



NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Acting Commissioner

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July 7, 2017

Derrick D. Cephas, Acting Chair and Vice-Chair
NYC 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) for Young Adults (18 to 21 years old)

Dear Mr. Cephas:

Pursuant to §1-15(f) of the New York City Board of Correction's ("Board") Minimum Standards, the Department requests a six (6) month renewal to the limited variances last granted by the Board on February 14, 2017, from BOC Minimum Standards §1-16(c)(1)(ii) which requires that "as of January 1, 2016, inmates ages 18 through 21, provided that sufficient resources are made available to the Department for necessary staffing and implementation of necessary alternative programming" be excluded from placement in Enhanced Supervision Housing (ESH). At the February 14, 2017 BOC public meeting, the Board granted variances allowing for the use of ESH for young adults (18 years of age) and young adults (19 to 21 years old). Both variances are set to expire on August 14, 2017; however, as there is no scheduled August public meeting, we ask that the Board consider the variance renewals at the July 11, 2017 public meeting. It is also requested that the variance renewals take effect on August 14, 2017, the date upon which the current variances are set to expire.

ESH is a vital component within the Young Adult Strategy and along with the Secure Unit has become a primary housing option for the management of violent young adults (18 to 21 years old) in the Department's custody. The Department's analysis and evaluation of the use of ESH for young adults is detailed in our report submitted to the Board on June 27, 2017.¹ While it is early to make definitive conclusions, there are promising preliminary indications of success associated with the implementation of ESH for the young adult population.

In 2016, as the Department advanced towards the complete elimination of punitive segregation for young adults (18 to 21 years old), we contemplated expansion of housing options within the Young Adult Strategy through the inclusion of ESH. The rationale at that time was founded upon notable reductions in violence and infractions in ESH for adults² due to the incentivized programming structure and observations that when young adults were co-mingled with adults they were involved in fewer violent incidents than their counterparts housed by themselves. In September 2016, the first young adults (19 to 21 years old) were placed in ESH in blended units with adults (22 years old and older). In October 2016, the Board granted a variance request allowing for the use of ESH for young adults, eighteen (18) years of age to be housed exclusively with other young adults in a young adult ESH unit. On March 1,

¹ The NYC Department of Correction "Evaluation of Enhanced Supervision Housing for Young Adults" covers the period of September 2016 through April 2017.

² In the July 11, 2016, variance request submitted to the Board, we noted "there was a fifty percent (50%) reduction in violent infractions for inmates that advanced through this phased programming model."

2017, the young adult ESH unit became the ESH Entry unit established to house violent young adults who have recently committed and/or participated in an actual or attempted slashing or stabbing or engaged in activity that caused serious injury to an officer, another inmate, or any other individual.

In order to address which segment of the young adult population is best served by the ESH housing model, the Department has engaged in on-going discussions with the Board on the criteria for young adult placement in ESH. As of April 30th, 2017, the ESH model has housed sixty-five (65) young adults as a means to manage their violent behavior. Fifty-nine (59) young adults were adjudicated for placement into ESH based on their involvement in a slashing or stabbing.

The ESH Entry unit is exclusively for the housing of young adults (18 to 21 year olds) and is currently limited to those who have recently committed and/or participated in an actual or attempted slashing or stabbing or engagement in activity that caused serious injury to an officer, another inmate, or any other individual. The Entry Unit is a housing unit that enables the Department to conduct a comprehensive assessment and gather information, within a thirty (30) day period, to determine the most appropriate housing option for each young adult placement. As part of the evaluation, the ESH Entry Unit Review Committee considers several factors, including: a young adult's continued violent behavior, program engagement, specific triggers that lead to engagement in violent acts, and possible motivating influences that could be used to inspire the young adult towards positive behavioral changes. The ESH Entry Unit Review Committee's feedback results in a recommendation that is provided to the Chief of the Department, who makes the final determination. Upon completion of the thirty (30) day assessment, all young adults remaining in ESH will subsequently receive a forty-five (45) day review, 45 days from the conclusion of the initial 30 day period. The forty-five (45) day review is instrumental in gauging an inmate's long-term rehabilitation, program engagement, and adherence to unit rules; these reviews also determine the continued appropriateness of ESH placement.

Young adults (19 to 21 years old) who have not engaged in a recent violent incident and are not eligible for the Entry Unit may be considered for direct placement in ESH Level 2 based on the criteria set forth in Minimum Standards under 1-16(b).³ It is important to note that young adults considered for placement in Level 2 would not be placed based solely on gang-related criteria.⁴

All inmates placed in ESH can advance through each level through consistent, productive program participation and good behavior. They can progress through Level 4, the least restrictive level of housing for inmates who have successfully completed the prior levels. Inmates earn additional privileges with successful completion of each level. Each level is designed to foster rehabilitation through the provision of necessary programming and related resources. An inmate's progression from level to level is based on feedback provided by all stakeholders and staff working on the unit which is considered as part of the review determination. These determinations take the form of forty-five (45) day reviews for all inmates in an ESH Level unit.

