



**NEW YORK CITY
BOARD OF CORRECTION**

November 14, 2017 Public Meeting Minutes

MEMBERS PRESENT

Derrick D. Cephias, Esq., Acting Chair
Stanley Richards, Acting Vice-Chair
Robert L. Cohen, M.D.
Honorable Bryanne Hamill
Jennifer Jones Austin, Esq.
Michael J. Regan
James Perrino
Gerard W. Bryant, Ph.D.

Martha W. King, Executive Director

MEMBERS ABSENT

Steven M. Safyer, M.D.

DEPARTMENT OF CORRECTION (DOC)

Cynthia Brann, Commissioner
Angel Villalona, Acting First Deputy Commissioner
Hazel Jennings, Acting Chief of Department
Jeff Thamkittikasem, Chief of Staff
Peter Thorne, Deputy Commissioner of Public Information
Winette Saunders, Deputy Commissioner of Youthful Offender and
Young Adult Programming
Faye Yelardy, Assistant Commissioner for Sexual Abuse and
Sexual Harassment Prevention
Timothy Farrell, Deputy Commissioner of Office of Classification and
Population Management
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Wesley Bauman, Assistant General Counsel
Ingris Martinez, Investigation Division Investigator
Anna Marzullo, Senior Policy Advisor
Steven Kaiser, Policy Analyst
Michael Tausek, Director of Correction Standard Review
Christopher Currenti, Director
Ruben Benitez, Director
RhonaMae Amorado, Legal Intern

NYC HEALTH + HOSPITALS (H+H)-CORRECTIONAL HEALTH SERVICES (CHS)

Patsy Yang, DrPH, Senior Vice President, CHS

Ross MacDonald, M.D., Chief Medical Officer, Assistant Vice President, CHS

Sara Gillen, Chief Operating Officer, CHS

Patrick Alberts, Esq., Senior Director of Policy and Planning, CHS

Levi Fishman, Director of Public Affairs, CHS

Ashley Smith, Assistant Director of Policy & Planning, CHS

Elizabeth Ford, Senior Director of Operations, CHS

OTHERS IN ATTENDANCE

Alex Abell, Urban Justice Center (UJC)

Jennifer Parish (UJC)

Susan Goodwillie (UJC)

Laura Fettig (UJC)

Elizabeth Mayers, Jails Action Coalition (JAC)

Victoria Phillips (JAC)

Ginger Lopez, Legal Aid Society Prisoners' Rights Project (LAS)

Elizabeth Wolozin (LAS)

Clara O'Brien (LAS)

Angel Castro, Correction Officers' Benevolent Association (COBA)

Otica Rutledge (COBA)

Albert Craig (COBA)

Charlotte Pope, Children's Defense Fund – NY (CDF-NY)

Catherine Frizell, Children's Rights

Maya Brown, Children's Rights

Ashley Saintiague, Brooklyn Defender Services (BDS)

Kelsey De Avila (BDS)

Miguel Medrano (BDS)

Simone Spirig (BDS)

Chelsey Davis, Office of the Mayor

Tyler Barbien, Office of the Mayor

Ashley Iodice, New York City Law Department (Law)

Kim Joyce (Law)

Keith Zobel, New York State Commission of Correction (SCOC)

Allen Riley (SCOC)

Robert C. (SCOC)

Dennis Gonzalez, *Nunez* Monitoring Team

Jin Lee, NYC Council

Brian Crow, NYC Council

Julia Ramirez, Osborne Association

Valentina Morales, Fedcap Rehabilitation Services, Inc.

Juliza Vasquez, NYC Department of Health and Mental Hygiene

Approval of October 2017 Minutes

Acting Chair Cephas asked for a motion to approve the October 10, 2017 meeting minutes. Upon Member Regan moving the item and Member Bryant seconding it, the minutes were unanimously approved (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Bryant, Hamill, Jones Austin, Perrino, and Regan).

CHS Response to BOC ESH Adult and Young Adult Reports

Acting Chair Cephas asked the Correctional Health Service (CHS) to present its response to the Board's ESH Adult and Young Adult Reports.

