



October 10, 2016

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

Re: DOC request for a six month limited variance from Minimum Standard 1-16(c)(ii) which required that the DOC exclude individuals ages 18-21 from Enhanced Supervision Housing

Dear Executive Director King, Chair Brezenoff, and Board Members:

The Children's Defense Fund - New York (CDF-NY) is writing in regard to the October 5, 2016 six-month limited variance request from the Department of Correction (DOC), which seeks to continue and expand the use of Enhanced Supervision Housing (ESH) for 19 to 21 year olds, as well as the October 7, 2016 six-month limited variance request seeking to include 18 year olds for placement in ESH. To be clear, we strongly support the expected elimination of punitive segregation for 19-21 year olds on October 11, which, as the DOC notes, will result in the complete elimination of punitive segregation for those ages 16 through 21. However, it is difficult to comment meaningfully on the Young Adult Plan as it exists today without a clear sense of the scope of what is being proposed. If the Board does consider the variance on October 11, we ask that conditions be imposed similar to the conditions of the July 12 variance to bring greater transparency to the proposed use of ESH and all alternatives to punitive segregation. **Without a more comprehensive explanation for this new direction of the Young Adult Plan, we cannot support the establishment of a new young-adult ESH as proposed by the DOC.**

Minimum Standard 1-05(b)(ii) establishes that those confined in ESH "may be locked in during the day for up to nine hours in any 24-hour period." Because of the restrictive nature of the unit, the Board determined on January 13, 2015 that placement in ESH is not permitted for "inmates under the age of 18, inmates with serious mental or serious physical disabilities or conditions, and, as of January 1, 2016, and provided that sufficient resources are made available to the Department for necessary staffing and implementation of necessary alternative programming, inmates aged 18 to 21."¹ We understand that on January 12, 2016 the Board voted to approve the DOC's request for a six-month limited variance regarding the exclusion of those ages 18 through 21 from ESH, ending June 1, 2016,² "for the purpose of implementing the newly created Young Adult Strategy."³ Then, on May 10, 2016, the Board voted to approve the DOC's request for a six-month limited variance establishing the Secure Unit with a minimum lock-out time of ten hours per day as it was "a key component of the Young Adult Strategy plan."⁴ On July 12, 2016, the Board voted to approve the DOC's request for a three-month limited variance to extend the deadline to exclude those ages 19 through 21 from ESH, ending October 11, 2016,⁵ in order to offer a

¹ New York City Board of Correction. (January 13, 2015). Notice of Adoption of Rules. Retrieved from http://www1.nyc.gov/assets/boc/downloads/pdf/boc_rules_governing_correctional_facilities_fr.pdf.

² New York City Board of Correction. (January 12, 2016). Record of Variance Action. Retrieved from [http://www1.nyc.gov/assets/boc/downloads/pdf/01.2016%20Record%20of%20Variance%20Action%20-%201-17\(b\)\(1\)\(ii\)%20-%20Exclusion%20from%20PSEG.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/01.2016%20Record%20of%20Variance%20Action%20-%201-17(b)(1)(ii)%20-%20Exclusion%20from%20PSEG.pdf).

³ New York City Department of Correction. (January 8, 2016). Variance Request to BOC Minimum Standards Regarding Implementation of the Young Adult Plan: Section 1-17 "Limitations on the Use of Punitive Segregation" Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Limited%20Variance%20-%20Elimination%20of%20Punitive%20Segregation%2018-21.pdf>.

⁴ New York City Department of Correction. (April 27, 2016). Variance Request. Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Limited%20Variance%20Request%20-%20Establishment%20of%20Secure%20Unit%20for%20Young%20Adults%204.27.16.pdf>.

⁵ New York City Board of Correction. (July 12, 2016). Record of Variance Action. Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/July-2016/post-records/POST%20Record%20of%20Variance%20Action%201-16%28c%29%281%29%28ii%29.pdf>.

