



January 9, 2017

Martha King, Executive Director
Vice-Chair Derrick D. Cephas and Board Members
New York City Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

**Re: Six (6) Month Limited Variance Renewal Request to BOC Minimum Standards:
Regarding Implementation of the Young Adult Plan and Use of Enhanced Supervision
Housing (ESH) Section 1-16(c)(1)(ii)**

Dear Ms. King, Vice-Chair Cephas, and Members of the Board:

The Children's Defense Fund - New York (CDF-NY) is writing in regard to the December 27, 2016 six-month limited variance request from the Department of Correction (DOC), which seeks to renew the October 11, 2016 three-month limited variance allowing for the placement of those aged 18 through 21 in Enhanced Supervision Housing (ESH). We were concerned by the degree to which the description of Young Adult ESH (YA ESH) presented during the October 2016 public meeting of the Board diverged from the October variance request, particularly with the addition of a young adult "assessment" component, and we cannot support the renewal of this variance absent a clear, consistent explanation of the unit's operation and purpose. We hope to remind the Board that the ESH rule was written to include the statement "such housing presents a serious and unacceptable threat to the physical and mental health of certain categories of inmates"¹ and that young adults were not intended to be placed in ESH.

The December DOC variance request to be voted on states:

"While initial findings are positive, more time is needed to comprehensively assess and explore the full benefits of the use of ESH will have on the young adult population. To that end, the Department will continue to monitor and track metrics and trends related to violence, length of stay, and utilization of programming/educational services. If the inclusion of ESH as a housing option for the young adults (18-21 years old) continues to prove beneficial, the Department will work with the Board to effectuate a package of rule changes."²

We encourage the Board to seek clarity publically on what is being described as a "comprehensive analysis of the use of ESH for all young adults"³ as well as the expected timeframe and benchmarks for determining "positive" findings and whether it is "beneficial" to the young adults housed there. According to the conditions placed on the October 11, 2016 variance, the Department was required to provide a public written report "evaluating the use of ESH for young adults" and in the report the Department "shall advise the Board as to whether it believes ESH for young adults is effective and should continue."⁴ We were disappointed to find that the public written report fell short in addressing the many unanswered questions raised during the October 2016 meeting of the Board, and we outline our concerns below and

¹ New York City Board of Correction, "Notice of Adoption of Rules," (Author: January 2016), http://www1.nyc.gov/assets/boc/downloads/pdf/boc_rules_governing_correctional_facilities_fr.pdf.

² New York City Department of Correction, "RE: Six (6) Month Limited Variance Renewal Request to BOC Minimum Standards: Regarding Implementation of the Young Adult Plan and Use of Enhanced Supervision Housing (ESH) Section 1-16(c)(1)(ii)," (Author: December 27, 2016), <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Jan-10-2017/NYC%20Department%20of%20Correction%20Variance%20Renewal%20Request%20-%20Use%20of%20ESH%20for%20Young%20Adults%20122716.pdf>.

³ New York City Department of Correction, "RE: Six (6) Month Limited Variance Renewal Request," December 27, 2016

⁴ New York City Board of Correction, "Record of Variance Action," (Author: October 11, 2016), <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/October-11-2016/post/2016.10.17%20-%20Record%20of%20Variance%20Action%20-%20ESH%20%2819-21%29.pdf>.

appreciate the Board's consideration of our comments. Specifically, the questions we seek clarity on include:

- What is expected at the end of the requested six-month variance? What standards or measures will be relied upon to determine whether DOC will pursue a rule change?
- What constitutes a young adult assessment and what are the due process protections that will be provided to young adults before they are transferred to the YA ESH?
- Who can be placed in the ESH model, how long can they stay, what is the process for exiting, where will they be eligible to be housed upon exit, and what will be the maximum allowable capacity of the ESH model?
- Why must lockout remain seven hours, as compared to the 10 hours afforded in Secure? What is the difference between these units?
- How is DOC ensuring young adults can access school and how will participation in school or programming influence length of stay or future placement?