Dr. Ross MacDonald, CHS' Chief Medical Officer, stated that the processes that CHS has set in place are working to provide adequate care to patients in Adult ESH and Young Adult ESH (collectively, "ESH"). In particular, CHS has a written policy that guides its process for reviewing patients for contraindications to their placement in ESH. This policy guides the leadership staff who looks for a variety of conditions — both medical and mental health — that cannot be adequately managed in the ESH setting. On the medical side, this would include, for example, medicines that require directly observed therapy, such as insulin and blood thinners that require daily administration by a nurse. On the mental health side, this would include active, recent suicidality, serious mental illness (SMI), and developmental delay. CHS strongly believes that determinations on whether to exclude people from ESH can be achieved through the review of medical records. CHS is very cognizant of its mission as a clinical care service and believes that this review is outside the bounds of clinical care. For this reason, it is very important that front line staff be insulated from this task as much as possible to avoid the perception that CHS is not acting in the best interests of its patients. CHS believes that this process successfully works to limit any pathology that should not be housed in ESH.

In response to discussion in the Board's Reports about the high rate of substance use disorders in the ESH population, Dr. MacDonald said that this is a characteristic of the jail population across the board. He stated that CHS is undergoing a reorganization and expansion of its substance use disorder service which will include more outreach around harm reduction and be tailored to individual substances that patients use, including those housed in ESH.

Member Cohen asked Dr. MacDonald whether post-traumatic stress disorder (PTSD) would be a contraindication to placement in ESH. He gave as an example a person whose PTSD stemmed from his childhood experience of being shackled by his parents. Dr. MacDonald responded that CHS includes PTSD in its definition of SMI and that the trauma Member Cohen described would be a contraindication to placement in ESH.

Dr. Elizabeth Ford, CHS' Senior Director of Operations, further explained that if there is documentation in a patient's medical record that he had a significant traumatic experience being restrained in any kind of setting — while in punitive segregation or when not incarcerated — CHS would take that into consideration in assessing whether the patient should be placed in ESH. That situation would usually be case conferenced with Dr. Ford and one of her direct reports. Dr. Ford reiterated Dr. MacDonald's earlier point that it is extremely important for line staff be insulated from conducting this evaluation. This is because of the potential for patients to interpret such an evaluation as not in their best interests, which happens fairly frequently.

Member Cohen asked whether CHS had recommended against placement in ESH for reasons other than SMI. Dr. Ford said there had been some, but not many, instances from a mental health perspective where the unique circumstances of the patient led to exclusion from ESH.

Executive Director ("ED") King asked how CHS would exclude placement of a person with a cognitive impairment based on review of the person's medical record. She understands that

currently, not all people in custody are assessed for this condition. Dr. Ford noted that was a fair understanding and that a diagnostic code is placed in the patient's medical record if the patient has been formally diagnosed with such condition. In that event, the patient would be automatically excluded from ESH. CHS has begun to implement a screening for all people ages 16 to 18 that includes information specifically related to intellectual impairment, trauma, new episodes of psychosis, and substance use disorder. The plan is to expand the screening to all 16 to 21-year-olds. ED King asked what the timeline is for this expansion. Dr. Ford said they were waiting for new staff to start and hope that the expansion can be accomplished within the next six months.

In response to Member Hamill's inquiry, Dr. Ford said that CHS staff is not involved in determining whether a young person should progress to a less restrictive level of ESH. CHS is involved to some degree in determining whether people should progress to a less restrictive phase of the Transition Repair Unit (TRU) or exit of the program. She would have to check whether CHS was involved with making progression decisions for people in Secure and Second Chance. Dr. Ford noted that mental health staff does rounds in TRU, is involved in treatment team meetings, and sees individuals who are receiving mental health treatment there pretty frequently.

Death Review Panel Update

ED King stated that the Board's review of deaths in custody has led to critical, systemic reforms in the City's jail system since 1970. She said the Board conducted an internal review of its death review process so the Death Review Committee and the Board can restart its investigative processes with a significantly strengthened capacity to study the circumstances underlying deaths and recommend ways to prevent deaths in the future. As part of the process, the Death Review Committee will report to the Board and the public whenever a death in custody occurs. To that end, ED King announced there has been one death since the October 2017 Board meeting — Selmin Feratovic, who died on October 19, 2017 at the age of 28. This is the sixth death of a person in DOC custody in 2017.

