



# THE CITY OF NEW YORK

## BOARD OF CORRECTION

**To** Members of the Board of Correction  
Richard Wolf

**From** Ashley D’Inverno, Director of Research & Compliance

**Subject** Preliminary report on DOC’s implementation of Enhanced Supervision Housing as of March 3, 2015

**Date** Thursday, March 05, 2015

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### Purpose

This report serves as a first-look at the Department of Correction’s (DOC) implementation of Enhanced Supervision Housing (ESH). We summarize the background of ESH and provide a timeline. We then present details on the inmates currently housed in ESH, as well as how the new unit has been operating.

### Summary

BOC is working diligently to assist DOC in its efforts to ensure the safety of both inmates and staff. However, BOC has encountered some difficulty obtaining the necessary information from DOC to adequately monitor compliance and effectiveness. For instance, on February 25, 2015, BOC staff was denied copies of placement notices and other documents provided to ESH inmates despite Directive 1100R-A section IV(c) which states, “Board of Correction staff may view and photocopy departmental records. All requests by Board of Correction staff to view and photocopy departmental books, records, documents and papers are to be complied with *promptly* [emphasis added] by Department staff.” Without timely access to all relevant information, BOC will be unable to identify problems quickly and work with DOC to resolve them.

### Background

On January 13, 2015 the Board voted to adopt new rules and approve the creation of Enhanced Supervision Housing, a non-punitive alternative to punitive segregation.<sup>1</sup> The purpose of ESH is to house inmates posing the most direct security threats so that the Department has the means to reasonably control the activities of its most violent inmates.<sup>2</sup> Violence has been steadily increasing at Rikers Island; thus, the goals of ESH are to reduce violence, promote rehabilitation and good behavior through the use of programming, and ensure the psychological and physical well-being of all the

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<sup>1</sup> Per Directive 4497 section III (a), DOC states, “Enhanced Supervision Housing (ESH): is a non-punitive housing unit [ . . . ].”

<sup>2</sup> See N.Y.C. Board of Correction Minimum Standards §1-16.

inmates. Furthermore, the creation of ESH is expected to assist the Department in reducing the overuse of punitive segregation.

**Timeline**

- **January 13, 2015** The Board approved the creation of ESH.
- **February 21, 2015** ESH effective date, but DOC chose to push the opening date to Monday, February 23, 2015.
- **February 23, 2015 – March 3, 2015** DOC began the processing of transferring inmates to ESH, slowly increasing the census over this time period. As of March 3, 2015, the ESH census was 18<sup>3</sup>.

**ESH Inmates**

The chart below includes basic demographic information on the 18 ESH inmates.

Age	Average: 27 Range: 22-43
Race	72% African American (n=13) 17% White (n=3) 11% Other (n=2)
M-Status	72% (n=13)
Length of stay – current incarceration	Average: 434 days <sup>4</sup> Range: 71-1397 days
Inmates transferred from Punitive Segregation	28% (n=5)
Inmates transferred from Restrictive Housing Units (RHU)	6% (n=1)
Days spent in Punitive Segregation over past year	Average: 129 Range: 0-318
Security Risk Group	72% (n=13)
Red ID	72% (n=13)

Based on materials DOC utilized during the assessment process, it is not clear why some inmates received new restrictions on mail, visits, or phone calls, particularly if they did not have an ICR status<sup>5</sup> or these restrictions prior to ESH placement. **Of the eight inmates known to have visit restrictions, only two had visit restrictions prior to ESH placement.**

<sup>3</sup> The census is taken daily at 5am. Per the census, there were 19 inmates in ESH housing on this date. However, we know that one inmate was discharged after the census was taken; therefore, we are reporting on the 18 inmates known to be located in ESH on March 3, 2015.

<sup>4</sup> One inmate has been incarcerated for 1,397 days. This outlier skewed the length of stay. Without this inmate, the average length of stay is reduced to 378 days.

<sup>5</sup> ICR status refers to Intended Contraband Recipient. DOC gives an inmate this status when the inmate is discovered to be an intended or actual recipient of contraband during a visit or through the mail.

