



THE CITY OF NEW YORK

BOARD OF CORRECTION

To Members of the Board of Correction
Richard Wolf

From Ashley D’Inverno, Director of Research & Compliance

Subject Follow-up report on Enhanced Supervision Housing as of April 30, 2015

Date Wednesday, May 6, 2015

This is the second report on Enhanced Supervision Housing (ESH). It provides updated demographic information on the ESH inmates, unit operations, and unusual incidents. It then analyzes ESH’s mission and some ongoing challenges.

Summary

The Board of Correction (BOC) has been monitoring ESH since the first unit, 1 West, opened in the Otis Bantum Correctional Center (OBCC) on February 23, 2015. The census in 1 West has remained low, yet there have been a number of violent incidents. Several inmates have told BOC staff that they feel unsafe.

The Department of Correction (DOC) uniformed staff members have not consistently maintained logs of which inmates attend voluntary programs aimed at rehabilitation and encouraging good behavior; consequently, during an inmate’s 45-day review, the Deputy Warden is unable to accurately assess the inmate’s progress. It is important to be able to measure program participation as it relates to rehabilitation, minimizing idleness, and addressing the root causes of violence -- DOC’s stated goals for programming in ESH.¹

DOC opened a second ESH unit in OBCC’s 3 West on April 6, 2015.

Background

On January 13, 2015 the Board voted to adopt new rules creating Enhanced Supervision Housing, a non-punitive housing unit for inmates who pose a credible threat to the safety, security and good working order of the facility.² It was established to enable DOC to effectively control the activities of its most violent inmates.³ ESH was to use enhanced programming to reduce violence, promote rehabilitation and good behavior, while promoting the psychological and physical well being of ESH inmates.⁴

¹ Directive 4497 section II (b).

² Directive 4497 section III (a).

³ See N.Y.C. Board of Correction Minimum Standards §1-16.

⁴ See *id.*

Timeline

- **January 13, 2015** The Board approved the creation of ESH.
- **February 21, 2015** ESH effective date, but DOC chose to push the opening date to Monday, February 23, 2015.
- **February 23, 2015 – March 10, 2015** DOC began the process of transferring inmates to ESH, slowly increasing the census over this time period. As of March 10, 2015, the day of the last board meeting, the ESH census was 17.
- **April 6, 2015** DOC opened a second ESH unit, 3 West at OBCC. Ten inmates were transferred to the new unit. The census at 1 West, the first ESH unit, was 20.
- **April 30, 2015** ESH 1 West census was 30. ESH 3 West census was 16.⁵

ESH Inmates

The chart below includes basic demographic information on the ESH inmates in both housing areas.

	1 West⁶	3 West	Total
Census	30	16	46
Age	Average: 28 Minimum-Maximum: 22-41	Average: 25 Minimum-Maximum: 22-36	Average: 27 Minimum-Maximum: 22-41
Race	67% African American (n=20) 3% White (n=1) 30% Other (n=9)	56% African American (n=9) 0% White (n=0) 44% Other (n=7)	63% African American (n=29) 2% White (n=1) 35% Other (n=16)
M-Status	57% (n=17)	63% (n=10)	59% (n=27)
Length of stay – current incarceration	Average: 602 days Minimum-Maximum: 43-1573 days	Average: 432 days Minimum-Maximum: 95-1121 days	Average: 543 days Minimum-Maximum: 43-1573 days
Inmates transferred from Punitive Segregation	17% (n=5)	0% (n=0)	11% (n=5)
Inmates transferred from Restrictive Housing Units (RHU)	0% (n=0)	0% (n=0)	0% (n=0)
Days spent in Punitive Segregation over past year	Average: 93 Minimum-Maximum: 0-365	Average: 73 Minimum-Maximum: 0-243	Average: 88 Minimum-Maximum: 0-365
Security Risk Group	63% (n=19)	63% (n=10)	63% (n=29)
Red ID	60% (n=18)	13% (n=2)	43% (n=20)

In the initial ESH report, we noted the potential impact of the punitive segregation reforms on the ESH census. We anticipated that many inmates who were no longer eligible for punitive segregation would

⁵ The census is taken daily at 5am. Per the census, there were 17 inmates in 3 West on this date. However, we ran a query which provided information on each inmate in the housing area after the census was taken; thus, our census number does not match the census number provided by DOC.