Restrictive Housing Rulemaking Committee Update

Member Hamill announced that the Restrictive Housing Rulemaking Committee held fact-finding discussions with 11 experts, including academics, psychiatrists, criminal justice advocates, consultants, and corrections officials from around the country. Many of them spoke to the conditions of YA-ESH, namely, the use of restraint desks, the levels system, and the presence of dogs in the units. Several academic experts recommended that the Board review the American Bar Association's (ABA) Standards on the Treatment of Prisoners in developing its rules on restrictive housing. A former DOC Captain with a Ph.D. in forensic psychology said that restraint desks should be reserved for extremely violent individuals who have failed to change their behavior after DOC has engaged them in meaningful programs and after mental health staff has provided psychotherapeutic interventions. He also recommended that an interdisciplinary team comprised of DOC and mental health staff should evaluate, on an individual basis, when and for how long restraint desks should be used. Medical experts said that restraints should only be used for a limited amount of time to address an immediate safety concern after less restrictive options have been tried and failed. Correctional officials at the Washington State Department of Corrections said their use of restraints is distinguishable from DOC's use because they only utilize restraints in a maximum custody setting. Additionally, Washington State limits their use of restraint desks to one and a half hours of congregate programming per day for individuals exiting solitary confinement.

Member Hamill said that restraining young adults for more than four (4) hours at a time violates DOC's Restraints Directive. Moreover, given that individuals in ESH are only locked out in one block per day, it is unlikely that the Department is able to comply with the Board's Minimum Standards requiring seven (7) hours of lock-out for people in ESH. Member Hamill said that none of the experts with whom the Committee spoke with believes the operation of the ESH Entry Unit is consistent with sound correctional and psychological principles. Young adults should not be held in the Entry Unit for 30 days solely for the purpose of assessing where they should be placed next. Instead, the assessment should involve mental health staff and the information gathered should be used to develop individual programming that addresses the root cause of the individual's violent behavior. Member Hamill concluded her remarks by stating that overall, the Entry Unit has a disparate impact on young men of color and thus violates their right to equal protection of the law.

Public Comment on Variance Requests

Acting Chair Cephas stated that the Board would be voting on the Department's three variance requests regarding ESH for young adults ("YA-ESH), the Secure Unit, and a change in the visit schedule on Thanksgiving Day; he invited public comment on the variances. The Board heard public comment from Jennifer Parish (UJC), Alex Abell (UJC), Kelsey De Avila (BDS), Ginger Lopez (LAS), Elizabeth Wolozin (LAS), and Charlotte Pope (CDF-NY).

The public comments are available at: <https://www.youtube.com/watch?v=YPgLUZh6uzU>.

YA-ESH Variance Request

► Introduction

Acting Chair Cephas stated that on July 12, 2016, the Board granted variances from Minimum Standards 1-05(b) and 1-08(f) to allow the Department to house 19 to 21-year-olds in ESH. In October 2016, the Board granted a variance allowing DOC to house 18-year-olds in ESH. The Board last renewed these variances on July 11, 2017, both of which are due to expire on November 15, 2017.

DOC now requests that the Board approve a six-month renewal of the variance allowing for placement of 18 to 21-year-olds in ESH. DOC has also requested that the Board amend the Minimum Standards to incorporate this variance on a permanent basis. The Department explained that YA-ESH is currently designed to address the specific needs of the most problematic, violent young adults in DOC custody.

Acting Chair Cephas stated that the Board would vote on the variance request today and review proposed amendments to its Standards as part of the rulemaking process. Prior to the vote, the Acting Chair asked the Department to present its variance request.

► DOC's YA-ESH Presentation

Mr. Thamkittikasem, DOC's Chief of Staff, said the Department has tried to develop alternatives to deal with the most violent young adults in its custody and is committed to continually reviewing and improving ESH. DOC is working to improve and audit the provision of mandated services and programming to young adults in ESH. The Department is developing a comprehensive programming schedule that will be posted in every unit and will be available to the Board. DOC has removed dogs from YA-ESH and it intends to close the Entry Unit within the next 30 days. The Department is also working with SCOC to develop indoor alternatives for recreation with the goal of expanding recreation to two (2) hours a day. DOC is engaged in discussions with SCOC and the NYC Department of Education (DOE)

about providing education to young adults in ESH Level 2 in a space that does not require their co-mingling with young adults in restraint desks. In addition, DOE intends to roll out a survey to people currently or formerly in ESH to determine additional programming needs for the future.

Mr. Thamkittikasem said the Department requests renewal of the YA-ESH variance so that it can continue to resolve issues with the program. DOC believes ESH has had a positive impact on the Department's ability to manage this problematic but relatively small population. For context, he reported that of approximately 1,000 young adults in custody per day, only 25 are in YA-ESH, and only 10 of them are placed in restraint desks when they are out-of-cell. Moreover, only young adults who have been found guilty of a recent stabbing, slashing, or serious assault are placed in restraint desks.