“safe alternative” to punitive segregation.⁶ **With this history in mind, we encourage the Board to adopt the goal of increasing out-of-cell time beyond the 7 hours offered in ESH, a housing area a Board report described as “a mirror image of Bing Lite.”**⁷

Concerns with Evaluation

In the July ESH variance request, the DOC wrote, “If the inclusion of ESH as a housing option for the young adults (19-21 years old) proves to be beneficial, the Department will work with the Board to effectuate a rule change.”⁸ Months later, in the October 5 variance request, the DOC wrote, “If the inclusion of ESH as a housing option for the young adults (18-21 years old) *continues* to prove beneficial, the Department will work with the Board to effectuate a package of rule changes” [emphasis added]. Further, the October 5 letter states, “Preliminary findings indicated that additional housing options were integral to the successful adoption of the young adult strategy. It was recognized that the incorporation of Enhanced Supervision Housing (ESH) into the management plan could serve to address a noted deficiency.”⁹ At this time, we ask that additional clarity be provided for what the “noted deficiency” includes, and how the benefits of ESH are being determined by the DOC and understood by the Board.

During the July discussion of ESH, the Board imposed three requirements as conditions on the three-month variance to allow the use of ESH for the placement of 19 to 21 year olds:

- (1) Each request for approval of a placement in ESH must be in writing and specify the reason why a less restrictive housing setting is not a safe option. The Chief of Department must also specify his reason for approving the request. The request for approval and the Chief’s approval thereof shall be sent immediately to the inmate who is subject of the request, NYC Health + Hospitals (“H&H”) and the Board.
- (2) The Department shall provide the Board with a weekly public report of implementation.
- (3) On a weekly basis, the Department shall provide to the Board notification and review paperwork for young adults admitted to TRU, SCH, Secure Unit or ESH.

We recommend that equally comprehensive conditions be applied to the October 5 and October 7 variance requests, and that the DOC be asked to report publically on “the reason why a less restrictive housing setting is not a safe option” in instances where 18 to 21 year olds are placed in ESH.

Concerns with Criteria for Placement

According to the October 5 letter from the DOC, “To date, four (4) young adults deemed appropriate for initial placement by the Chief of the Department, have been transferred into [ESH].” We request that the Board require the DOC to define “appropriate,” as much of the past public comment on ESH has been directed at the vague nature of ESH placement criteria. In a Board report on ESH, released May 2015, the Board wrote that several people housed in ESH expressed to Board staff that they prefer being confined in punitive segregation than being housed in ESH, and “they know that a punitive segregation sentence is for a fixed period of time; the duration of a stay in ESH is uncertain,” suggesting that people “may choose to act out in an attempt to be transferred to punitive segregation.”¹⁰ According to Minimum Standard 1-16(a), “ESH is designed to separate from the general population those inmates who pose the

⁶ New York City Department of Correction. (June 30, 2016). Re: Limited Variance Request to BOC Minimum Standards Regarding Implementation of the Young Adult Plan: Section 1-02(c)(1) and Section 1-17(b)(1)(ii). Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/July-2016/DOC%20Six%20Month%20Variance%20Requests%20Letter%20-%20Elimination%20of%20Punitive%20Segregation%20for%2019-21%20year%20olds%20and%20Housing%20Separately%20and%20Apart%206.30.16.pdf>.

⁷ D’Iverno, A. (2015). Follow-up report on Enhanced Supervision Housing as of April 30, 2015. New York: New York City Board of Correction. Retrieved from [http://www1.nyc.gov/assets/boc/downloads/pdf/Follow-up%20report%20on%20Enhanced%20Supervision%20Housing%20\(April%2030.%202015\).pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Follow-up%20report%20on%20Enhanced%20Supervision%20Housing%20(April%2030.%202015).pdf).

⁸ New York City Department of Correction. (July 11, 2016). Re: Amended: Limited Variance Request to BOC Minimum Standards Regarding Implementation of the Young Adult Plan: Section 1-02(c)(1), Section 1-17(b)(1)(ii), and Section 1-16(c)(1)(ii). Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/July-2016/Amended%20DOC%20Variance%20Requests%20Letter%20-%20Elimination%20of%20Punitive%20Segregation%20for%2019-21%20year%20olds%2c%20Housing%20Separately%20and%20Apart%20%2c%20and%20Placement%20in%20ESH%207%20%2011%2016%20.pdf>.

