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Record of Variance Action for March 9, 2021 Public Meeting

This variance allows the Department of Correction to house people in custody ages 18 through 21 in Enhanced Supervision Housing (“YA-ESH”).

Type of Variance: Limited

Date on which Variance will commence: March 9, 2021

Time period, if any: One week, ending March 16, 2021

Minimum Standard for which Variance is Granted: 1-16(c)(1)(ii)

Date on which Board of Correction first approved Variance (for renewals only):  
July 12, 2016

Requirements imposed as conditions on Variance during its pendency:

1. The Department may operate multiple levels of YA-ESH, with Level 1 being the most restrictive. There shall not be a separate unit for assessment purposes.
2. A young adult can be placed in YA-ESH Level 1 only if the person has recently participated in an actual or attempted slashing or stabbing, or engaged in activity that caused serious injury to an officer, another person in custody, or any other person, and provided that the use of a restraint desk is the least restrictive option necessary for the safety of others.
3. 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, 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.

4. 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 her 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 her designee must, separately, approve or disapprove this use and specify her 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.
5. The Department shall evaluate each incarcerated young adult housed in ESH Level 1 every seven (7) days to determine if the young adult should progress out of Level 1 to a less restrictive level or unit pursuant to the criteria set forth in condition no. 7, below. The Deputy Warden responsible for ESH or designee, will conduct the evaluation and the determination shall specify the reasons and specific facts relied upon for such determination.
6. The Department shall review each young adult in any level other than ESH Level 1 every twenty-one (21) days to determine whether the person will advance to a less restrictive level or unit pursuant to the criteria set forth in condition no. 7, below.
7. At each such 7-day or 21-day review, a young adult will advance to a less restrictive level or unit unless: (1) he has engaged in 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; and/or (3) he has willfully disregarded rules and regulations and these instances are reported and documented. The Department shall conduct this evaluation in consultation with the ESH interdisciplinary team and shall specify the reasons and facts for such determination.
8. If the Department's review of a young adult recommends progression to a less restrictive level or unit, the young adult shall be moved to the recommended level or unit. If the young adult is not moved within 48 hours of such recommendation, DOC shall notify the Board in writing within 48 hours of its decision not to move the person. The notification shall include the reason the Department did not move the young adult to a less restrictive level or unit.
9. A young adult recommended to progress to a less restrictive level or unit shall not remain in his current unit solely due to lack of available housing elsewhere (e.g., progression recommended to Level 2; however, a co-defendant is already in Level 2).

10. The Department shall not keep K9s stationed in YA-ESH units.
11. The Department shall provide all young adults housed in ESH with a minimum out-of-cell time of seven (7) hours per day, not inclusive of school hours. If exceptional circumstances occur where the Department cannot comply, it will notify the Board immediately as to the reasons why it cannot comply.
12. 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.
13. The Department shall conduct and report on a monthly audit of its compliance with BOC Minimum Standards and education services:
  - a. § 1-05(b) (Lock-in), specifically, the number of out-of-cell hours per person;
  - b. § 1-08(f) (Access to Courts and Legal Services, including Law Library);
  - c. § 1-06 (Recreation); and
  - d. § 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.
  - e. Education services, specifically the number of young adults DOC brought to school and, for each young adult, the time DOC brought him to school and the time DOC took him out of school.

The Department shall provide its monthly audit report to the Board by the tenth business day of the following month.

14. 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.
15. 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 can include three (3) hours of school.
16. 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 July 9, 2019 and available on the Board's [website](#).
17. 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,

and the YA-ESH 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.

18. DOC shall publicly report monthly on the implementation of its plan to increase young adults' participation in recreation including the number, rate, and time of young adults' recreation participation.
19. DOC shall discontinue the non-individualized use of restraints, including restraint desks, no later than April 15, 2021.