Mr. Thamkittikasem stated that of the 600 young adult admissions since January 2017, only 83 were placed in ESH, and some of this number have progressed to Level 2 (without restraint desks). He cited statistics demonstrating that DOC's focus on young adult programming in GMDC and YA-ESH and other initiatives has led to a reduction of violence among young adults. Going forward, DOC would like to pursue a two-tiered track for ESH — one for adults and the other for young adults — but that requires collaboration with and approval from SCOC for design and construction of space. The Department continues to believe that ESH is a necessary tool to manage the most violent members of the young adult population and requires an additional six (6) months to make changes and improve the program.

Following Mr. Thamkittikasem's presentation, Member Regan moved the variance for discussion and Member Jones Austin seconded the motion.

► **Board Discussion**

Member Regan noted that no one on the Board likes how ESH is currently operating, but the Board continues to allow it to operate out of concern for the safety of staff who work there and the young adults who are housed there. He asked Mr. Thamkittikasem to comment on a due process issue raised during public comment. Apparently, only one member of DOC staff conducts periodic reviews and determines whether a young adult will progress to a less restrictive ESH level or exit ESH. If a young adult's progression is denied, he does not have an opportunity to appeal that determination, at which point his next review may not be for 45 days. The Chief of Staff responded that each individual in ESH is adjudicated for placement, and that DOC is working to expand the multidisciplinary review team to include programming staff and other agency staff if they agree to be involved. DOC would like to reduce the time between assessments, and is reevaluating that right now. Mr. Thamkittikasem said the Department is committed to taking the most cautious stance when it comes to security, but does not want to use restraint desks unless it is absolutely necessary to ensure the safety and security of staff and people in custody.

With respect to Legal Aid's public comment that young adults had been injured while in restraint desks, Member Regan asked how that could have happened. Mr. Thamkittikasem said that when the desks were first used, some people were able to attack each other due to the desks' proximity to each other. He also referenced an incident (still under investigation) where a key was displaced and, as a result, several individuals were unlocked from their desks and attacked one of their peers. Acting Chair Cephias asked whether the Department was aware of any individuals who had incurred any injury from restraint desk placement itself. Mr. Thamkittikasem said he did not know of any such instance. The Board said it would try to corroborate this assertion.

Acting Vice-Chair Richards commended the Commissioner on DOC's commitment to removing canines from ESH and eliminating the Entry Unit. He challenged the Department to eliminate the 45-day review period in favor of individualized assessments that would allow progression to a less restrictive level in less than 45 days based on good behavior. Mr. Thamkittikasem expressed his agreement with this approach.

Member Cohen asked for DOC's position on allowing young adults to participate in their reviews. Mr. Thamkittikasem said he did not have an answer to that question, but reiterated that DOC is redesigning its multidisciplinary review process so that more staff can be involved. Member Cohen asked when DOC's ESH Directive would be finalized and made public. General Counsel Heidi Grossman said that one barrier to finalizing the Directive is that the circumstances of ESH change every time the Department appears in front of the Board with an ESH variance request. She said they were hopeful that a finalized policy could emerge during rulemaking. Acting Chair Cephas asked whether the Directive could be released now, and revised later as necessary. Ms. Grossman said that DOC would consider that if today's variance was approved. However, it could be confusing to release multiple drafts, particularly if information in the operative draft no longer aligned with current practice. Acting Chair Cephas encouraged the Department to release something that could be reviewed.

Member Hamill said the Vera Institute of Justice, as well as experts consulted by the Board's Rulemaking Committee, concluded that there should not be predetermined timeframes in these restricted units. Instead, there should be individualized assessments so that people can move through ESH at their own rates of progress. She asked why DOC had not adopted this recommendation. Mr. Thamkittikasem disputed that Vera had made this recommendation for young adults. Nevertheless, the Department was attempting to vary the progression of these reviews and increase their frequency on a case-by-case basis. Member Hamill clarified that Vera had not finalized its report on young adults, but she believed Vera had recommended that restricted housing units in general should not operate with predetermined timeframes. Mr. Thamkittikasem recalled that Vera had recommended more frequent evaluations, but had not issued an express prohibition on predetermined timeframes. Member Hamill questioned what was taking DOC so long to implement more frequent evaluations. Mr. Thamkittikasem said some of the delay is attributable to the lack of available space to conduct more frequent reviews. In addition, the Department is restructuring all of its restrictive housing units, and each unit requires a different approach, which also contributes to delay implementation.