## **Incidents**

On Saturday, February 28, 2015, in the visit search area, four balloons of marijuana were found in the socks of an ESH inmate. The inmate refused to surrender them, so three officers utilized control holds to take the inmate down to the floor. A visit floor officer had observed a visitor passing the marijuana to the ESH inmate. The visitor was arrested and 1 West was placed on lockdown for an hour and forty minutes so DOC could conduct a search of the inmate's living quarters. The inmate also received a drug test and ICR card. This inmate has since been transferred to state prison.

On March 4, 2015, in 1 West, an ESH inmate attempted to climb over the rail of the top tier and stated he was going to jump off the tier. The inmate refused to comply with the officer's orders to get off the rail. The officer used chemical agents, but this did not end the incident so three additional officers intervened and utilized control holds on the inmate, taking him to the floor. No injuries were reported and the incident was classified as a Use of Force C. BOC has since learned that the inmate involved in the incident will be transferred out of ESH and sent to punitive segregation.

## **ESH Operations**

BOC recognizes that DOC is still working on the logistics of providing services and programs to ESH inmates. However, BOC staff has learned that some services have not been provided appropriately or in a timely manner. It appears as though many documents are still in draft form or not being used and this is concerning because there is confusion among the inmates about why they were placed in the unit and what the unit entails. Consequently, inmates cannot learn what is expected of them or how they may work towards being discharged from ESH. On Wednesday, February 25, 2015, the program schedule was finally posted (see Attachment A) in the unit, although it was later removed on March 1, 2015.

### *General Intake, Processing, and Entering the Unit*

BOC staff has been onsite weekdays to monitor ESH. As inmates enter the unit, they are required to change into facility clothing and receive a second uniform. All inmates have been provided with headphones so they can listen to one of the four televisions. The first group of inmates did not immediately receive the Inmate Handbook insert explaining the program when they were transferred on Monday, February 23, 2015 because the print shop had not sent them. The following day, Tuesday, February 24, 2015, inmates were given the Inmate Handbook insert explaining the program (see Attachment B) and they were served with the notice of placement.

### *Hearings*

Hearings started on Wednesday, February 25, 2015; however, BOC discovered this only shortly before the hearings started. BOC was originally denied copies of the placement notices until DOC was instructed to provide BOC with the documents and allow BOC staff to attend the hearings. This is particularly concerning because the hearings were not being recorded and there is no schedule for when the hearings will take place (BOC staff were told that hearings start when the Adjudication Captain arrives). A hearing date/time is not provided on the placement notice, so it is unclear whether inmates are told in advance when their hearing will take place, thus calling into question whether inmates have adequate time to prepare for the hearing. After much insistence by BOC, DOC began recording hearings as of March 4, 2015.

BOC staff attended three hearings. Inmates were offered a hearing facilitator and the option to call witnesses, but none of the inmates utilized these options. The hearings lasted anywhere from five minutes to 20 minutes. The Adjudication Captain explained why the inmates were placed in the unit and asked them to, "Think positively about the program and give the programmatic component an opportunity." Most of the inmates were receptive to the program. At the end of the hearings, the Adjudication Captain informed the inmates they would receive the decision within two days and they have the option to appeal the decision. It is important to note that there was no discussion of visit, mail, or phone restrictions during these hearings.

### *Law Library*

BOC staff report that there is a lot of confusion surrounding how law library operates. The legal coordinator has been reporting to the unit, but there is not a sign-up sheet for inmates. The space for law library is very small (BOC staff estimate no more than two inmates could enter at a time); therefore, creating a system or utilizing sign-up sheets is imperative so that all inmates have equal opportunity to access legal resources. Additionally, the kiosk located in ESH law library is still not operable.

### *Lock-in/out Schedule*

ESH inmates have been broken up into two groups – the AM Tier and the PM Tier. The schedule rotates so that both groups have access to services. BOC was told the AM Tier will lock out from 5am-7am and 8am-1pm, while the PM Tier will lock out from 1pm-4pm and 5pm-9pm. However, this does not align with the schedule of mandated services which states the PM Tier is afforded Grievance starting at 12:00pm (see Attachment A). Notwithstanding these issues, there have not been any complaints by inmates with respect to locking in and access to services, but this could change as the census increases.

