



November 2017

The Legal Aid Society Testimony to the Board of Correction

Oral Testimony by Ginger Lopez

My name is Ginger Lopez, I am a paralegal with the Prisoners' Rights Project of The Legal Aid Society. Over the past year, fellow paralegal Lizzy Wolozin, several law interns, and I have interviewed over 70 people incarcerated in Enhanced Supervision Housing (ESH). Consistently, the people we've interviewed have described a de-humanizing, punitive, seemingly arbitrary program. It is clear from their experiences that ESH is absolutely not therapeutic. It is dangerous and is harming the people subjected to it. Overwhelmingly, the mostly young men housed there express a sense of hopelessness that they can safely advance up and out of ESH. At minimum, given the more extreme impact of punitive conditions on young people, the Board should deny the variance requests for people under 21. But the reality is ESH is currently a debilitating, violent failure for all ages. Changes must be made now, even as you consider rule-making to improve the conditions for everyone in restrictive housing.

I would like to read some excerpts of statements about current conditions in ESH from some of the people we've interviewed. The clients quoted today are all over 21 years of age except for one who is 20. We are not provided the names of the individuals housed in ESH by DOC and cannot, therefore, easily identify the young adults for interviews.

These excerpts are all from interviews that occurred after our testimony in July. Please keep in mind that these are just examples. All of the individuals we've talked to in ESH report similar frustrations with lack of services, inconsistent policies and the punitive nature of the unit.

We believe that it is important that you hear their words and remember that these are people who require this Board to maintain appropriate standards in our jails. Their fate is in your hands.

**Many of our clients complain about the ESH lock-out schedule. Officers are frequently late to let people out of their cells, resulting in less than seven hours of lockout time, and long periods of lock-in, sometimes more than 24 hours in a row. Facility lockdowns exacerbate this problem.**

Quote from 29 year-old: In Phase I, the DOC required the Emergency Service Unit to lock us in and out of our cells. Lock-outs often occurred late, but we were always locked in on time. That meant that often we were locked out of our cells for less time than the required 7 hours.

Quote from 22 year-old: The lock-out time is supposed to alternate day to day between the two tiers. The hours are from 5am-12pm, and from 1pm-8pm. During the lock-out time, the corrections officers bring us out of our cells one by one to lock us into the restraint desks. Sometimes, this process can take up one or two hours of your allotted lock out time. The officers will also just skip people to get somebody else out first. People will have to yell, kick and scream to get out of their cells. This is incredibly stressful for everyone. Our daily lock out time is often cut even shorter because of the fact that ESH gets locked down at least three to four days per week. This has happened every single week that I have been here. This is made even worse because we also get locked down every time something happens at OBCC. Frequently, we would get locked down during the 5am-12pm scheduled lock-out time. Then, we have to wait until the next day's alternate lock out time at 1pm to get out of our cells. Because of the alternating schedule, we are often locked into our cells for twenty-five to thirty-eight hours, or sometimes even longer.

Quote from 23 year-old: Every day the tiers rotate who is locked out in the morning and evening. The early shift is 5am to 12pm; however, the lockout rarely occurs at 5am. We usually get locked out between 6am and 7am. When our lockout times starts late, DOC staff do not add time to the end of the lockout, so we do not get 7 hours out of cell. The evening shift is from 1pm to 8pm. We get our full 7 hours more regularly in the afternoon shift, but there are still times when DOC staff deny us our full lockout time. Sometimes we are locked down for 23 hours at a time.

Quote from 22 year-old: Lockout time is frequently up to an hour and a half late. The other day, we were supposed to lock out at 1 pm and we locked out at 4:30 for no reason.

**Our clients often complain about the lack of legitimate due process in the review process. Reviews occur late and individuals who have done everything asked of them rarely advance.**

Quote from 29 year-old: I was in Phase I of ESH for 9 months. I never received any disciplinary infractions for the entirety of my time in Phase 1. I was continually told that I was not advancing because I blocked my window and my food slot.

Quote from 29 year-old: After my first 45 days in Phase 1, I received my first review. I passed the review, as I had participated in programming and had not received any disciplinary infractions, but was not moved out of the unit. I submitted a grievance, and the grievance officer told me they did not know why I had not been transferred. Soon after that, the grievance officer was transferred out of the facility. Correction staff came to my cell and threatened me, saying, "keep grieving, you'll stay here another 45 days."