Member Hamill asked why there was no mention of restraint desks in DOC's variance request. General Counsel Grossman responded that the requests are tailored to specific Minimum Standards, and since there are no Minimum Standards governing restraint desks, the variance request does not address them. Member Hamill asked the Department how it planned to comply with its own Restraints Directive prohibiting more than four (4) continuous hours in a restraint desk, and the requirement that young adults in YA-ESH be locked out for seven (7) hours per day. Ms. Grossman clarified that the Directive requires DOC to offer breaks every hour (e.g., to use the bathroom, take a shower, make a phone call). The expectation is that if these procedures are followed, someone will not be in a restraint desk for seven (7) continuous hours. Given that young adults are only locked out in a single block and they may only be in a restraint desk for four (4) continuous hours, Member Hamill questioned whether seven (7) hours of lockout could actually be afforded since it was unlikely that services (phone calls, showers) could take up the remaining lock-out time.

Member Hamill concluded this discussion by citing statistics provided by Board staff about lack of progression in ESH, lack of appropriate due process before placement in ESH, and

DOC's noncompliance with the requirement of 7-hour daily lockout. She also read several comments by young adults in ESH that had been recorded by Board staff, including complaints about lack of services and unconstitutional conditions. Member Hamill emphasized that the Board has the authority to provide people in custody with more rights than required under the Constitution.

Member Perrino commended everyone in the room for their work and dedication, but said the most important thing is to keep people safe. He recalled the controversy a decade ago about reducing the use of punitive segregation, and applauded DOC's and the Board's collaborative efforts to eliminate punitive segregation for young people and significantly reduce its use for adults. He acknowledged that without punitive segregation for young adults, the Department needs another way to keep people safe, and while ESH may not be perfect, it is the only option right now until the Board and DOC figure out something better.

► **Votes on Proposed Conditions**

1. Prohibition on Restraint Desks

Member Cohen proposed the following condition: "Young adults will not be subject to restraint desks at any time." He expressed his view that restraint desks are punitive and endanger people, and are also inhumane and humiliating. Acting Chair Cephias conducted a roll call vote of all members present, and the Board voted 4-4 against approving the condition (Acting Chair Cephias and Members Bryant, Perrino, and Regan voted against the proposed condition, while Acting Vice-Chair Richards and Members Cohen, Hamill, and Jones Austin voted in favor).

2. Limitation on the Use of Restraints

Member Hamill proposed the following condition, modeled on Standard 23-5.9 of the ABA Criminal Justice Standards on Treatment of Prisoners: "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."

Acting Chair Cephias conducted a roll call vote of all members present. Mid-vote, DOC's General Counsel interjected to say that the Department had not had time to review this condition prior to the meeting, and that it had concerns about the condition's operational impact on security. Member Hamill responded that she had shared her intention to propose this condition during a recent meeting with the Commissioner, the Chief of Staff, other Board members, and Board staff. The Department's request to defer the vote was declined. The Board voted unanimously to approve the condition, 8-0 (Acting Chair Cephias, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, Perrino and Regan).

3. Elimination of Assessment Unit (i.e., YA-ESH Entry Unit)

Member Hamill proposed the following condition: "The Department may operate four levels of YA-ESH, with Level 1 being the most restrictive. There shall not be any other levels or units in YA-ESH, for assessment purposes or otherwise." Mr. Thamkittikasem confirmed that the DOC is eliminating the assessment unit, but expressed concern about being restricted to operating four (4) levels. The proposed condition was revised to allow the Department to operate YA-ESH, with Level 1 being the most restrictive. Acting Chair Cephias conducted a

roll call vote of all members present, and the Board voted unanimously to approve the condition, 8-0 (Acting Chair Cephas, Acting Vice-Chair Richards and Members Bryant, Cohen, Hamill, Jones Austin, Perrino and Regan).

4. Documentation of YA-ESH Approval

ED King read the following existing condition: “Each request for approval of a placement of a young adult in YA-ESH (i.e., any ESH unit where young adults are housed) must be in writing and specify the reason(s) why a less restrictive housing setting is not a safe option. If the placement is to include the use of a restraint desk, the request for approval must include why YA-ESH without restraint desks is not a safe option. The Chief of Department, or designee, must also specify his reason(s) for approving or disapproving the request for YA-ESH placement. If the placement is to include the use of a restraint desk, the Chief or his designee must, separately, approve or disapprove this use and specify his reason(s) for approving or disapproving the use of a restraint desk. The request for approval and the Chief’s or designee’s approval or disapproval thereof shall be sent within 24 hours to the person who is the subject of the request, NYC Health + Hospitals, and the Board.” Acting Chair Cephas conducted a roll call vote of all members present, and the Board voted unanimously to renew the existing condition, 8-0 (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, Perrino, and Regan).

