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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 22, 2017, and ending on May 22, 2018, during which the Department may provide young adults (ages 18 through 21) housed in Secure Units with a minimum lock-out time of ten (10) hours per day and access to law library services by means of a law library kiosk and typewriters in the Secure Units.

Type of Variance: Limited

Date on which Variance will commence: November 22, 2017

Time period, if any: 6 months

Minimum Standards for which Variance is Granted: §§ 1-05(b) and 1-08(f)

Date on which Board of Correction first approved Variance (for renewals only):  
May 10, 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.<sup>1</sup>
2. The Department shall not use restraint desks in Secure Units except in the Secure Unit ("Secure") school area and only when (a) extenuating safety or security circumstances,

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<sup>1</sup> This condition is based on Standard 23-5.9 of the American Bar Association's Standards on the Treatment of Prisoners.

or specific, credible intelligence of a safety or security threat, require their use; and (b) the Deputy Warden of Secure approves their use in writing. The Department shall provide written notice to the Board on a weekly basis stating whether restraint desks were used and specifying the circumstances that required their use.

3. The Department will make every effort to (a) increase the number of staff present and supervising young adults during Secure Unit school sessions; and (b) keep the number of students to a safely manageable number without restraint desks by adding multiple school sessions if necessary.
4. The Department shall not use three- or more point-restraints in Secure Units.
5. The Department shall: (a) provide all young adults housed in Secure Units with a minimum out-of-cell time of ten (10) hours per day, except for instances of de-escalation, as set forth in the Department's written directive concerning Secure Units; (b) provide all young adults with due process in connection with their placement in Secure Units; and (c) exclude all young adults with serious mental or serious physical disabilities or conditions from placement in Secure Units.
6. The Department shall notify the Board, in writing, every time the lock-out period in Secure Units does not start at 5:00 a.m. and the reasons therefor. The Department shall provide written notice to the Board within 24 hours of such occurrence.
7. During the pendency of this Variance, if the young adult in a Secure Unit has not committed an infraction within the preceding 28 days, the young adult will advance to a less restrictive level or unit unless: (1) he has engaged in disruptive, violent, or aggressive behavior while in Secure Unit Level 1; and/or (2) there is credible intelligence that he may engage in additional violence in a less restrictive unit.
8. Where the Department is permitted to consider a young adult's activity occurring or actions committed prior to the instant incident, such activity or actions must have occurred within the preceding year.
9. The Department shall continue to adhere to the terms of DOC's June 9, 2017 Written Plan for Complying with and Reporting on BOC Minimum Standards:
  - § 1-05(b) (Lock-in);
  - § 1-08(f) (Access to Courts and Legal Services, including Law Library);
  - § 1-06 (Recreation).

In addition to the data the Department is currently providing, the Department shall report to the Board on the number of out-of-cell hours per person (§ 1-05(b) (Lock-in)), the number of programming hours offered to each young adult, and the number of hours each young adult participated in programming (§ 1-02(c)(2) (Classification)). At the January public meeting, the Department shall report on its progress towards adding these data points to the audit.

10. The Department shall provide the Board with a monthly public report on the implementation of the Variance and 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](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).
11. On at least a monthly basis, the Department shall provide the Board access to all documentation considered in each Secure placement and review decision. This includes, but is not limited to, all records reviewed or created by Secure Unit adjudication, Health + Hospital's placement review, the Chief's reviews, and the Secure Unit Support Team. On a monthly basis, the Department shall transmit to the Board a list of all Secure placements and reviews. The Department shall provide this documentation for each month by the tenth business day of the following month, except documentation for the month this Variance expires shall be provided by the fifth business day of the following month.