Quote from 29 year-old: I have been completing the program books in my cell, but program staff tell me it "does not count." I have basically given up on programming in Phase 2, because I am not learning any marketable skills from the programming, and I know that it will not affect my ability to move up to Phase 3. I do not think I will ever get to Phase 3, and the Captain tells me so. I have heard of people being moved back from Phase 3 to Phase 2 for small things. I believe that I have absolutely no hope of advancing.

Quote from 23 year-old: I was placed into Phase 2 of ESH upon my arrival in July 2016, and have been at this phase ever since. The 45 day review comes, but staff appear to pick and choose who they will allow to progress. I participate in programming, but believe that I will not and have not progressed to the next phase because of prior tickets from the previous year. At my last review, I was told that I did everything sufficiently according to their standards, but was still unable to progress to the next phase. At one point, everyone on the unit was participating in programming, but once they saw that even if they participated they would not progress, most gave up participating.

Quote from 22 year-old: I heard rumors I would receive a forty five days review. Instead on my thirty first day in ESH, I was informed that this was the first day of my 45 day review period and I would have a review in forty-five days. So this was actually a seventy six day review period. After this review period, I was informed that I would still continue to be in ESH Phase I. In general, the outcomes of all of our review hearings seem completely unfair and baseless. We are told that in order to advance in ESH, we have to participate in programming, and that there are booklets we have to complete. Meanwhile, those of us who participate in everything we are asked to do just stay here. I attempted to complete all of my workbook. However it was thrown away after a hearing. I never received a disposition.

Quote from 29 year-old: We programmed in the restraint desks. Our programming included anger management programming, poetry and literature workshop, what they called “Goals and Skills”. I always participated in programming, because I did not want to give them an excuse to keep me in Phase 1. I earned four separate certificates. However, I did not advance for 9 months, despite always participating. I constantly received paperwork that said I failed to advance because I had been written up in the log book for smoking, or covering my window. However, I have never had a dirty urine test; and I do not smoke, because of my severe asthma. I felt like ESH contradicted the logic of the programming, because there was no accountability for staff or our own participation in the programming.

#### Oral Testimony by Lizzie Wolozin

My name is Lizzy Wolozin. I am a paralegal with the Prisoners’ Rights Project of The Legal Aid Society. In addition to the complaints about ESH’s unduly limited lock-out time and lack of due process shared by Ms. Lopez, I would like to share excerpts from our clients statements about shackling, other extreme measures (K9, ESU), dignity and safety. At the end I will share recommendations made by our clients that demonstrate their understanding of their plight and provide some logical solutions that should be considered.

We believe that it is important that you hear their words, and consider them carefully, as you regulate the conditions of their confinement in our City’s jails.

**During lock-out in ESH Phase 1, our clients are shackled to restraint desks, ostensibly for their own safety. However, in addition to feeling robbed of their agency and humanity, individuals report feeling vulnerable to attack and unable to defend themselves should someone get free. Several people have been seriously hurt while shackled to a desk. We also**

**have heard multiple reports of people urinating on themselves because staff did not respond to their requests to go to the bathroom.**

Quote from 20 year-old: I was attacked in a restraint desk. When I was returned to ESH a Captain came to speak with me and asked if I wanted protective custody. The Captain also asked me to give a written statement. I did so, and in the statement, I asked to be placed in protective custody. I was told I would have a hearing three days later, but I never did. Instead, I received a piece of paper saying that I did *not* want protective custody, even though I told the Captain that I did. I told the Captain that the paper was wrong, and that I did want to be placed into protective custody. No one has ever followed up with me about this.

Quote from 22 year-old: While locked out in the restraint desks, sometimes it would take the officers a really long time to respond to our requests. Even to use the bathroom, people would have to yell because it would take forever for officers to respond. Sometimes, people couldn't wait any longer, and would just urinate on the floor. In general, using the bathroom while locked out was annoying, because you would be subjected to a strip search every single time.

Quote from 22 year-old: The use of the restraint desks make ESH very unsafe. In a recent incident where an individual was cut by others while he was shackled in the desk restraint chair, he was not able to get away, or defend himself. The ESU Captain who is supposed to be watching us during lock-out, had left the floor. The restraint chairs are also dangerous because officers drop keys all the time, and individuals are able to get handcuff keys. Also, sometimes officers forget to lock certain people into the chairs properly. When I was in one unit, there were probably five occasions when an officer dropped his keys and someone got ahold of them. Afterwards, the officers didn't want to take responsibility for it. This makes it very easy for assaults to keep happening to people who are not able to get away.