5. Notice of Hearing and Right to Counsel

Member Cohen proposed the following condition: “Prior to placing an individual in YA-ESH, the Department must provide the individual with notice of a hearing. Such notice shall advise the individual of their right to have counsel present at the hearing to advocate on their behalf. A copy of the notice shall also be provided to defense counsel.”

Member Cohen stated that since placement in ESH carries serious consequences and placement can last for a long time, it is important that defense counsel is aware that someone is about to be placed in ESH so that there is an opportunity to present a meaningful defense. General Counsel Grossman expressed concern that this condition, if passed, would have a significant impact on the Department’s ability to operate ESH, and indicated that DOC might not be able to operationally comply with such a condition. She asked that the Department be able to further engage with the Board on this issue prior to a vote. Member Bryant asked whether individuals currently have a right to counsel. Ms. Grossman said that the SCOC’s Minimum Standards provide detainees with the right to contact a hearing facilitator, who can explain the process to the detainee and provide interpretation services. Individuals are currently permitted to call witnesses and introduce evidence, and Ms. Grossman indicated that there are procedures available in Writ Court for individuals wishing to challenge their placement. Member Hamill asked if DOC had any objection to notifying counsel when an individual is placed in ESH. Ms. Grossman responded that DOC had not had time to evaluate this condition prior to the meeting, and that all parties would be well served to defer this conversation until the Department was in a position to have a more meaningful discussion. Member Cohen said he is willing to have additional conversations with the Department and the defense bar about this issue before the January 2018 Board meeting, and agreed to withdraw the condition. As a result, the Board did not vote on it.

6. Canines

Given the Commissioner’s agreement to remove canines from ESH, the Board discussed whether to vote on a condition stating the same. Acting Vice-Chair Richards and Members Regan and Perrino said the Board need not vote on this as a condition and should take the Commissioner at her word. Member Hamill said that the Board should vote on the issue, as

the use of canines “shocked the conscience.” Acting Chair Cephas conducted a roll call vote of all members present, and the Board voted 7-1 to approve the condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino voted in favor of the condition, while Member Regan voted against).

7. Lock-out Calculations

ED King proposed the following condition: “The Department shall provide all young adults housed in ESH with a minimum out-of-cell time of seven (7) hours per day, which is not inclusive of school hours.” DOC responded to the proposed condition by saying they were open to exploring it. Acting Chair Cephas conducted a roll call vote of all members present, and the condition was unanimously approved 8-0 (Acting Chair Cephas, Acting Vice-Chair Richards and Members Bryant, Cohen, Hamill, Jones Austin, Perrino and Regan).

After the vote, Mr. Thamkittikasem advised that DOC might not be able to comply with this condition pending resolution of potential space issues and coordination with DOE. Acting Vice-Chair Richards said the Board has been having an ongoing conversation about this with the Department for quite some time, and that offering school as additional lock-out time would incentivize young adults to go to school. Deputy Commissioner Saunders said that the number of young adults who want to attend school fluctuates daily and will certainly increase if and when restraint desks are not allowed in school, and so it is difficult to guarantee adequate DOE resources and physical space. Mr. Thamkittikasem added that if the enrollment numbers are high, DOC would need to build additional classroom space outside or inside the unit that would require SCOC approval. Ms. Grossman requested that the condition be modified to allow for an exception in the event circumstances prevented compliance.

The Acting Chair and Vice-Chair proposed modifying the condition to permit DOC to notify the Board immediately in the event it was unable to comply and to state the reasons why. Acting Chair Cephas conducted a second roll call vote of all members present, and the Board unanimously voted 7-0 to approve the proposed condition as so modified (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino).

8. Reporting

ED King read the following proposed condition, adapted from a practice that had been successfully implemented in the Secure Unit: “Commencing December 18, 2017, the Department shall notify the Board, in writing, every time the lock-out periods in YA-ESH do not start on time and the reasons therefor. The Department shall provide written notice to the Board within 24 hours of such occurrence.” Mr. Thamkittikasem requested that the condition be extended from December 18, 2017 to January 15, 2018 so that the information could be gathered. Acting Chair Cephas conducted a roll call vote of all members present on the condition subject to a January 15, 2018 implementation date, and the Board unanimously approved it, 7-0 (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Perrino, Bryant, Hamill, Cohen, and Jones Austin.)

