



Defending America's
Abused and Neglected Kids

Derrick D. Cephas, Acting Chair
NYC Board of Correction
51 Chambers Street, Room 923
New York, NY 10007

May 7, 2018

Re: Limited Six (6) Month 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)

Dear Mr. Cephas and Board Members:

Children's Rights is a national advocate for youth in child welfare and juvenile justice systems and a member of the New York Jails Action Coalition. Since 1995, Children's Rights has served as a national watchdog organization, fighting to protect and defend the rights of young people, because we believe that children have the right to the best possible futures. Our experience with adolescents and young adults in foster care and juvenile justice systems often brings us in contact with adult corrections, as our clients are disproportionately represented in that setting. We are very concerned about the welfare of young adults at Rikers.

We do not support the Department's continued practice of using restraint desks on young adults in Enhanced Supervision Housing (ESH). For this reason, we oppose this variance and want to remind the Board of the dangers inherent in the overuse of restraints on young adults, and the lack of due process afforded to young adults in the restrictive housing units.

The Board's recent implementation of a new standard governing the use of restraints on young adults in Secure and Enhanced Supervision Housing is a step in the right direction, but our concerns regarding the use of restraints on young adults at Rikers remain. The Department of Corrections made it clear at the April 20th Public Meeting that young adults in Level 1 ESH continue to be subject to restraint desks, now coined "program desks," for up to seven hours per day and during all programming time.¹ The February 9th letter from the Department states that "the use of program desks ... in ESH Level 1 ... is addressing the imminent risk of serious harm these inmates present" and that inmates "are not compelled to use the program desks for a predetermined period of time" because inmates may choose to "return to their cells."² Neither of these instances constitutes compliance with the conditions implemented at the November 14th Public Meeting.³ The standards clearly intend restraint desks to be used only for "as long as the need exists" and only on an "incarcerated person who presents an immediate risk of self-injury or injury to others, to prevent serious property damage, for

¹ NYC Board of Corrections Public Meeting, April 20th, 2018. <http://www1.nyc.gov/site/boc/meetings/apr-20-2018.page>

² Letter To Derrick Cephas from Cynthia Brann, February 9, 2018, <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/March-13-2018/2018.02.09%20-%20Letter%20to%20BOC%20re%20ESH%20Reviews%202918.pdf>

³ Record of Variance Action at November 14, Public Meeting, <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/November-14-2017/FINAL%20RECORD%20OF%20VARIANCE%20ACTION%20YA-ESH%2011.14.17.pdf>

health care purposes, or when necessary as a security precaution during transfer or transport.”⁴ Furthermore, the required use of restraints during program time dissuades inmates from attending programming, including school, which runs counter to the stated goal of ESH, which is to provide rehabilitative programming for inmates.⁵ To continue to subject all ESH Level 1 inmates to restraint desks seven hours a day without review is a clear violation of the implemented standards and the goal of ESH.

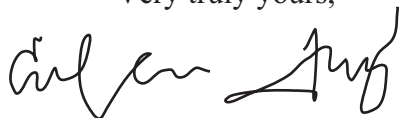
As stated in prior letters, the harmful effects of restraints have been well-documented. In fact, some studies show that the use of restraints, and forms of seclusion contribute to unsafe environments for both those subject to restraints, and those who impose them.⁶ The use of restraints has been recognized as having “no therapeutic value,” and “frequently result[s] in severe emotional and physical harm, and even death.”⁷

We are concerned that the DOC routinely denies young adults’ procedural due process protections within ESH and Secure, and that DOC practices may run afoul of basic principles of fairness. Young adults often linger in the restrictive housing units without the opportunity to be heard in a meaningful time and meaningful manner, and without the benefit of sufficient status reviews. The lack of quality hearings, coupled with the Department’s uniform approach to setting behavioral and program participation expectations without clear progress monitoring fail to provide young adults with a fair process for improvement and advancement through the restrictive housing units.⁸ We believe, as others have asserted, that ensuring inmates are afforded a full review during the ten day “check-in” would allow them to progress through ESH Level 1 more rapidly, and enable them to transition to less restrictive levels safely.⁹

As the Board staff has observed, “[r]esearch has shown that individuals are more likely to cooperate with law enforcement when processes are fair and they perceive they have been treated fairly.”¹⁰

We appreciate your consideration of these concerns.

Very truly yours,



Catherine Frizell
Staff Attorney
Children’s Rights



Maya Brown
Paralegal
Children’s Rights

⁴ <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/November-14-2017/FINAL%20RECORD%20OF%20VARIANCE%20ACTION%20YA-ESH%2011.14.17.pdf>

⁵ An Assessment of Enhanced Supervision Housing, April 2017, New York City Board of Correction, p. iii
[http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/FINAL-BOC-ESH Assessment-Adults-2017.04.26.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/FINAL-BOC-ESH%20Assessment-Adults-2017.04.26.pdf)

⁶ Charles G. Curie, *Special Section on Seclusion and Restraint: Commentary: SAMSHSA’s Commitment to Eliminating the Use of Seclusion and Restraint*, 56(9) *Psychiatric Services* 1139-1140 (2005). Moreover, some studies indicate that seclusion and restraint use leads to an increase in the behaviors that staff members are attempting to control or eliminate. See Jones RJ, Timbers GD. *An analysis of the restraint event and its behavioral effects on clients and staff*. *Reclaiming Children and Youth*. 2002;11:37–41.

⁷ See, e.g. Position Statement 24: *Seclusion and Restraints*, Mental Health America,
<http://www.mentalhealthamerica.net/positions/seclusion-restraints>

⁸ Fourth Report of the Nunez Independent Monitor, 243-244 (2017).

⁹ NYC Board of Corrections Public Meeting, April 20th, 2018. <http://www1.nyc.gov/site/boc/meetings/apr-20-2018.page>

¹⁰ *An Assessment of Enhanced Supervision Housing*, New York City Board of Correction 6 (2017) (citing Tom R. Tyler, *Why People Obey the Law* (2006) and Lorraine Mazerolle et al., *Procedural Justice, Routine Encounters and Citizen Perceptions of Police: Main Findings from the Queensland Community Engagement Trial (QCET)*, 8 *J. Experimental Criminology* 343 (2012)).
[http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/FINAL-BOC-ESH Assessment-Adults-2017.04.26.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/FINAL-BOC-ESH%20Assessment-Adults-2017.04.26.pdf)