESH provides the Department with the necessary flexibility to determine the most suitable and appropriate placement for young adults who exhibit violent behavior while in our custody.

Since the establishment of the Secure Unit in June 2016, we have operationalized one (1) unit located at George R. Vierno Center (GRVC) with a total of thirty-five (35) young adults placed in the unit, two (2) of whom had a repeat placement. Currently, there are seven (7) young adults housed in the Secure Unit. The Secure Unit and the Enhanced Supervision Housing (ESH) Entry Unit and ESH Level 1 have become the primary housing options for the management of violent young adults 18 to 21 years old in the Department's custody based on specific criteria that account for the severity and persistence of the violent behavior. The inclusion of ESH as a housing option has refocused the utilization of the Secure Unit. The Secure Unit serves as a housing option for a specific category of violent young adults' whose history of violent behavior may not rise to the level of consideration for placement in ESH but requires that they be in a unit that has higher staffing ratios, programmatic and therapeutic offerings, and an initial ten (10) hours a day of out-of-cell time. Additionally, the Secure Unit may also provide a critical housing option for young adults transitioning from the Entry Unit. This transition enables young adults to have an incremental increase in out of cell time from seven (7) hours to ten (10) hours while continuing therapeutic engagement. The Secure Unit is structured to facilitate enhanced safety and security while fostering an environment where young adults can obtain skills for positive change. The unit's Support Team conducts weekly reviews and interacts with the young adults. Trained and dedicated unit staff, both uniform and

¹ This letter replaces the variance renewal submitted on June 5, 2017.

non-uniform, are knowledgeable of young adults' histories and work with them to further develop their strengths and advance their goals.

As noted in further detail in our May 2, 2017, limited variance application, there have been notable benefits for both the young adults who have been placed in the unit and more generally to overall safety and security evidenced through an evaluation of Use of Force (UOF) and fights data.² The positive impact of educational services for young adults remains steady and robust. Since September 2016, when the East River Academy began providing educational services in the unit, through May 2017 twenty (20) young adults enrolled and participated in school. This is particularly significant as half of those young adults (10 out of the 20) had not previously enrolled in school during their incarceration. Art and theatrical programs continue to play an important role in engaging with young adults through creative expression.

The Secure Unit's structure is designed to facilitate each young adult's rehabilitation and advancement. Upon admission, young adults receive an orientation and program plan setting forth the programming offered to facilitate their successful progression in the unit. All newly admitted young adults begin in Phase I. Each phase provides for progressively more privileges and lock-out time, eventually up to fourteen (14) hours per day. During Phase I and initial placement in the unit, a young adult must demonstrate consistent satisfactory behavior for a minimum of twenty-eight (28) days in order to be considered for advancement to the next phase. In the remaining phases, a young adult may be considered for phase progression prior to the twenty-eight (28) day period. It is important to note that the Support Team meets on a weekly basis to discuss each young adult's support plan and ways to encourage their individual advancement. Young adults' behavior and actions within the unit will directly impact their progress through the phases.

Young adults placed in the Secure Unit are some of the most challenging within this population, as evident by the severity of their violent, and/or assaultive behavior. As stated in the original variance and sought in this variance renewal, restricting young adults to ten (10) hours a day of out-of-cell time is a critical management tool to ensure safe operation of the unit and provide necessary incentives for progression, when combined with the other programmatic and therapeutic offerings. This lock-out period coincides with the hours in which facility staffing is at optimal levels to respond to any security issues that may arise. A key element of the incentivized behavioral approach is the establishment of defined parameters and a structure in which young adults understand the positive and negative ramifications of their actions. Enabling the Department to limit young adults' lock-out time provides a safe and critical incentive tool that allows for incrementally increasing the amount of out-of-cell time over the course of the phases. Young adults in Phase III receive fourteen (14) hours per day of lock-out. During this phase, the Department evaluates the young adult's behavior and interaction with others to assess whether he can safely transition out of the Secure Unit and successfully reenter a general population unit, without continued risk of engaging in severe, violent behavior. Ten (10) young adults have completed all three (3) phases of Secure Unit.

Additionally, all mandated services and programming are conducted in the unit. The Department is also seeking a variance renewal to §1-08(f) to allow for the continued provision of legal services and materials through alternative access, in the unit, that permits effective legal research while addressing safety and security concerns. Law library services are provided within the unit through the use of law library kiosks and typewriters in the area. A law library coordinator is also assigned to the unit to assist young adults in the provision of law library related services. This variance renewal is necessary as the Department cannot otherwise effectively control, especially directly after an incident, continued violent activity in the law libraries, gang communication from being conducted, or protect other young adults and staff from those who would capitalize on potential opportunities to perpetuate additional violence.

² There is a noted decline in rates of Use of Force (UOF) and fights during placement in comparison to the period preceding placement. UOF rates decrease further post-Secure, most notably among those young adults who have completed all three (3) phases.

The Department has made a good faith effort to comply with the noted provisions of the minimum standards within the month prescribed but we cannot do so as additional time is needed to incorporate the parameters of the Secure Unit within broader restrictive housing rulemaking. Recognizing the critical importance of maintaining these therapeutic, structured housing options geared towards incentivizing positive behavior with heightened programming, inmate engagement and staffing, the Department began to pursue rulemaking. On March 31, 2017, the Department submitted a letter to the Board regarding the advancement of restrictive housing rulemaking and proposed subject matter for their consideration. Discussions have begun towards the establishment of new minimum standards that will serve to provide for comprehensive restrictive housing. Additionally, the Department continued to examine the overall Young Adult Strategy plan and the manner in which each housing unit utilized for the management of young adults advanced plan objectives. During this interim period, it is imperative that we maintain the Secure Unit, as outlined herein, as we continue to solidify the overall Young Adult Strategy plan, the Secure Unit, and the ESH Entry Unit.

Our commitment to the advancement of an innovative correctional model for the management of young adults remains steadfast. We are proud of what has been accomplished thus far, while recognizing that there is more to be learned as we continue along this unprecedented path. It is our hope that educational and therapeutic engagement will lead these young adults towards positive life changes and decrease their likelihood of future incarceration. Six (6) young adults that have been in Secure Unit have transitioned back to the community.

The Department appreciates the Board's consideration of this six (6) month limited variance renewal, which would allow for the reduction of out-of-cell time to a minimum of ten (10) hours per day and the provision of law library services within Secure Unit. We look forward to continuing to work together in the implementation of an unprecedented disciplinary model for the management of young adults within the correctional setting and to achieve compliance through future restrictive housing rulemaking.

Sincerely,

A handwritten signature in cursive script that reads "Joseph Ponte".

Joseph Ponte

cc: Martha King, Executive Director