9. Audit

ED King read the following proposed condition, modeled after a successful practice in the Secure Unit:

The Department shall conduct and report on a monthly audit of its compliance with BOC Minimum Standards:

§ 1-05(b) (Lock-in), specifically, the number of out-of-cell hours per person;
§ 1-08(f) (Access to Courts and Legal Services, including Law Library);
§ 1-06 (Recreation); and
§ 1-02(c)(2) (Classification), specifically, the number of programming hours offered to each young adult and the number of hours each young adult participated in programming.

The Department shall provide its first monthly audit report to the Board on December 18, 2017 for the preceding month of November. The Department shall provide monthly audit reports for each month thereafter by the tenth business day of the following month, except the report for the month this Variance expires shall be provided by the fifth business day of the following month.”

Mr. Thamkittikasem stated that the audit took three months to implement in the Secure Unit, and thus requested additional time to conduct the audit of ESH. Acting Vice-Chair Richards proposed that the condition be modified so that the first report is due on February 15, 2018, and that the audit team report back at the next Board meeting whether it is on track to meet that deadline. Acting Chair Cephias conducted a roll call of all members present, and the Board approved the condition, 7-0, subject to the Acting Vice-Chair’s proposed modification (Acting Chair Cephias, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino).

10. Look-back

ED King read the following existing condition: “Where the Department is permitted to consider a young adult’s activity occurring or actions committed at a time prior to the instant incident in connection with the young adult’s placement in YA-ESH, such activity or actions must have occurred within the preceding year.” Acting Chair Cephias conducted a roll call of all members present, and the Board unanimously approved the condition, 7-0 (Acting Chair Cephias, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino).

11. Progression through ESH

ED King read the following condition: “At each periodic review (30- or 45-day), a young adult will advance to a less restrictive level or unit unless: (1) he has engaged in disruptive, violent, or aggressive behavior while in his current level; and/or (2) there is credible intelligence that he may engage in additional violence in a less restrictive unit.” Ms. King said this condition was identical to an existing condition, except that this new condition eliminated a third criterion, which had restricted progression for individuals who had been placed in the unit multiple times.

Mr. Thamkittikasem clarified that this condition is silent on the issue of regression, and Acting Vice-Chair Richards acknowledged that the Department retains discretion to move people back a level for cause. Acting Chair Cephias conducted a roll call of all members present, and the Board unanimously approved the condition, 7-0 (Acting Chair Cephias, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino).

12. Programming

ED King read the following proposed condition: “The Department shall offer five (5) hours of programming to each young adult in YA-ESH each day. For young adults enrolled in school, the five hours of programming includes three (3) hours of school.” Acting Chair Cephias conducted a roll call of all members present, and the Board unanimously approved the

condition, 7-0 (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino, Bryant).

13. Training

ED King read the following proposed condition: “By the conclusion of this Variance, the Department shall provide specialized training to all YA-ESH staff, including the two-day collaborative training and 1-day overview of Dialectical Behavior Therapy and programming strategies.”

DC Saunders stated that DOC needs additional time to develop training for ESH staff, since ESH continues to change. She said that H+H does not have the same level of involvement in ESH as it does in some of the other restrictive housing units, and, therefore, that relationship would need to be further developed before collaborative trainings could be provided. She requested 60 days to have discussions with DOC’s partners so that a training curriculum could be developed. Depending on the design of the curriculum, there might be a need to procure a contract. DC Saunders said the Department could not estimate how long this process could take. She offered to provide a curriculum plan and an estimated implementation date at the next Board meeting, to which the Board agreed. Acting Chair Cephas conducted a roll call of all members present, and the Board unanimously approved the condition 7-0, subject to the Department’s modifications (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino).

14. Reporting

ED King read the following existing conditions:

- The Department shall provide the Board with a public report on the implementation of the 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 on the Board’s website.
- On at least a monthly basis, the Department shall provide the Board access to all documentation considered in each YA-ESH placement and review decision for young adults. This includes, but is not limited to, all records reviewed or created by YA-ESH adjudication, Health + Hospital’s placement review, the Chief’s reviews, the YA-ESH Entry Unit Review Committee, and the YA-ESH 45-day periodic review. On a monthly basis, the Department shall transmit to the Board a list of all YA-ESH placements and reviews. The Department shall provide this documentation for each month by the tenth business day of the following month. Documentation for the month this Variance expires shall be provided by the fifth day of the following month.
- By December 28, 2017, the Department shall submit an update to its June 2017 Evaluation of Enhanced Supervision Housing for Young Adults. The update shall focus on outcomes and include progress updates on the issues they and the Board identified in the initial report.

