



July 10, 2017

Via E-Mail

Martha King, Executive Director
Acting Chair and Members
New York City Board of Correction
1 Centre Street
Room 2213
New York, NY 10007

Re: Variance Request to Maintain the Secure Unit; Variance Request to Maintain Enhanced Supervision Housing for Young Adults

The Children's Defense Fund-New York (CDF-NY) is writing in regard to the two July 7 variance requests of the Department of Correction that seek to continue the operation of the Secure Unit as well as Enhanced Supervision Housing options for young adults (YA ESH). We are concerned by many components of these two requests and cannot support the renewal of these variances absent increased protections for young adults.

We outline our concerns below and we thank you for your consideration of our comments.

The Secure Unit

I. Restraints

We ask that the Board revisit the conversation on restraint use in young adult restrictive housing units, particularly the point raised by the Board that young adults in the Secure Unit are in restraints during all out of cell time.¹ The revised June 7th variance does not mention restraints, while the June 5th variance only briefly referred to desks, stating "the Department has not adjudicated any young adult for placement in a restraint desk during out of cell time in the designated quad". The draft directive also does not mention restraint use other than the desks, and does not mention the quads, only classroom settings:

"Young adults shall not be three point restrained while in the restraint desk during school or other programming by providers within the classroom and/or areas designated for school within the unit."

This new July 7 variance does not mention restraints, and we now ask that the Board require the Department to report on the use of any restraints, including but not limited to restraint desks, and report on all areas of Secure, including but not limited to a quad.

II. Confidential Testimony & the Role of the Adjudication Captain

In regard to the Secure Unit's placement review hearing and determination procedures, the Department's draft directive states:

¹ NYC Board of Correction, "2017 05 09 Board of Correction meeting," Posted [May 11, 2017], YouTube video, See 15:09 <https://youtu.be/6943Sid0ITw?t=909>.

“For the purpose of this hearing, the Deputy Warden for Security shall ensure that the Adjudication Captain is provided with: Copies of any reports or other information that were relied upon in making the recommendation to place the young adult in Secure Unit based upon association with or engagement in the activities of a Security Risk Group. Where such information contains the name or other identifying information of a confidential informant, such information shall be redacted and clearly marked by OSIU as ‘Confidential’.”

Also according to the directive, the Adjudication Captain is able to sentence a young adult to secure in instances where the young adult is found not guilty, thereby counteracting any attempt to offer a meaningful hearing process. The directive states:

“If the Adjudication Captain finds the young adult not guilty of the current infraction based on the evidence presented, placement in the Secure Unit may still be found to be appropriate so long as there are additional facts upon which the Department relied for Secure Unit placement and the imposition of related restrictions that the Adjudication Captain finds support, by a preponderance (greater than 50%) of the evidence, the conclusion that the young adult presents a current significant threat to the safety and security of the facility such that Secure unit placement and each of the imposed restrictions is appropriate.”

As we testified during the June public meeting of the Board, this combination of confidential testimony and what appears to be unlimited power of the Adjudication Captain is unsettling. We ask that the Board reject the use of confidential testimony and limit the power of the Adjudication Captain in an effort to preserve the integrity of the hearing process.

III. Placement Criteria

The draft directive and variance request list criteria for placement including, “Involvement in the organization of a violent or dangerous gang related incident that results in serious injury” and “The individual has been identified as an SRG member.” We find these categories to be overly broad and we worry that a significant number of young adults will be caught in a situation where placement criteria is difficult to refute when used in combination with confidential testimony. The variance request states, “the new criteria is geared to identify and address the behavioral issues of a young adult who has begun to exhibit increasingly violent behavior or has a past history of violence and has engaged in recent concerning violent acts.” The language “increasingly violent behavior” and “concerning violent acts” is not as specific as the language of the draft directive and we ask that the Board require the Department to release a revised Secure Unit directive.