⁶ Of the 30 inmates in 1 West, nine were transferred to ESH within the first week of its opening.

be transferred to ESH.⁷ We expected to see a lot of movement and rapid turnover in ESH due in part to inmates receiving a seven-day respite from punitive segregation, and then returning to punitive segregation to complete their infraction sentence. However, there has been very little movement out of ESH and, through April 30, 2015, only five inmates transferred into ESH from punitive segregation. Of these, three have been in ESH since its inception. The remaining two inmates have spent approximately one month in ESH without returning to punitive segregation.⁸

Incidents

Since February 23, 2015, when the first ESH unit opened, there have been a total of 14 Use of Force (UOF) incidents involving inmates in 1 West. Nine were classified as UOF-C, while the remaining five were UOF-B. Additionally, there was one inmate-on-inmate fight, one splashing, and one visitor arrest (i.e., the visitor passed contraband to an ESH inmate). Four ESH inmates have been involved in multiple UOF incidents.⁹ Since April 6, 2015, when the second ESH unit opened, there have been zero incidents in 3 West.

In comparison, there have been no UOF incidents involving inmates in the two Bing Lite¹⁰ units, housing 16 inmates, who also receive 7 hours of lockout. General population housing maximum security inmates provide a better comparison. For instance, in a maximum housing area of AMKC¹¹, there were seven UOF incidents during this time period, five UOF-C and two UOF-B; in a maximum housing area of GRVC¹² there were eight UOF incidents, all UOF-C.

Update on ESH Operations in 1 West

Many of the mandated services have been operating as scheduled. However, when trying to determine the times that services were afforded, BOC staff had difficulty locating documentation of services in the B post logbook.¹³ In some instances, there was no documentation of specific services for each tier.¹⁴ Other times, services were documented separately on mandated service sheets. These should augment, rather than replace, documentation of services in the B post logbook. Compliance monitoring is made more difficult when DOC-required logbooks are not properly completed and located at the appropriate post.

⁷ The punitive segregation reforms adopted by BOC provide that an inmate may not serve more than 30 consecutive days in punitive segregation without a seven day break from punitive segregation, and an inmate may not serve more than 60 days within any six-month period in punitive segregation (which includes RHU).

⁸ The 30-day punitive segregation restriction went into effect on March 23, 2015; the 60-day restriction within any six-month period went into effect on April 22, 2015.

⁹ One inmate has been involved in three UOF incidents and three inmates have each been involved in two UOF incidents.

¹⁰ Bing Lite was created on February 23, 2015. It is intended for inmates found guilty of Grade 2 or non-violent infractions. Bing Lite operates exactly like punitive segregation (PS), except inmates receive 7 hours of lockout instead of the one hour provided in PS. Currently, there are two PS Lite units in OBCC, one for adults, and one for 18-year olds.

¹¹ 6 Upper.

¹² 9A.

¹³ Per Directive 4514R-A section V (a) (10), DOC requires that each housing unit logbook must contain, "All inmate activities, e.g., religious services, recreation, commissary, visits, sick call, medication, meal periods, lock-in/lock-out count periods, etc. Enter time activity commenced/concluded and number of inmate participants."

¹⁴ To limit the number of inmates who lock out at the same time, each ESH unit is divided by tier, upper and lower. If upper tier inmates are offered the opportunity to lock out in the morning, lower tier inmates may do so in the afternoon, and vice versa. Most services are offered twice daily to accommodate both tiers.

BOC staff monitoring has revealed the need for improvements in program and service delivery, as follows:

Law Library

Many of the problems with ESH law library services, discussed in the initial report, persisted for weeks. Two legal coordinators are scheduled to work in the ESH law library, one for the AM tier and the other for the PM tier. However, the PM tier was not being afforded law library for a month. It was unclear whether the PM legal coordinator was not coming to the unit or if the PM law library sessions were not being logged. BOC staff spoke with the Assistant Deputy Warden about this and learned that the legal coordinator only comes to the unit if an inmate requests to use the law library. The officer then notifies the legal coordinator to come to the unit.¹⁵ BOC staff advised the Assistant Deputy Warden to create a law library sign-up sheet in order to aid the legal coordinator in determining how many inmates need assistance and clear up any confusion about how law library operates. Approximately a week later, BOC staff reported an improvement in the PM law library sessions being provided and logged. Also, during a recent inspection BOC staff observed a sign-up sheet for law library.