Acting Chair Cephas conducted a roll call of all members present, and the Board unanimously approved all three conditions 7-0 (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino). After the vote, Mr. Thamkittikasem requested that the December 28, 2017 deadline for an update to its YA-ESH Evaluation (set forth in the third reporting condition) be extended until the January 2018 Board meeting, given the intervening holidays. The Board agreed.

► Board Vote on Six-Month Variance with Conditions

Acting Chair Cephas conducted a roll call of all members present, and the Board unanimously approved the Department's variance request with conditions for a period of six months, by a vote of 7-0 (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino).¹

Secure Unit Variance

► Introduction

ED King explained that the Board first granted variances from Minimum Standards 1-05(b) and 1-08(f) in May 2016 allowing the Department to provide young adults in the Secure Unit with a minimum lock-out time of ten (10) hours and access to law library services by means of a law library kiosk and typewriters. The Board last renewed this variance on July 11, 2017 and it is set to expire on November 15, 2017.

The Department now requests the Board's approval renewing this variance for six months. DOC also requested that the Board consider amending its Minimum Standards to incorporate this variance permanently.

ED King said the Board will be voting today on the variance request and consider its permanent incorporation into the Minimum Standards as part of the ongoing rulemaking process. Prior to the vote, ED King asked the Department to present its variance request.

► DOC's Secure Presentation

Mr. Thamkittikasem said the Department has been judiciously operating the Secure Unit. He noted that DOC has changed the Unit's placement criteria, maintained a commitment to conduct individual reviews for school placement, and eliminated the use of restraint desks, except when warranted by safety and security concerns. He requested that the Board renew the variance for another six months while DOC continues to monitor the Secure Unit and other alternatives to punitive segregation for young people.

Following Mr. Thamkittikasem's presentation, Member Hamill moved the variance for discussion and Member Bryant seconded the motion. Acting Vice-Chair Richards thanked the Department for significantly limiting its use of restraint desks in Secure while maintaining its ability to offer programming and services.

► Conditions

1. Restraints

Member Hamill proposed that condition no. 1 of the YA-ESH variance regarding restraints be made a condition of the Secure variance. This would achieve consistency in the use of restraints in both YA-ESH and Secure.

Mr. Thamkittikasem stated that DOC had exercised caution in using restraint desks in Secure, and expressed concern about broadening application of this condition beyond YA-ESH. Ms. Grossman questioned whether this condition exceeded the Board's authority, given the scope of the variance request. She also stated that Secure is operated differently than ESH.

¹ The final Record of Variance is available at:

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/November-14-2017/FINAL%20RECORD%20OF%20VARIANCE%20ACTION%20YA-ESH%2011.14.17.pdf>

Members Perrino and Bryant stated that it was within DOC's discretion to determine whether a situation warranted the use of restraints, and they would vote in favor of this condition with the understanding that DOC can use restraints when necessary to maintain the safety and security of the facility.

2. Auditing

ED King read a proposed condition modeled from an existing condition, and corresponding to condition no. 9 of the YA-ESH variance concerning auditing and reporting. Mr. Thamkittikasem stated that DOC would need time to develop a method to collect and report on the newly required information. He said the program-specific information could be provided in January 2018, but DOC might need additional time to provide the information on the number of out-of-cell hours per person. Acting Vice-Chair Richards stated that DOC could report on its progress toward collecting and reporting on these data points at the January Board meeting.

► Board Vote on Six-Month Variance with Conditions

Upon being moved and seconded, Acting Vice-Chair Richards conducted a roll call vote of all members present. The two new conditions (on restraints and auditing/reporting) and all existing conditions were unanimously approved, 7-0 (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin and Perrino).²

DOC Request for Thanksgiving Day Variance

► Introduction

Acting Chair Cephas said the Department had requested a variance from Minimum Standard 1-09(c)(1)(i) to allow it to conduct Thanksgiving Day visiting on a day rather than an evening schedule. He noted that DOC had requested this variance in past years and it encourages family and friends to visit people in custody on Thanksgiving Day.

► Board Vote on Variance

The Acting Chair called for a motion to vote on the variance request. After Member Jones Austin moved and Member Bryant seconded, the variance was unanimously approved, 7-0 (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino).

Public Comment

The Board heard public comment from Clara O'Brien (LAS) and Victoria Phillips (JAC), available at: <https://www.youtube.com/watch?v=G XUuyV5nexM&feature=youtu.be>.

Following public comment, Acting Chair Cephas adjourned the meeting.

² The final Record of Variance is available at:

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/November-14-2017/Final%20Record%20of%20Variance%20Action-SECURE%2011.14.pdf>