Further, the Secure Unit variance includes “escalation of behavior in Second Chance or Transitional Restorative Unit (TRU)” as a type of criteria for placement in Secure. We would appreciate clarity on how “escalation of behavior” will be defined and assessed and how this category is different from any of the criteria listed in the draft directive.

IV. Placement Criteria & the Role of the Adjudication Captain

The draft directive states that the Adjudication Captain’s review shall include “consideration of the time that has elapsed since the occurrence of the activity or behavior relied on by the Department to support Secure Unit placement”. We would appreciate greater clarity on how or in what way that information is being considered.

V. “Other Restrictions”

In the Department’s June 5 written variance request it is stated, “Young adults’ behavior and actions within the unit can result in the imposition of additional restrictions.” We understand that phrase is not present in the June 7 or July 7 variance, but the directive uses the words “imposition of additional restrictions” including that any incoming and outgoing non-privileged correspondence shall be read. We would appreciate greater clarity on what all of the “additional” restrictive options being referred to in the directive are or can be.

VI. *Hearing Facilitators*

The draft directive states that a young adult may ask for a hearing facilitator in the following circumstances:

- The young adult is non-English speaking;
- The young adult is illiterate;
- The young adult is blind or deaf; or
- For any other reason the young adult is unable to prepare a defense.

The circumstance “for any other reason the young adult is unable to prepare a defense” we think should apply to all young adults due to the complexity of this process and the restrictive nature of the unit. We ask that all young adults are granted a hearing facilitator that can serve as an advocate and not limit that resource to the small set of circumstances listed. Particularly given the fact that young adults have unique developmental needs it is important that they are appropriately supported through this process.

VII. *Criteria for Movement*

The Secure Unit draft directive offers some examples of behavior that a young adult “would need to display to progress through the phases” including:

- “Receipt of any infractions”
- “Comply with all the assigned program”
- “Attend DOE services if applicable”
- “Demonstrate positive interaction with staff and all other young adults”

We continue to ask that the Board not allow people to be held in Secure for an unlimited period of time. We are concerned that these criteria appear inflexible and not individualized and will work to prevent young adults from progressing through the three phases. We also ask that the Board explore the effect of restraint desks in classroom settings on any student attendance measure in school or assigned programs and the impact of restraint desks on the quality of learning and level of student engagement in school. We urge the Board to require the Department to limit this list of example behaviors. Absent an exploration or understanding of the situation, these behaviors should not indicate failure or disrupt the young adult’s progress. Rather, these behaviors speak to the need for the Department to reach a more complex understanding of why a young person doesn’t meet compliance.

Enhanced Supervision Housing (ESH)

I. *Lock in/Lock out*

We remain concerned by the Departments use of restraint desks in ESH and ask that the Board further explore the effect of restraint desks on the actual number of hours young adults spend out of cell. According to the DOC’s evaluation of ESH:

“Currently, the Department does not have the means to collect and centralize electronic data on lock-in/lock-out hours anywhere across the Department. This makes reporting on compliance with the minimum standards challenging outside of occasional, smaller scale reports and requests.”²

Advocates have testified to young adult’s reluctance to spend extended periods of time in restraint desks and we urge the Board to continuously speak to young adults about their experience, limit the length of time a young person can be kept in ESH, and explore options for alternatives to restraint desks.

II. *Access to Education*

² New York City Department of Correction. (2017, June). Evaluation of Enhanced Supervision Housing for Young Adults. Page 34. Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/DOC-Evaluation-of-Enhanced-Supervision-Housing-for-Young-Adults-6-27-17.pdf>.

During the February 2017 public meeting of the Board, the Department testified that a second educational service track had been added to ESH.³ During the same meeting, the Department of Education testified that students can opt out of attending school on any given day and, at that time, 21 young adults have signed up for school but do not attend every day. We ask that the Board explore incentives and disincentives and barriers for attending school and revisit the conversation of young adults traveling from ESH Level II to a classroom area that requires the use of restraint desks.