⁹ New York City Department of Correction. (October 5, 2016). 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)(ii). Retrieved from <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/October-11-2016/DOC%20Six%20Month%20Limited%20Variance%20Request%20-%20Enhanced%20Supervision%20Housing%20%28ESH%29%20for%20Young%20Adults%20100516.pdf>.

¹⁰ D’Iverno, A. (2015). *Op. Cit.*

greatest threats to the safety and security of staff and other inmates.” However, there is considerable overlap in Minimum Standard 1-16(a)¹¹ and the shared Secure Unit placement criteria. According to the variance request submitted May 10 that established the Secure Unit:¹²

- “Young adults who are engaging in serious violence and assaultive behavior will be considered for the Secure Unit.”
- “The Secure Unit is intended for the housing of young adults who commit serious and persistent acts of violence such as assaults on staff and peers, gang activity, and slashings and stabbings.”
- “The young adults placed in the Secure Unit are the most challenging of the overall young adult population, as they have exhibited a history of persistent, violent, and/or assaultive behavior.”

We want to emphasize the need for the Board to require the DOC to clearly distinguish between criteria for placement in each of the four housing tiers – Second Chance, TRU, Secure and ESH. Between July 12 and October 11, 2016, people ages 19-21 were eligible for punitive segregation only through infractions for “a slashing or stabbing of staff or other assault on staff that causes staff to suffer one or more serious injuries; or a slashing or stabbing of another inmate.”¹³ With the coming elimination of punitive segregation, we encourage the Board to strengthen the required reporting on placement justifications for each of the four housing tiers - Second Change, TRU, Secure, and ESH. **We request further clarity on the criteria for placement and recruitment of young adults into all units, as they exist at the October 11 deadline and how they plan to operate until the November Secure Unit deadline, as well as throughout the six proposed months of this requested ESH variance. If the Board does choose to vote on the six-month variance request, we strongly recommend that conditions be added to halt the establishment of a new young adult ESH at this time.**

Sincerely,

Charlotte Pope
Youth Justice Policy Associate

¹¹ An inmate may be confined in ESH if the inmate presents a significant threat to the safety and security of the facility if housed elsewhere. Such a determination shall only be supported by a finding that one of the following has occurred: (1) The inmate has been identified as a leader of a gang and has demonstrated active involvement in the organization or perpetration of violent or dangerous gang-related activity; (2) The inmate has demonstrated active involvement as an organizer or perpetrator of a gang-related assault; (3) The inmate has committed a slashing or stabbing, has committed repeated assaults, has seriously injured another inmate, visitor, or employee, or has rioted or actively participated in inmate disturbances while in Department custody or otherwise incarcerated; (4) The inmate has been found in possession of a scalpel or a weapon that poses a level of danger similar to or greater than that of a scalpel while in Department custody or otherwise incarcerated; (5) The inmate has engaged in serious or persistent violence; or (6) The inmate, while in Department custody or otherwise incarcerated has engaged in repeated activity or behavior of a gravity and degree of danger similar to the acts described in paragraphs (1) through (5) of this subdivision, and such activity or behavior has a direct, identifiable and adverse impact on the safety and security of the facility, such as repeated acts of arson. Provided, however, that, where the Department is permitted to consider an inmate's activity occurring or actions committed at a time when the inmate was incarcerated, such activity or actions must have occurred within the preceding five (5) years. Where the Department is permitted to consider an inmate's activity occurring or actions committed at a time when the inmate was not incarcerated, such activity or actions must have occurred within the preceding two (2) years.

¹² New York City Department of Correction. (April 27, 2016). *Op. Cit.*

¹³ New York City Board of Correction. (July 12, 2016). *Op. Cit.*