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Martha W. King
Executive Director

Record of Variance Action at November 14, 2017 Public Meeting

This variance allows the Department of Correction a 6-month extension of time, commencing on November 16, 2017 and ending on May 16, 2018, to house people in custody ages 18 through 21 in Enhanced Supervision Housing for Young Adults (“YA-ESH”).

Type of Variance: Limited

Date on which Variance will commence: November 16, 2017

Time period, if any: 6 months

Minimum Standard for which Variance is Granted: 1-16(c)(1)(ii)

Date on which Board of Correction first approved Variance (for renewals only): July 12, 2016

Requirements imposed as conditions on Variance during its pendency:

1. Restraints, including restraint desks, shall not be used except to control an incarcerated person who presents an immediate risk of self-injury or injury to others, to prevent serious property damage, for health care purposes, or when necessary as a security precaution during transfer or transport. When restraints are necessary, the Department shall use the least restrictive forms of restraints that are appropriate and should use them only as long as the need exists, not for a pre-determined period of time.¹
2. The Department may operate multiple levels of YA-ESH, with Level 1 being the most restrictive. There shall not be a separate unit for assessment purposes.

¹ This condition is based on Standard 23-5.9 of the American Bar Association’s Standards on the Treatment of Prisoners.

3. Each request for approval of a placement of a young adult in YA-ESH (i.e., any ESH unit where young adults are housed) must be in writing and specify the reason(s) why a less restrictive housing setting is not a safe option. If the placement is to include the use of a restraint desk, the request for approval must include why YA-ESH without restraint desks is not a safe option. The Chief of Department, or designee, must also specify his reason(s) for approving or disapproving the request for YA-ESH placement. If the placement is to include the use of a restraint desk, the Chief or his designee must, separately, approve or disapprove this use and specify his reason(s) for approving or disapproving the use of a restraint desk. The request for approval and the Chief's or designee's approval or disapproval thereof shall be sent within 24 hours to the person who is the subject of the request, NYC Health + Hospitals, and the Board.
4. The Department shall not keep K9s stationed in YA-ESH units.
5. The Department shall provide all young adults housed in ESH with a minimum out-of-cell time of seven (7) hours per day, not inclusive of school hours. If exceptional circumstances occur where the Department cannot comply, it will notify the Board immediately as to the reasons why it cannot comply.
6. Commencing January 15, 2018, the Department shall notify the Board, in writing, every time the lock-out periods in YA-ESH do not start on time and the reasons therefor. The Department shall provide written notice to the Board within 24 hours of such occurrence.
7. The Department shall conduct and report on a monthly audit of its compliance with BOC Minimum Standards:
 - § 1-05(b) (Lock-in), specifically, the number of out-of-cell hours per person;
 - § 1-08(f) (Access to Courts and Legal Services, including Law Library);
 - § 1-06 (Recreation); and
 - § 1-02(c)(2) (Classification), specifically, the number of programming hours offered to each young adult and the number of hours each young adult participated in programming.

The Department shall provide its first monthly audit report to the Board on February 15, 2018 for the preceding month of January, and shall also provide an update on its progress on the January audit at the January public Board meeting. The Department shall provide monthly audit reports for each month thereafter by the tenth business day of the following month, except the report for the month this Variance expires shall be provided by the fifth business day of the following month.

8. Where the Department is permitted to consider a young adult's activity occurring or actions committed at a time prior to the instant incident in connection with the young adult's placement in YA-ESH, such activity or actions must have occurred within the preceding year.

9. At each periodic review, a young adult will advance to a less restrictive level or unit unless: (1) he has engaged in disruptive, violent, or aggressive behavior while in his current level; and/or (2) there is credible intelligence that he may engage in additional violence in a less restrictive unit.
10. The Department shall offer five (5) hours of programming to each young adult in YA-ESH each day. For young adults enrolled in school, the five hours of programming includes three (3) hours of school.
11. Within 60 days, the Department shall develop a curriculum and plan to provide specialized trainings to all YA-ESH staff. The Department shall update the Board at the January public meeting as to its projected timeline for implementation.
12. The Department shall provide the Board with a public report on the implementation of the foregoing conditions. The requirements for this report are outlined in a document titled ESH and Secure Unit Variances – Public Reporting Condition, dated November 14, 2017, and available at: http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/November-14-2017/2017.11.14-%20ESH%20Secure%20Unit%20Variance%20Report%20for%20web_Updated.pdf
13. On at least a monthly basis, the Department shall provide the Board access to all documentation considered in each YA-ESH placement and review decision for young adults. This includes, but is not limited to, all records reviewed or created by YA-ESH adjudication, Health + Hospital's placement review, the Chief's reviews, the YA-ESH Entry Unit Review Committee, and the YA-ESH 45-day periodic review. On a monthly basis, the Department shall transmit to the Board a list of all YA-ESH placements and reviews. The Department shall provide this documentation for each month by the tenth business day of the following month. Documentation for the month this Variance expires shall be provided by the fifth day of the following month.
14. By December 28, 2017, the Department shall submit an update to its June 2017 Evaluation of Enhanced Supervision Housing for Young Adults. The update shall focus on outcomes and include progress updates on the issues they and the Board identified in the initial report.