



February 26, 2021

BY EMAIL

Jennifer Jones Austin, Chair
Members of the Board
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

Re: Department of Correction Emergency Variance Declarations

Dear Chair Jones Austin and Members of the Board:

We urge the Board to issue a Notice of Violation in response to the Department of Correction continuing to hold young adults in Enhanced Supervision Housing (ESH) in contravention of Minimum Standard § 1-16(c)(1)(ii).

In blatant disregard for the Board's rules and authority to grant variances from those rules, the Department continues to subject young adults to the harmful conditions of ESH. At the February 9, 2021 Board meeting, the Board refused to extend beyond February 21, 2021, the ESH variance, which had been granted repeatedly since July 12, 2016. Instead of preparing to transition young adults out of ESH and into other settings after the Board meeting, the Department persisted in its use of ESH with even more young adults being held in ESH on each day since the variance lapsed.¹

Issuing emergency variance declarations on February 22, 23, 24, and 25, the Department flouted the requirements of Minimum Standard § 1-15(b)(3), which permits the Department to declare an emergency variance for a period of *less than 24 hours* when an emergency

¹ According to the Department's emergency variance declaration dated February 22, 3 young adults were in ESH level 1 and 15 in ESH level 2. The February 23, 2021 declaration states that 6 young adults were in ESH level 1 and 16 in ESH level 2. The February 24, 2021 declaration states that 6 young adults were in ESH level 1 and 20 in ESH level 2. The February 25, 2021 declaration states that 10 young adults were in ESH level 1 and 15 in ESH level 2.

situation prevents the Department from complying with the rules. No such emergency exists. The Department is simply continuing its practice in defiance of the Board's authority to approve or deny variance requests.

The Department's variance request was considered and rejected at the last Board meeting. During public comment on the request, the Board was presented with significant reasons that the variance should be denied, including the following:

- the harm that conditions in ESH cause to young adults' health and well-being;
- the extreme isolation that many young people experience in ESH;
- the Department's failure to provide for their educational needs;
- the lack of age-appropriate programming in ESH;
- the increased levels of anger, anxiety, and depression that this punitive environment engenders;
- the consequences of not appropriately addressing anger, anxiety, and depression;
- due process violations in ESH placements;
- the dehumanizing effect of shackling a young person to a restraint desk;
- the trauma that results from shackling and isolation;
- extensive lockdowns that continue to occur in ESH;
- young adults' need for developmentally appropriate services, programming, and social connections;
- the most extreme consequences of failing to provide for young adults' needs;
- the consequences to families of failing to care for young adults in custody; and
- the need to hold the Department accountable.

In the face of that testimony, the Board refused to allow the Department to continue this barbaric practice.

The Board must not now acquiesce to the Department's flagrant violation of the rules. The Board must condemn this unlawful conduct and assert its authority as an independent oversight agency.

You must stand up for the rule of law and hold DOC accountable.

Sincerely,

Jails Action Coalition & #HALTsolitary Campaign

cc: Margaret Egan, Executive Director