### *Mental Health*

Mental health providers have been making daily rounds. However, they only make rounds after 9pm, when inmates are locked in. If an inmate needs to speak with them before that time, they will make special arrangements. For example, on Wednesday, February 25, 2014, an inmate asked to speak with a mental health provider, but when the mental health provider arrived, the multipurpose room outside the unit, which mental health providers were told would be reserved for mental health consultations, was being utilized for hearings. The mental health provider was flexible and spoke to the inmate through the gate at the unit entrance. Providing therapeutic services through a metal gate severely compromises the effectiveness of such services. Mental health should be provided with a safe and private space to meet with inmates.

### *Recreation*

Recreation is not being consistently logged on the unit, making it difficult to know if it is being offered to both groups. When it is logged, it is typically only offered in the morning for the first group of inmates. However, the logbook states that inmates have been refusing recreation. This is possible, due to the recent inclement weather, but indoor recreation should be offered as an alternative when there is inclement weather. ESH inmates are escorted to a small concrete area behind the unit where there are no benches or equipment, offering little incentive to go to recreation.

### *Grievance and Social Services*

Grievance and social services have been afforded daily.

### *Healthcare Services*

ESH does not have traditional sick call. Medical staff makes rounds and identifies inmates who need to be taken to the clinic for further treatment. Initially, it was unclear whether ESH inmates that need further treatment would be processed through the CPSU clinic or the main clinic. As a result, there were delays in these services. BOC has since learned that the operating procedure is to send ESH inmates to the CPSU clinic. In the future, DOC intends to build a separate ESH clinic.

Logs are not being kept so it is difficult for our staff to accurately report on whether sick call happened on any given day. Concerned for their safety, the physicians are not making rounds because inmates are locked out. This is alarming because BOC standards §1-16 (d4) state, "All inmates in ESH shall be seen at least once each day by medical staff who shall make referrals to medical and mental health services where appropriate." It is vital that the inmates in ESH do not decompensate, but without a medical professional making rounds and contact with the inmates, the burden of reporting a decompensating or suicidal inmate would be on the officers or inmate himself. Fortunately, mental health clinicians have been diligent in making rounds. As of March 5, 2015, BOC staff confirmed that medical staff has been making rounds between 7:00am-8:00am when inmates are locked in.

### *Steady Posts*

Currently, 100% of the ESH officers are steady. BOC staff queried 12 officers and asked whether they were drafted or volunteered for the post. Eleven out of the 12 stated they were drafted. They volunteered only after DOC told them they were selected.

### **Conclusions**

BOC will continue to monitor compliance and assess the effectiveness of ESH. It is clear that DOC is still working out how to operate ESH, but that does not excuse the fact that services have been interrupted not only at the unit level, but at the facility level as well. Inmates should have a better understanding of why they were selected for the unit, what restrictions they have, and what programs will be offered. Many of the inmates are confused as to why they are in ESH, especially when some of the inmates have infractions that occurred years ago. DOC's lack of communication to BOC and the inmates regarding due process hearings is particularly concerning. Inmates should be provided with adequate notice so that they may prepare for the hearing and call witnesses. BOC should also be informed of the schedule for the hearings, should we decide to attend. Additionally, due process should be provided in a timely manner, within 3 business days (per BOC Standards §1-16 (g1)). BOC is aware of two inmates who have not had their placement hearings within this time frame.<sup>6</sup>

It is especially concerning that no programs aimed at rehabilitation, minimizing idleness, and addressing root causes of violence are being offered to ESH inmates, particularly if this is one of the items assessed

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<sup>6</sup> BOC has learned that if an inmate is not available (e.g., due to sick call, court, etc.) when the Adjudication Captain arrives to conduct hearings, the hearing does not occur and is postponed until the next time hearings are conducted.

during the inmate's housing review. One goal of ESH is to promote rehabilitation and good behavior through the use of programming, but the programming must exist in order for this to take place. Furthermore, DOC cannot evaluate the appropriateness of continued ESH placement for inmates if the inmates have not had the ability to participate in programs and reform their behavior. BOC standards give DOC until July 1, 2015 to provide this programming, but inmates placed in ESH prior to this date should be offered this option, especially when curriculum is available (e.g., *The Courage to Change Interactive Journaling*). Even after such programming has been implemented, it will be several months before the effects emerge.