Concerns with Utilizing ESH for "Assessments" of Young Adults

Through the winter 2014 CAPA rulemaking process to consider the establishment of ESH, protections were built into the rule so that "as of January 1, 2016, and provided that sufficient resources are made available to the Department for necessary staffing and implementation of necessary alternative programming," people ages 18 to 21 would be excluded from placement in ESH.⁵ In the July 11, 2016 letter from the DOC requesting a six-month limited variance to place young adults ages 19 to 21 years old in Enhanced Supervision for the first time, the DOC wrote:

"The Department is requesting this limited variance to determine the effectiveness of ESH for the young adult population. If the inclusion of ESH as a housing option for the young adults (19-21 years old) proves to be beneficial, the Department will work with the Board to effectuate a rule change."⁶

With the October 5, 2016 DOC letter to the Board, the Department then sought to establish a new YA ESH which would apply to all young adults ages 18 through 21 years old. That letter stated that "This is necessary to end the practice of 23-hour lock down punitive segregation in a safe manner."⁷ Days later, during the October 11, 2016 public meeting of the Board, the proposed YA ESH was repeatedly described as an assessment unit, a qualifier absent from both the initial request to the Board to establish YA ESH as well as the established rule on ESH:

"The 18 to 21 year old young adult ESH is a little bit of different focus. It provides us with an opportunity to create a comprehensive profile... we don't have an opportunity to do a comprehensive assessment without moving into a housing area that we're seeing is suitable right away, so this would give us the time to really identify the most appropriate and safe place to house someone. That's the difference."⁸

It was shared in the October meeting that "assessment" meant "to figure out what are the needs, what are the circumstances that brought that person here, and how do we address that through programming, and

⁵ New York City Board of Correction, "Notice of Adoption of Rules"

⁶ New York City Department of Correction, "Re: Amended Limited Variance Request to BOC Minimum Standards Regarding Implementation of the Young Adult Plan: Section 1-02(c)(1), Section 1-17(b)(1)(ii), and Section 1-16(c)(1)(ii)," (Author: July 11, 2016), <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/July-2016/Amended%20DOC%20Variance%20Requests%20Letter%20-%20Elimination%20of%20Punitive%20Segregation%20for%2019-21%20year%20olds%2c%20Housing%20Separately%20and%20Apart%20%2c%20and%20Placement%20in%20ESH%207%2011%2016%20.pdf>.

⁷ New York City Department of Correction, "RE: Six (6) Month Limited Variance Renewal Request to BOC Minimum Standards: Regarding Implementation of the Young Adult Plan and Use of Enhanced Supervision Housing (ESH) Section 1-16(c)(ii)," (Author: October 5, 2016), <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/October-11-2016/DOC%20Six%20Month%20Limited%20Variance%20Request%20-%20Enhanced%20Supervision%20Housing%20%28ESH%29%20for%20Young%20Adults%20100516.pdf>.

⁸ NYC Board of Correction, "2016.10.11 NYC Board of Correction Meeting," Posted [October 13, 2016], YouTube video, See 1:24:18 <https://youtu.be/k0rAO4dQc30?t=5057> see also 1:28:06 <https://youtu.be/k0rAO4dQc30?t=5286>; 1:35:20 <https://youtu.be/k0rAO4dQc30?t=5720>; 1:49:18 <https://youtu.be/k0rAO4dQc30?t=6558>.

how do we determine or identify the most suitable housing for that individual based on their needs.”⁹ The December Report that arose from the October conditions to the variance only briefly mentions the assessment of young adults within the unit:

“This new unit addressed a fundamental gap in the young adult housing plan through the institution of a unit that facilitated the Department’s assessment of problematic young adults and the collection of relevant information related to their attitudes, beliefs behavior, skills, influences, and facility-based and community-based ties. This comprehensive review allows for appropriate consideration of programming needs, management, critical security determinations, and additional options for alternative housing as necessary.”¹⁰

There are no further public explanations of assessment content, protocol, outcomes, frequency, etc. and we advise against the continued approval of the YA ESH without clarification on this deviation from the public understanding of ESH.

Concerns about the Expansion of YA ESH

It was emphasized by the DOC in October that the ESH model was for a small population of young adults. At that time, four young adults “deemed appropriate for initial placement” had been transferred into the ESH model.¹¹ When asked if there were any 18 year olds “on the horizon right now” the response was “We don’t know, I don’t know if we can say.”¹² It was repeatedly affirmed that “this is a small population”¹³ and “these are small numbers.”¹⁴ The Board voted to approve the October variance on the basis that the anticipated number was small,¹⁵ however there was no cap placed on the population.

