



September 12, 2017

New York City Board of Correction
1 Centre St.
Room 2213
New York, NY 10007

RE: DOC Request for Emergency Variance – Secure Unit

Dear Chair Cephas and Board Members,

My name is Miguel Medrano. I am a Jail Services Advocate at Brooklyn Defender Services (BDS). BDS provides innovative, multi-disciplinary, and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for over 40,000 clients in Brooklyn ever year.

Thank you for the opportunity to comment regarding 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, requested last August 31, 2017.

When the Board previously renewed this variance in July, a condition was imposed requiring the Department to detail a plan for compliance with Minimum Standard §1-05(b), which requires 14 hours lockout each day.¹ From the tone of the Department’s present request, it appears that no such plan was ever formulated; and none was made publicly available. Nevertheless, considering that only 7 young people were housed in Secure as of August 31, 2017, there is simply no justification for limiting out-of-cell time to 10 hours per day. Moreover, there is certainly no reasonable basis for two-point restraints during out-of-cell time – a practice the Department omits from its request, but which has been reported by young people in the unit.

Rather than comply with the Board’s condition, the Department insists that restricting lockout to 10 hours is necessary to maintain safety and the “incentive” structure of the unit. To the former, the Department claims that current lockout hours coincide with the highest staffing levels. We believe this claim is misleading. It is our understanding that jail staffing is highest between 7:00 and 15:00 and lowest between 23:00 and 7:00. As such, unless the Department has changed lockout hours to begin at 7:00am rather than 5:00am, this claim appears to be untrue.

¹ 12 July 2017 Record of Variance Action, Condition 6

Notably, before the unit opened advocates objected to lockout beginning at 5:00am, pointing out that most of the young people it housed would sleep through precious lock-out time in the early morning. These considerations were rejected by the Department. We would welcome a change in lockout schedule to begin at 7:00 to address these concerns and accommodate the Department's stated interests that lockout occur at peak staffing.

We also have serious concerns about the latter claim, that lockout restrictions are components of an incentive structure designed to "intervene" and "engage" young people, inducing them to improve their behavior.² The use of therapeutic terminology to justify restrictive measures should not obscure the implications of prolonged lock-in for young people in Secure. Spending the bulk of each day locked in a cell is sure to breed restlessness and frustration in any young person. Compounded by the immense humiliation of being chained to a desk when let out, it is difficult to fathom how anyone would remain composed under such a regime. Yet, the expectation is that a young individual already struggling in jail must maintain their composure for months, or better yet improve their behavior, to "earn" their way to slightly more humane conditions.

Piling on unwarranted restrictions in an already oppressive segregation unit is understandably perceived as punitive, which undermines therapeutic efforts. Addressing violence and other behavioral challenges requires engaging their root causes through truly therapeutic means, in the least restrictive setting possible. Depriving young people their basic rights and offering their restoration does not serve these aims, nor is it a positive "incentive." Restrictions on lockout and two-point restraints are counterproductive, harmful, and plainly unnecessary. With only 7 people in the unit, there is no justification to grant the Variance renewal. The Board must therefore enforce compliance with the Minimum Standards.

In their Request, the Department lays out a number of criterion according to which placements in the Secure unit may be justified. We welcome the Department's overdue efforts to articulate and narrow the criteria for placement. However, the Department's criteria remain overly broad and highly subjective. Without clearly defining what "involvement in the organization" of an incident entails, or what constitutes "dangerous," a broad swath of young people could become eligible for placement in this highly restrictive unit. Relatedly, our experience suggests that many individuals in the jail system are wrongly labelled as gang members; their status overturned upon appeal and review. Relying too heavily on such classifications compounds the risk of arbitrary restrictions.

Furthermore, we object to the Department's characterization of the unit as a "transition" between ESH and the general population. The Department notes that Secure offers individuals exiting ESH an "incremental increase in out of cell time" from 7 to 10 hours.³ However, the Department does not clarify why such an incremental increase is necessary or warranted. Is the suggestion that individuals need to slowly adjust to having more time out of their cells? Is having 14 hours of social interaction considered too difficult for an individual who has been limited to 7? What

² See e.g. 27 August 2017 DOC Request for Variance Renewal, p. 3

³ DOC Variance Request, p. 2

transitional purpose specifically, is envisaged by the Department by depriving individuals of 4 hours of out-of-cell time each day for another 3 months?

The Department does note that “therapeutic engagement” would continue in Secure. While we support continuation of any programming that individuals find helpful, we are troubled by the Department’s apparent assumption that therapeutic engagement must be accompanied by two point restraints and 14 hours per day in a cell. Wouldn’t such engagement be more successful in the least restrictive setting in general population?

Most importantly, if a young person has endured the restrictions in ESH such that their release from the unit is appropriate, on what basis is that individual now held in Secure? A young person who earns their way out of ESH only to find themselves in a unit where their extra 3 hours of out-of-cell time is spent restrained in a cage on the day room floor would have good reason to wonder what they had done to deserve this “transition.” Criteria for admission and discharge from restrictive units must be clear, equitably applied, and cannot serve merely as a pretext on which young people are shuttled between restrictive units. Articulating clear and definitive missions for the various units making up the Department’s growing archipelago of restrictive units would help to limit understandable feelings of confusion and resentment.

Thank you for your consideration of my comments. I am grateful to the Board of Correction for the invitation to comment about the DOC’s proposed variance. Please do not hesitate to reach out to me with any questions about these or other issues at (646) 787-3325 or mmedrano@bds.org.

Thank you for your consideration,

Miguel Medrano
Jail Services Advocate