BOC recognizes the related issue of reforms to punitive segregation and the impact this will have on inmates transferred to ESH. With the recent punitive segregation restrictions of no more than 30 consecutive days or 60 days within any six month period, inmates who have maxed out their time in punitive segregation (which includes RHU) may be transferred to ESH. BOC will closely monitor the use of ESH for inmates who are no longer eligible for punitive segregation.

**ENHANCED SUPERVISION HOUSING UNIT**

## Programs Calendar of Mandated Services

02/20/2015

PROGRAMS & SERVICES AFFORDED	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
BARBERSHOP	CLOSED	PENDING	PENDING	PENDING	PENDING	PENDING	CLOSED
COMMISSARY	CLOSED		AM AND PM TIERS 0900- 1000			Make-up for courts	CLOSED
LAW LIBRARY	CLOSED	CLOSED	AM TIER 0800-1200 PM TIER 1600-2100	AM TIER 0800-1200 PM TIER 1600-2100	AM TIER 0800-1200 PM TIER 1600-2100	AM TIER 0800-1200 PM TIER 1600-2100	AM TIER 0800-1200 PM TIER 1600-2100
RECREATION	AM TIER 0800 -0900 PM TIER 1400-1500	AM TIER 0800 -0900 PM TIER 1400-1500	AM TIER 0800 -0900 PM TIER 1400-1500	AM TIER 0800 -0900 PM TIER 1400-1500	AM TIER 0800 -0900 PM TIER 1400-1500	AM TIER 0800 -0900 PM TIER 1400-1500	AM TIER 0800 -0900 PM TIER 1400-1500
RELIGION SERVICES			JEWISH* 1100	CATHOLIC* 1100	PROTESTANT* 1100	MUSLIM 1300	
SICK CALL	EMERGENCIES ONLY	AM TIER DAILY PM TIER DAILY	AM TIER DAILY PM TIER DAILY	AM TIER DAILY PM TIER DAILY	AM TIER DAILY PM TIER DAILY	AM TIER DAILY PM TIER DAILY	EMERGENCIES ONLY
SOCIAL SERVICES	CLOSED	AM TIER 0900-1100 PM TIER 1300-1500	AM TIER 0900-1100 PM TIER 1300-1500	AM TIER 0900-1100 PM TIER 1300-1500	AM TIER 0900-1100 PM TIER 1300-1500	AM TIER 0900-1100 PM TIER 1300-1500	CLOSED
GRIEVANCE	CLOSED	AM TIER 0800-1200 PM TIER 1200-1600	AM TIER 0800-1200 PM TIER 1200-1600	AM TIER 0800-1200 PM TIER 1200-1600	AM TIER 0800-1200 PM TIER 1200-1600	AM TIER 0800-1200 PM TIER 1200-1600	CLOSED
VISITS	A-L	CLOSED	CLOSED	A-L	M-Z	A-L M-Z	M-Z
LINEN EXCHANGE	CLOSED	PENDING	PENDING	PENDING	PENDING	PENDING	CLOSED

\*Time frames will be rotated to meet needs

## Attachment B

### ENHANCED SUPERVISION HOUSING

#### **Enhanced Supervision Housing**

Enhanced Supervision Housing (ESH): is a non-punitive housing unit for inmates who, based on security screening data and verifiable information, pose a credible threat to the safety, security, and good working order of the facility. Inmates housed in ESH shall have access to programming aimed at facilitating rehabilitation, addressing root causes of violence, and minimizing idleness. This includes creating incentives for good behavior within ESH, rehabilitating individuals who are assigned to ESH, and providing access to appropriate programs and necessary treatment. See Section 1-16 (“Enhanced Supervision Housing”) of the BOC Minimum Standards for more information.