As of December 9, the ESH model has housed twenty-six 18-21 year olds.¹⁶ According to the December report of the DOC, there were a total of 17 young adults housed with adults in Blended ESH, and seven young adults in YA ESH.¹⁷ Two were transferred from YA ESH “due to their continued negative and unsafe behavior.”¹⁸ In October, YA ESH was described as “It might be a temporary placement... but not necessarily.”¹⁹ We are concerned that Blended ESH and YA ESH are expanding without a cap on population or clarity on its operation, and without clear justification for the departure from the protections built into ESH during the rulemaking process. **We encourage the Board to limit the expansion of the ESH model at this time without a clear explanation of who can and will be housed there and how they can leave and where they can be moved.**

Concerns about Placement Criteria

We understand that as of the December Report, 22 of the 26 young adults approved for placement in the unit “have committed a slashing and/or stabbing.”²⁰ **We urge the Board to inquire as to when the events took place, and whether placement in ESH is being used as an immediate response to infractions, and/or if past behavior alone will warrant placement.** It was shared by the Department during the October public meeting of the Board that “in ESH there’s a history, in Secure there’s a history

⁹ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 2:24:02 <https://youtu.be/k0rAO4dQc30?t=8642>.

¹⁰ New York City Department of Correction, “Evaluation of the Enhanced Supervision Housing Model,” (Author: December 14, 2016), <http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/DOC-Evaluation-of-Enhanced-Supervision-Housing.pdf>.

¹¹ New York City Department of Correction, “RE: Six (6) Month Limited Variance Renewal Request,” October 5, 2016

¹² NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 1:32:55 <https://youtu.be/k0rAO4dQc30?t=5576>.

¹³ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 1:32:55 <https://youtu.be/k0rAO4dQc30?t=5576>.

¹⁴ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 1:33:35 <https://youtu.be/k0rAO4dQc30?t=5615>.

¹⁵ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 2:17:27 <https://youtu.be/k0rAO4dQc30?t=8247>.

¹⁶ New York City Department of Correction, “RE: Six (6) Month Limited Variance Renewal Request,” December 27, 2016

¹⁷ NYC Department of Correction, “Evaluation of the Enhanced Supervision Housing Model”

¹⁸ Ibid.

¹⁹ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 1:29:41 <https://youtu.be/k0rAO4dQc30?t=5380>.

²⁰ NYC Department of Correction, “Evaluation of the Enhanced Supervision Housing Model”

but there is also an immediate action that brought that person to Secure.”²¹ We have continuing concerns with adult ESH that should not be replicated in the Young Adult Plan’s ESH Model, especially considering the finding from the first ESH report, from March 2015, that “many of the inmates are confused as to why they are in ESH, especially when some of the inmates have infractions that occurred years ago.”²²

We would also appreciate further clarity for the 4 of the 26 young adults who “engaged in other serious incidents warranting their placement”²³ and whether that fell into the criteria discussed publically by DOC in October 2016:

“I just wanted to clarify because it came up twice, that you were unclear of what the eligibility criteria is, the eligibility is stabbing slashing, serious injury to staff, or serious injury to their peers.”²⁴

Also provided in the report was that two young adults were “transferred” from YA ESH to Blended ESH due to their “continued negative and unsafe behavior.”²⁵ We would appreciate greater clarity on the relationship between YA ESH and Blended ESH as well as the relationship between the ESH model and other restrictive housing units established under the Young Adult Plan. It was mentioned in the October public meeting that “we place them in 18-21 enhanced supervision so we can do the assessment to see where those individuals can eventually leave young adult ESH to go either to Secure, Second Chance or TRU.”²⁶ We ask that the Board require the DOC distinguish between the criteria of Secure and the ESH model, considering ESH allows for seven-hour lock-out compared to the ten-hour initial lock-out of Secure.