It should be noted that the contents of law library are meager. It includes one typewriter, two kiosks, and two bins of books, which BOC staff were told are books from the public library, not legal books. The kiosk provides access to LexisNexis, a database of documents and records from various legal, news, and business sources. However, inmates are unable to print from the kiosk and typing on the upright touchscreen is challenging; thus, inmates do not have a strong desire to use the law library. Officers only allow one inmate at a time in law library. Furthermore, because the unit's program area has no electrical outlets, barbershop services are provided in the law library space on Fridays. If an inmate wants to use the law library on Friday morning, this is problematic because barbershop conflicts with the AM law library hours.¹⁶ The two services should not overlap. BOC staff spoke with the legal coordinator about the small number of ESH inmates using law library and she stated that the ESH inmates are not interested in using law library. She reported that many inmates did not know that the law library contains a kiosk or what information the kiosk provides, so she frequently walks around the units to offer assistance and urge the inmates to use the information available to them.

Mental Health

Mental health providers have been consistent in making daily rounds. Although clinicians began convening mental health groups on March 11th, 2015, these groups were unsuccessful because the inmates were not cooperative. The groups were discontinued, but they have recently been reinstated.

Recreation

Recreation is not being regularly logged on the unit, making it difficult to monitor. When it is logged, the number of inmates who are reported to have attended recreation is very low. From March 16, 2015-April 5, 2015 the average number of inmates in 1 West was 21; the average number of ESH inmates who attended recreation daily during this same time period was six.¹⁷ However, it appears as though the

¹⁵ The legal coordinator's office is located just outside of 1 West.

¹⁶ Barbershop is afforded from 9:00am-12:00pm for the AM tier and 1:00pm-4:00pm for the PM tier. Law library is afforded from 8:00am-12:00pm for the AM tier and 4:00pm-9:00pm for the PM tier.

¹⁷ The temperature may play a role in the low recreation numbers, as spring temperatures can be unpredictable. The average temperature during this time period was 44 degrees. Additionally, there was precipitation in the form of rain or snow on 10 of the 21 days.

inmates have a desire to attend recreation as evidenced by their refusal to lock in on March 8, 2015 because they were denied recreation.

Lock-in/out Schedule

The lock-out logs for the PM tier are not being consistently maintained; thus, it is difficult to determine whether inmates are being offered the opportunity to lock out of their cells for seven hours each day. BOC staff discussed this with the Assistant Deputy Warden. Shortly thereafter, the inmates complained about locking out late. BOC staff spoke with the Deputy Warden regarding this complaint. He stated that if a tier locks out late, the affected inmates receive extra time out to compensate for the delay. BOC staff was unable to verify this, but it would be difficult to provide extra time since each tier is supposed to receive seven hours of lockout (for a total of 14 hours) and this accounts for all of the eligible out-of-cell time, as the DOC system-wide time for lock-in for the night is 9 p.m.¹⁸

Voluntary Programming

On March 6, 2015, DOC began offering nine voluntary programs for ESH inmates including: Anger Management, Daddy and Me, Meditation, Stress Reduction, i-CAN, BPL Public Library, Step-Up, Challenge, and Homebase Palladia. However, no record is being maintained of each inmate's participation in these programs. An inmate's participation in these programs is supposed to be an important criterion for assessing an inmate during the 45-day review.¹⁹ During this review, the inmate's behavior, progress, and rehabilitation are to be considered to determine the appropriateness of continued ESH placement, or transfer from ESH.

Forty-Five Day Placement Review

Per the Board of Correction Minimum Standards²⁰, ESH placement is reviewed every 45 days. The reviews began on April 9, 2015. As of May 1, 2015, 13 reviews had been completed. BOC obtained the documents which detail the decision for each inmate. The decision for all 13 reviews was to continue ESH placement. Three inmates wished to remain in ESH because of their opportunity to work within the unit or to participate in the programs. The review determinations on three other inmates cited a lack of program participation and/or passive resistance towards staff. The remaining seven inmates were involved in incidents; whether or not these inmates participated in the available programs, the determination for all seven inmates was to continue ESH placement. The review documents cite program participation as part of the criteria for whether an inmate has grasped the idea of rehabilitation while on the unit. However, as noted throughout this report, BOC is unaware of program tracking at the individual level.