III. “Assessment”

According to the DOC’s July 7 variance, the Entry Unit is a housing unit that “enables the Department to conduct a comprehensive assessment and gather information, within a thirty day period, to determine the most appropriate housing option for each young adult placement”.⁴ The Department writes further:

“As part of the evaluation, the ESH Entry Unit Review Committee considers several factors, including: a young adult’s continued violent behavior, program engagement, specific triggers that lead to engagement in violent acts, and possible motivating influences that could be used to inspire the young adult towards positive behavioral changes.”

According to the DOC’s evaluation of ESH, twenty two intakes have been completed.⁵ Information noted in that report includes “seventeen of the twenty-two young adults reported that they lived in a single parent household” and “six of the twenty-two young adults reported that they experienced trauma prior to their incarceration.”⁶ Because the Department is collecting a wide range of factors, we request further information on why certain categories are included and in what way are these disclosures influencing assessment decisions. We are particularly intrigued by the inclusion of factors mentioned above. We would like to know in what way such factors are responded to and what if any follow up is provided for young people who disclose histories of trauma.

IV. *Length of Stay & Restraint Use*

We are concerned that young people who are placed in Level 1 following 28 days in the Entry Unit can spend over two months in restraints, up to seven hours each day. The Department writes that nearly 66% of those young adults who were able to leave ESH were released because they were discharged from DOC custody,⁷ and we worry that absent discharge most young adults may be subjected to indefinite stay. The ESH variance includes information that may potentially expand that timeline further, where “upon completion of the thirty day assessment, all young adults remaining in ESH will subsequently receive a forty-five day review” where the young adult’s progression from level to level is “based on feedback provided by all stakeholders and staff working on the unit.” We ask that the Board restrict the maximum number of days young adults can remain in ESH, especially in the ESH units that mandate the use of restraint desks.

V. *Administrative Segregation*

The Department reports that in the young adult population, the majority of people now in ESH were moved from the General Population.⁸ We understand that 4 people were moved from administrative

³ New York City Board of Correction. (2017, February 14). Public Meeting Minutes. Page 6. Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Feb-14-2017/Board%20Minutes%20of%202.14.17%20FINAL.pdf>.

⁴ New York City Department of Correction. (2017, July 7). 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 (18 to 21 years old). Retrieved from http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/5.%20NYC%20Department%20of%20Correction%20Variance%20Renewal%20Application%20-%20Use%20of%20ESH%20for%20Young%20Adults_final.pdf.

⁵ Evaluation of Enhanced Supervision Housing for Young Adults. *op. cit.* p. 20.

⁶ *Ibid.*, p. 20.

⁷ *Ibid.*, p. 11.

⁸ *Ibid.*, p. 12.

segregation, and would appreciate an explanation of the relationship between administrative segregation and other restrictive housing units operating under the young adult plan.

VI. Movement to Punitive Segregation

According to the Department's evaluation of ESH for young adults, one young adult moved from ESH to punitive segregation when they reached the age of 22. We ask that the Board seek clarity on this movement and any other policies or practices for the movement of young adults out of YA ESH when they age out.

VII. Blended ESH

During the January 2017 public meeting of the Board the Department testified, "The young adults that are chosen for the AMKC blended pilots they have not chosen to go to school."⁹ Further, when asked which young adults are appropriate for the blended units the Department testified to a number of different "factors", including "When we discuss with young people do you want to go to school, what are your interests, what are your needs."¹⁰

We ask that the Board revisit this conversation about how the Department will ensure young adults in blended units receive schooling and programs afforded to those other young adults in YA ESH during the discussion of the comingling variance.

Thank you again for your consideration of these comments.

Sincerely,

Charlotte Pope
Youth Justice Policy Associate
Children's Defense Fund-New York

⁹ NYC Board of Correction, "2017 01 10 NYC BOC Meeting final," Posted [Jan 12, 2017], YouTube video, See 36:07 <https://youtu.be/1fDeLzwCeD8?t=2167>.

¹⁰ Ibid., at 37:15 <https://youtu.be/1fDeLzwCeD8?t=2235>.