It was briefly mentioned in the October public meeting of the Board that ten-hour ESH lock-out could be possible, “And here in this we would basically allow for earning up to ten with the education if they commit to it”²⁷ and “as part of an incentive we can do that.”²⁸ It was also discussed that, “If young people meet the criteria and are showing promise in the young adult ESH we can move them to Secure so that they can have the ten hours and go through the process.”²⁹ **We would appreciate greater clarity on whether young adults in ESH will be provided ten-hour lock-out and urge the Board to adopt the goal of ten-hour lock-out.** It has been the argument of the DOC that two people requiring separation cannot be housed together in Secure—it should not be the case that separation alone determines access to seven-hours of lock-out instead of the ten to fourteen hours afforded in Secure.

Concerns about Length of Stay

We are concerned by the absence of a clear pathway for transitioning out of ESH. Early issues with adult ESH were that those housed there prefer being confined in punitive segregation due to the uncertain duration of stay in ESH.³⁰ It was shared by the DOC during the October public meeting that in YA ESH, “The first tier is the 28 day, so potentially somebody can leave within 28 days if they’re suitable. If not, somebody can go to the 45th day and leave after that.”³¹ We urge the Board to require review procedures

²¹ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 2:09:34 <https://youtu.be/k0rAO4dQc30?t=7775>.

²² Ashley D’Inverno, “Preliminary report on the DOC’s implementation of Enhanced Supervision Housing as of March 3, 2015,” (New York City Board of Correction, March 5, 2015), <http://www1.nyc.gov/assets/boc/downloads/pdf/Preliminary%20Report%20on%20the%20Enhanced%20Supervision%20Housing%20Unit.pdf>.

²³ NYC Department of Correction, “Evaluation of the Enhanced Supervision Housing Model”

²⁴ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 2:35:08 <https://youtu.be/k0rAO4dQc30?t=9308>.

²⁵ NYC Department of Correction, “Evaluation of the Enhanced Supervision Housing Model”

²⁶ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 2:10:52 <https://youtu.be/k0rAO4dQc30?t=7852>.

²⁷ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 2:38:49 <https://youtu.be/k0rAO4dQc30?t=9529>.

²⁸ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 2:38:59 <https://youtu.be/k0rAO4dQc30?t=9529>.

²⁹ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 2:39:01 <https://youtu.be/k0rAO4dQc30?t=9541>.

³⁰ Ashley D’Inverno, “Follow-up report on Enhanced Supervision Housing as of April 30, 2015,” (New York City Board of Correction: May 6, 2015), [http://www1.nyc.gov/assets/boc/downloads/pdf/Follow-up%20report%20on%20Enhanced%20Supervision%20Housing%20\(April%2030.%202015\).pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Follow-up%20report%20on%20Enhanced%20Supervision%20Housing%20(April%2030.%202015).pdf).

³¹ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 1:31:24 <https://youtu.be/k0rAO4dQc30?t=5485>.

that demand a current justification for keeping a young adult in the ESH model, along with individualized instructions on how to gain release from the unit and time limits on ESH placement as a check on the review process.

Concerns about Access to Education

The December report states that 3 out of 17 of the young adults housed in Blended ESH have “chosen to accept educational services” offered by the DOE.³² In reference to the Young Adult ESH, “Fifty-seven percent (57%), 4 out of 7 of the young adults have elected to participate in the educational services provided in this housing unit.”³³ During the November meeting of the Board, DOC shared that YA ESH had been modified to allow for young adults who attend school to receive two additional hours of out-of-cell time.³⁴ We ask that the Board ensure DOC extends that courtesy to those young adults housed in Blended ESH. It is written in the rules that ESH “seeks to promote the rehabilitation of ESH inmates by incentivizing good behavior and by providing necessary programs and therapeutic resources.” ESH must involve increased access to educational programs and procedures for ensuring access to education. We ask that the DOC be required to demonstrate their efforts to encourage school participation and remove barriers or disincentives to participation.

If the Board does choose to vote on the six-month request, we ask that the length of the variance to be limited and conditions be added that restrict the expansion of the unit and mandate thorough reporting on the unit’s criteria for placement and criteria for release in a way that brings clarity to its relationship to all other restrictive housing units operating under the Young Adult Plan.

Thank you again for your attention and consideration of our comments.

Sincerely,

Charlotte Pope
Youth Justice Policy Associate

³² NYC Department of Correction, “Evaluation of the Enhanced Supervision Housing Model”

³³ Ibid.

³⁴ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” Posted [October 13, 2016], YouTube video, See 1:56:52 <https://youtu.be/QqebB7rl-U?t=7012>.