ESH Operations in 3 West

DOC staff members told us that 3 West is being operated in the exact same manner as 1 West. However, BOC staff interviews with officers and inmates in 3 West revealed that operations are not the same, as of April 29, 2015. Sign-up sheets are not being used, a practice that is now in place in 1 West

¹⁸ Two hours during the 5:00am-9:00pm lockout time are reserved for DOC to conduct institutional business.

¹⁹ See N.Y.C. Board of Correction Minimum Standards §1-16.

²⁰ See *id.*

for services such as law library, social services, and grievance. The sign-up sheet informs the service provider of the inmates in need of the service.²¹

Finally, there are no voluntary programs, except for the Challenge program, offered like those in 1 West. The inmates in 3 West voiced their concern about this, particularly because they understood that participating in these programs was part of the criteria assessed in their 45-day review.

Analysis and Conclusions

The number of unusual incidents in ESH (1 West) is concerning. Several ESH inmates have expressed to BOC staff they prefer being confined in punitive segregation than being housed in ESH. They know that a punitive segregation sentenced is for a fixed period of time; the duration of a stay in ESH is uncertain. Some inmates may choose to act out in an attempt to be transferred to punitive segregation.

We note, however, that after serving time in punitive segregation, some of the more problematic ESH inmates are being returned to ESH.²² Moreover, BOC is aware of three inmates who have remained in ESH, despite being involved in UOF incidents there. These inmates were not sent to punitive segregation as punishment for their violent infractions. As noted earlier, some inmates have expressed fears for their safety.

DOC has repeatedly stated that ESH is not punishment, yet ESH is a mirror image of Bing Lite, a housing area intended for punishment. Inmates in both units receive seven hours of lockout. The only difference between the two units is the programming offered in ESH, but as noted above, this is not being offered in both ESH units. As further evidence of the similarities between ESH and Bing Lite, inmates receiving Grade 2 or non-violent infractions while in ESH are not being transferred to Bing Lite.²³ Instead, they remain in ESH.

ESH inmates without a gang affiliation report feeling unsafe out of their cells with gang-affiliated inmates. DOC recently started cuffing ESH inmates when escorting them outside of the unit if the other tier is locked out. The inmates have stated this procedure makes them feel unsafe because it makes them vulnerable to attacks by other inmates and leaves them unable to defend themselves.²⁴ An example of the level of violence found in ESH includes an incident in which an inmate utilized a crutch to assault another inmate, or an inmate-on-inmate assault that involved multiple inmates.

DOC began electronic tracking of mandated services in ESH at the end of April. This should help to ensure each inmate receives services in a timely and appropriate manner. Additionally, DOC has

²¹ For instance, without a law library sign-up sheet, an inmate coming back from court or the clinic must know to notify the officer that he would like to speak with the legal coordinator. The officer then calls the coordinator to the unit. If an inmate does not see the legal coordinator on the unit, he may think law library is not open and he cannot meet with the legal coordinator. As for other services in which the provider conducts rounds, inmates not present during these rounds miss out on the service until the next time the provider comes to the unit. Mandatory services should be easily accessible.

²² BOC is aware of two inmates that have returned to ESH after serving punitive segregation time for an infraction that occurred in ESH.

²³ BOC is aware of five inmates that were guilty of Grade 2 infractions, but remained in ESH without spending time in Bing Lite for the infraction.

²⁴ Before this policy was implemented, there was an incident in which an inmate was returning from a counsel visit during the time his tier was locked in. Another inmate from the tier that was locked out attacked the inmate returning to his cell.

exceeded the required minimum of 25% of steady officers in ESH. DOC reported to BOC the creation of 10 steady officer posts in ESH. Furthermore, several officers working in 3 West told us they trained for ESH in 1 West and then transferred into the new unit. This practice should facilitate the opening of new ESH units and promote consistent protocols and practices.