



November 14, 2017

Derrick D. Cephas, Vice Chair & Acting Chair  
Member of the Board of Correction  
Martha King, Executive Direction  
New York City Board of Correction  
1 Centre Street  
New York, NY 10007

**Re: Department of Correction Variance Requests for “Six (6) Month Limited Variance Renewal Request to BOC Minimum Standards: Use of Enhanced Supervision Housing (ESH) Section 1-16 (c)(1)(ii) for Young Adults (18 to 21 years old)” (Exclusion of 18-21 Year Olds from Enhanced Supervision Housing) and “Limited Variance Renewal – Secure Unit – Minimum Standards §1-05(b) and §1-08(f)” (Lock-In and Access to the Courts and legal services, including law library in the Secure Unit).**

Dear Director King, Acting Chair Cephas and Members of the Board:

Brooklyn Defender Services strongly opposes the Department’s continued use of Enhanced Supervision Housing for Young Adults, and we oppose the use of restraint desks in ESH and Secure Units. BDS encourages the Board to deny the Department’s request and instead move forward with rule-making on restrictive housing units.

At the time of ESH’s creation, the Board recognized the harms posed by isolation of young people, aged 18-21, and strictly excluded young people from these units. Yet, the Department repeatedly uses the process of variance requests to continue the humiliating and punitive treatment of the very young people the Board sought to protect.

Rather than moving towards compliance, DOC has just expanded the use of isolation for young people.

We believe these units are overly punitive in design and character, and as a result are counterproductive to their purported aims to reduce violence. One particular example is the practice of restraining young people to desks during their out-of-cell time. This practice is disturbing and a patently inappropriate use in facilities predominantly housing people who have yet to be convicted of any crime.

Despite the Department’s claims that placements in ESH and Secure are non-punitive, the policies that govern these units will almost certainly be perceived to the contrary. The punitive

tone is set from the very beginning, during 30 day “assessment” period throughout which young people in the ESH Entry Unit are subjected to the most severe restraints as a matter of course. In a jail setting where a young person is observed by correctional staff around the clock and healthcare staff daily, there is no reasonable justification for chaining a young person to a chair for a month to determine the least restrictive setting and restraints necessary to maintain safety. The “least restrictive setting” is, by definition, established on an individual basis. Uniformly applying severe and humiliating restraints to everyone can therefore only be understood as a punitive (or arbitrary) measure.

It should come as no surprise that many young people choose to remain in their cells rather than be subjected to the humiliation of being chained to a desk for hours each day.<sup>1</sup> As a result, however, these young people find themselves exposed to the devastation of solitary confinement - precisely the harm from which the Board sought to protect their developing minds when it adopted rules barring placement in punitive segregation and ESH.

Further exacerbating their social isolation, the vast majority of young people are deprived contact visits while in restrictive settings.<sup>2</sup> When our young clients are deprived of supportive contact visits with family, they uniformly become increasingly despondent and obstinate. Taken together, a predictable outcome of humiliating restraints and social isolation is a climate of frustration, resentment, anger and embarrassment; precisely the emotional ingredients that contribute to violence. As such, we consider such punitive measures to be counterproductive; harmful to the individual in question, and threatening the safety of other people in jail, as well as the communities to which these young people will ultimately return.

Should young people continue to be subjected to ESH units despite the Boards initial and intentional exclusion of this population for such restrictive settings, safeguards must be enumerated. Any restrictive measures - along with treatment and programmatic plans - should be considered and frequently reviewed by teams that include not only custody staff, but also mental health, social work, program, educational and other staff who interact with the young person. It is imperative that behavioral challenges are approached with more tools than punishment. The Department has more than a hammer on hand, and should be mandated to utilize a wider array of tools before resorting to extreme punitive tactics.

In the case of visiting, we understand that some of these young people may have been involved in incidents where weapons were used. Nevertheless, even if there is a justification to closely monitor visits, limits should be narrow, *individualized*, and reviewed in short intervals. We are confident that in most cases parents, grandparents, co-parents with children, and other close family members are *not* the culprits of contraband smuggling. Considering the relatively small population in question, visiting restrictions should be subject to closer and more frequent scrutiny and tailored to permit as much social contact with family and friends as possible.<sup>3</sup> For instance, situating a visit immediately adjacent to the correction officer’s post would allow for closer supervision without sacrificing altogether the crucial support young people receive through family visits.

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<sup>1</sup> July 2017 BOC Report on Young Adult ESH, p. iii

<sup>2</sup> Id., p. 20

<sup>3</sup> Also recommended in July 2017 BOC Report on Young Adult ESH, p. v.



Since the Board adopted measures to reform the use of isolation in our City's jails, DOC continuously states that they cannot comply with the minimum standards set forth by the Board. They've had more than a year to get up to speed, and yet young people continue to languish in isolation, and suffer direct harm the Board was vehemently opposed to at the beginning. This delay is inexcusable and we urge the Board to deny the Department's variance request.

Sincerely,



Kelsey De Avila, LMSW  
Jail Services Social Worker