Quote from 22 year-old: During lockout time, we are in restraint desks. While in restraint desks, the correction officers don't respond very quickly when we request something. I have seen a few inmates, waiting for the restroom for a long time, urinating on the floor instead. We are shackled all the time, even just when going to the shower. Everything that happens in ESH is making us worse. Being in ESH is a black hole; once you receive this status, you just don't leave from it, no matter what. Sometimes I feel ready to throw my life away just to get out of ESH. It has been so difficult to be housed here that I recently considered taking a bad plea bargain on my criminal charges to get out and be transferred upstate.

Quote from 29 year-old: I was transferred to ESH from the Residential Housing Unit (RHU). Mentally, Phase 1 is disturbing because you are chained. DOC wants you to do wrong; they are teaching us that wrong is right. In Phase 2, regular DOC staff can lock us out. There are no dogs, there are no restraint desks, and I feel much calmer. I believe that you could take the meanest, loudest person from Phase 1 and put them in Phase 2 and they would improve.

**Our clients report that correctional staff rely heavily on militarized emergency units, like the Probe team, the Emergency Service Unit and the K-9 unit, to respond to conflict.**

Quote from 29 year-old: In Phase 1 the DOC required the Emergency Service Unit to lock us in and out of our cells. We were searched every time we entered and left our cells. We were

searched before showers. I was often left in the showers waiting for an officer to search me for hours. The only things that officers respected was violence, and they were constantly spraying chemical agents in response to incidents, however minor. I have severe asthma, and I was constantly catching asthma attacks in response to the spray. Correction staff would often make fun of me while I was having an asthma attack, laughing and saying, “he look like he’s dying.”

Quote from 23 year-old: Tasers are used every once in a while for disobeying orders. I witnessed a prisoner being tased in May 2017, and he was left on the floor of the unit for approximately 10 minutes until medical staff came. I have been sprayed with a chemical agent since my entry into ESH approximately five times.

Quote from 22 year-old: In ESH the correctional officers get into physical and verbal altercations with individuals all day. Minor incidents will happen and officers will escalate the situations unnecessarily. For example, recently an officer asked me to place my arms behind my back and into the cell door slot in order to be handcuffed. I complained that the slot was too little to do this. The officer told me to do it anyway. This resulted in four correctional officers taking me to the ground. I had severe rub burns on my chest from this.

Quote from 20 year-old: Since I returned to ESH, I have participated in school every day it was available because I really want to finish. This was difficult after I was attacked in a restraint desk. I have trouble focusing in the classroom because I am worried I will be injured again. I am constantly looking over my shoulder. I am also distracted by the loud barking of the dogs from the ESU K9 unit who are present in the classroom. The dogs are kept about fifteen feet away from where we are in restraint desks.

**The people we have interviewed have provided us with astute and realistic recommendations for improving ESH, from addressing the due process and safety issues to more and better programming and a reduction in non-contact visits.**

Quote from 29 year-old: I recommend that there be inmate council meetings, so that we can discuss our grievances and be heard by decision-makers. I would like more escorts, so that programs and recreation run as designed. Provide us with more activities so that we stay busy. Better programming, that teaches us job skills or the opportunity to earn college credit would be very motivating for me. I recommend more outreach and discharge planning programming, so that we can prepare for our lives on the outside.

Quote from 23 year-old: I believe that giving the individuals who are in ESH the same privileges as those in general population would help. Also, if a prisoner does all that is required of him to move to the next phase, then he should be moved. The inconsistency, favoritism, and blatant disregard for our overall mental health makes us feel completely helpless.

Quote from 29 year-old: I recommend that DOC plan a family day for us, to incentivize better behavior. We need real incentives in general, that are actually delivered when we behave well.

Quote from 23 year-old: Allowing us to touch our families when they come to visit would help deter alleged bad behavior significantly. The disconnect that we feel from others and from the outside world keeps us angry and sad.

Quote from 23 year old: It would be helpful if individuals knew that they would actually level up if they actively participated. I also think more program instruction on improving communication and writing skills would be beneficial to individuals. In terms of ESH placement improvements, I suggest more emphasis on individual characteristics and behaviors when considering what privileges should or should not be granted. I remind DOC of its own policy that the removal of contact visits should not be punitive, which I believe they have become.

Quote from 22 year-old: The phase 1 restraint chairs are too dangerous. Finally, the booth visitation restriction has got to stop. We need to be able to hug our families.