#### **Initial Placement**

When you are going to be initially placed in Enhanced Supervision Housing you will be provided with written notice informing you why you have been placed (you will be evaluated for placement in Enhanced Restraints at the same time – for more information see the **Enhanced Restraint and/or Red ID Status** section of this Handbook). The notice should say very clearly why you were placed in ESH and tell you that you have a right to a hearing before an impartial Adjudication Captain within 3 business days.

#### **Hearing**

The Adjudication Captain will decide if the evidence and witnesses you want are appropriate, relevant, and not repetitive of other evidence or witnesses. If you are placed in ESH, the notice will tell you what restriction(s) are being imposed. ESH may impose restrictions such as monitoring of correspondences, restriction of certain types of items that may be permissible for the general population or other items stipulated during the hearing.

#### **Written Decision**

Unless something unexpected happens (such as you having to appear in court) to delay your receiving the decision, if the adjudication’s decision is that you should remain in ESH, you must receive a written decision saying so within 72 hours after the hearing is finished, not including weekends and holidays. A decision to continue to house in ESH must be based on a “preponderance of the credible evidence” which means most of the evidence must prove placement is warranted.



## **Appeals**

If you believe the decision to keep you in ESH is wrong, you have a right to appeal that decision to the Deputy Warden of ESH at your facility within 21 days after you get the decision. At any other time you may appeal if you have a good reason and supporting facts, including new evidence or a change in circumstances.

Appeal forms can be obtained from the uniformed staff assigned to your ESH unit. If you want to appeal, you must fill out the Appeal form explaining why you think you should not remain in ESH. You must file the completed form in the locked box marked "ESH Appeals" in the unit. Staff from the Deputy Warden of ESH office will collect the contents of the locked box daily from Monday through Friday.

You may mention improved conduct on your part as a reason to remove you from ESH. The Deputy Warden of ESH will review the specifics of your appeal as well as all documented information and the circumstances surrounding your placement. The Deputy Warden of ESH has 7 days after receiving the appeal to render a written decision. Then you must receive the written decision within 1 business day. The Deputy Warden of ESH's decision is final.

If either your privileges or your visitor's privileges have been denied, revoked or limited, you may appeal to the N.Y.C Board of Correction. Any person doing so must give notice in writing to the Board of Correction and to the Warden of the facility. You may first file a grievance, but if you appeal to the Board of Correction as your first choice then you cannot go back and file a grievance.

## **Medical Review**

All inmates in ESH shall be seen at least once each day by clinical staff who will make referrals to medical and mental health services where appropriate.

## **Periodic Review**

Whether or not you appeal your placement in ESH, a review of the continued appropriateness of your placement and related restrictions will be conducted every forty-five (45) days by the Unit team, which includes the Deputy Warden for ESH, ESH captain, ESH housing officers, and servicing clinician(s) from the day and evening tours.

At least twenty-four (24) hours prior to the review, you shall be notified of the pending review in writing and of your right to submit a written statement for consideration on Form #ESH-7, "Notification of Enhanced Supervision Housing 45 Day Review." If you are unable to read or understand the notice, assistance shall be provided for you.

Periodic review of your ESH status shall consider the following:

The justification for continued ESH placement; the continued appropriateness of each individual ESH restriction and whether any such individual restrictions should be relaxed or lifted; information regarding your recent behavior and attitude since ESH placement began, including participation in and availability of programming; information regarding the effect of ESH placement or of individual ESH restrictions on your mental and physical health; any written statement you submit for consideration; any other factors that may favor retaining you or releasing you from ESH or any other factors that may favor the lifting of individual ESH restrictions or continuing to impose individual ESH restrictions; and if your ESH placement is to continue, any actions or behavioral changes that you might undertake to further rehabilitative goals and facilitate the lifting of individual ESH restrictions or ESH release.

At any time when deemed appropriate by the Deputy Warden of ESH, you may be evaluated and recommended for placement in a housing unit outside of ESH.