The security protocols instituted at each level relate directly to the safety concerns associated with the inmates placed therein. The current level structure serves two principle functions: short-term behavioral management founded upon the severity of violent placement behavior and long-term rehabilitative behavior modification.

³ Minimum Standards 1-16(b) sets forth the criteria for placement in ESH:

(b) *Policy.* An inmate may be confined in ESH if the inmate presents a significant threat to the safety and security of the facility if housed elsewhere. Such a determination shall only be supported by a finding that one of the following has occurred: (1) the inmate has been identified as a leader of a gang and has demonstrated active involvement in the organization or perpetration of violent or dangerous gang-related activity; (2) the inmate has demonstrated active involvement as an organizer or perpetrator of a gang-related assault; (3) the inmate has committed a slashing or stabbing, has committed repeated assaults, has seriously injured another inmate, visitor, or employee, or has rioted or actively participated in inmate disturbances while in Department custody or otherwise incarcerated; (4) the inmate has been found in possession of a scalpel or a weapon that poses a level of danger similar to or greater than that of a scalpel while in Department custody or otherwise incarcerated; (5) the inmate has engaged in serious or persistent violence; or (6) the inmate, while in Department custody or otherwise incarcerated, has engaged in repeated activity or behavior of a gravity and degree of danger similar to the acts described in paragraphs (1) through (5) of this subdivision, and such activity or behavior has a direct, identifiable and adverse impact on the safety and security of the facility, such as repeated acts of arson. Provided, however, that, where the Department is permitted to consider an inmate's activity occurring or actions committed at a time when the inmate was incarcerated, such activity or actions must have occurred within the preceding five (5) years. Where the Department is permitted to consider an inmate's activity occurring or actions committed at a time when the inmate was not incarcerated, such activity or actions must have occurred within the preceding two (2) years.

⁴ Only young adults (19 to 21 years old) have been directly adjudicated for placement in ESH Level 2.

As comprehensively evaluated in the Department report on the use of ESH for young adults, security indicators demonstrate that housing violent inmates in ESH has a beneficial impact on overall safety in general population. Statistical evidence asserts that Use of Force (UOF) and slashings/stabbings are more likely to occur when there are ESH-eligible inmates in general population (GP) units than when there are none. For example, if a particular GP unit has a ten percent (10%) chance of having a slashing/stabbing incident when it does not house ESH inmates, the same unit's predicted rate of slashing/stabbing incidents increases to thirty percent (30%) when it houses at least one ESH inmate. These results are intuitive, as many ESH inmates are perpetrators of slashings/stabbings and a plurality (48%) of young adult ESH inmates were placed into ESH from a GP unit. It is also relevant to note that the rate of slashing/stabbing incidents in GP is considerably small. There is a predictive rate of one (1) slashing/stabbing incident per one hundred (100) weeks within GP. These preliminary findings support the Department's initial rationale for the creation of ESH founded upon the notation that by housing violent inmates separate from general population and limiting opportunity for interaction, overall jail safety could be enhanced.

As discussed in the Department's Report on Punitive Segregation Reforms submitted to the Board on June 27, 2017, ESH plays a pivotal role in the delivery of programming for violent young adults (18 to 21 years old) who pose a threat to the safety and security of the general population. Within the incentivized framework of ESH, young adults, like adults, have the ability to earn incentives through positive behavior and participation in education, skill-building, self-improvement programs designed to promote jail safety, reduce idle time, and prepare individuals for successful release to the community.

ESH is a necessary part of the Young Adult Strategy plan. The Department looks forward to continuing conversations with the Board regarding how best to serve the overall young adult population by developing the most appropriate criteria for the constantly-evolving spectrum of alternatives to punitive segregation for young adults. As previously stated, and as detailed in the Department's recent evaluation of the use of ESH, indicators show that there are critical successes associated with the use of ESH for young adults, including the notable reduction in the likelihood of a stabbing or slashing in a GP unit when ESH-eligible young adults are removed from the unit. Maintaining ESH as a housing option for young adults who have been involved in egregious acts of violence is critical for maintaining the safety of the system as a whole.

The Department has made a good faith effort to fully comply with the applicable provisions of the Minimum Standards; however, we are unable to do so at this juncture. Recognizing the critical importance of ESH as a housing option for violent young adults and an integral component of the Young Adult Strategy plan, the Department began pursuing rulemaking. On March 31, 2017, the Department submitted a letter to the Board regarding the advancement of restrictive housing rulemaking and proposed subject matter, inclusive of maintaining the use of ESH for young adults for their consideration. There have been ongoing discussions with the Board towards the establishment of new Minimum Standards that will serve to provide for comprehensive changes. For the safety of all staff and inmates, the Department urges the Board to move forward in the advancement of restrictive housing rulemaking and the inclusion of this vital housing option.

The Department appreciates the Board's consideration of this six (6) month limited variance renewal to permit the continued use of ESH for young adults (18 to 21 years old). We look forward to further collaboration with the Board towards the advancement of related restrictive housing rulemaking.

Sincerely,



Cynthia Brann

cc: Martha King, Executive Director