



NEW YORK CITY DEPARTMENT OF CORRECTION

Cynthia Brann, Commissioner

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March 8, 2021

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

RE: Limited Six (6) Month Variance Renewal Request to BOC Minimum Standards Section 1-16(c)(1)(ii) Regarding the Use of Enhanced Supervision Housing (ESH) for Young Adults (18 to 21 years old)

Dear Chair Jones Austin,

Pursuant to §1-15(f) of the New York City Board of Correction's ("Board") Minimum Standards, the New York City Department of Correction ("Department") requests a six (6) month limited variance renewal from Board Minimum Standards §1-16(c)(1)(ii), which requires that young adults (ages 18-21) be excluded from placement in Enhanced Supervision Housing ("ESH"). The Department requests this request to take effect March 9, 2021, the date upon which the Board is set to next convene.

During the February Board meeting, the Board did not consider the Department's variance renewal request for an ESH housing option for young adults immediately following their acts of violence causing injury to staff or other people in custody. While the Board afforded substantial public comment on the variance, the Board did not provide the Department an equal opportunity to be heard.

In doing so, the Board rejected a successful structured housing model that prioritizes safety, manages risk, and promotes changed behavior without a reliance on punitive segregation. Young adult ESH is one of only two housing options the Department may use to safely house young adults following their most serious and violent acts towards staff or people in custody. Notably, the other option – the Secure Unit – consists of only a single housing unit. The Board's decision at the February Board meeting left the Department in the difficult position of weighing strict compliance with Minimum Standard §1-16(c)(1)(ii), despite the documented evidence of jail violence, severe physical injury, risk of death, and a legal and moral obligation to protect the safety of staff and young adults in custody. The factual basis of this evidence was laid out in the Department's variance renewal request dated February 3, 2021, and in years of detailed documentation shared with the Board. Following the Board's inaction on the variance, the Department began issuing emergency variance declarations on February 22, 2021 in compliance with Board Minimum Standard §1-15(b)(3), and as required in consideration of the safety of individuals and staff following violent incidents involving young adults in custody and the lack of any other viable recourse provided in the Board's Minimum Standards for their safe management.

As of the date of this letter, twenty-seven (27) young adults are housed in ESH, including eight (8) young adults in Level 1 and nineteen (19) young adults in Level 2. Since November 21, 2020, when the most recent

variance period first began, there have been forty (40) new young adult placements in ESH. Of those forty (40) young adults, twenty-seven (27) were initially placed in Level 1 following a recent qualifying event: three (3) based primarily on a slashing or stabbing, fourteen (14) based primarily on an assault on staff or person in Department custody, and ten (10) based primarily on both a slashing or stabbing and an assault on staff or person in Department custody. Thirteen (13) young adults were initially placed in ESH Level 2 based on a qualifying event, such as a slashing or stabbing, possession of a dangerous article, or an assault on a staff member or another person in Department custody.

Since the expiration of the Department's longstanding variance on February 21, 2021, there have been eighteen (18) young adult placements in young adult ESH based on ten (10) distinct acts of violence, including three (3) slashings/stabbings, four (4) serious assaults resulting in injury to young adults, and three (3) assaults on staff. ESH is a proven risk mitigation and behavioral intervention for young adults who engage in serious and persistent violence. The Department conducted an analysis of ESH incident data in FY20, as previously shared with the Board and Board staff, which demonstrated a significant reduction in the rate of fights, infractions, and slashings and stabbings following individuals' placement in ESH.¹ The rate of fights were reduced by approximately seventy percent (70%), infractions by thirty-nine percent (39%), and slashings and stabbings by forty percent (40%) when comparing individuals' stays in general population housing prior to subsequent stays in ESH. Most importantly, however, these trends in violence and incident reduction were sustained once individuals returned to general population housing, thereby demonstrating ESH to be an effective violence intervention program. The sustained rate of fights, infractions, and slashings respectively decreased by approximately fifty-eight percent (58%), forty-four percent (44%), and twenty-seven percent (27%) following individuals' return to general population housing.

Individuals are currently entering Department custody with longstanding gang involvement, serious and violent charges, and long-untreated behavioral health issues. In the Department's experience, violence and gang conflicts in the community follow individuals into Department facilities. Various gang leadership frequently deter young members from engaging in meaningful programming designed to target and treat underlying causes of violence. In response to this, the Department makes every effort to meaningfully incentivize the engagement of young adults in ESH in restorative programming and educational offerings and continues to afford robust offerings to young adults in ESH targeted at addressing underlying causes of violence. While we cannot require programming participation, the Department continues to provide counseling services and programming worksheets to all young adults in ESH. These critical resources include, but are not limited to, evidence-based dialectical behavioral therapy, anger management, healthy relationships, and youth communication.² All individuals in ESH are engaged in the process of completing their Individual Support Plans (ISPs) in order to guide their progress through and out of ESH and reinforce the benefits of targeted programming. In-person services such as individualized counseling and social services are additionally available to young adults in ESH by request through a service request slip system and can also be requested when program counselors are in the units.

The Department continues to partner with the Department of Education ("DOE") to deliver educational services to young adults in ESH. On March 13, 2020 the DOE suspended in-person education as a result of the COVID-19 pandemic. Prior to the start of the current school year, the Department's Educational Services Unit conducted outreach and recruitment efforts to encourage young adults to enroll in DOE educational services. Additionally, the Department distributed informational flyers that have reminders on how to utilize DOE's support hotline. Students enrolled in ESH commenced the current school year on September 21, 2020 with remote learning through educational packets prepared by the DOE.

¹ This analysis of key violence indicators considered individuals who were admitted into ESH between January 2018 and June 2019. All individuals had recorded stays in general population housing prior to placement in ESH and time in general population housing after their stays in ESH. In total, the institutional conduct of 115 individuals were considered and studied.

² Youth Communication is a programming module containing a series of true stories written by young adults that cover various topics including the positive impact young adults can have in their community, overcoming challenges and setting goals, and overcoming negative stereotypes.

Without the operation of young adult ESH, and in consideration of the Department's limited ability to commingle young adults – another proven violence reduction strategy – there is no further recourse or safe housing options when young adults perpetrate serious violence in the Secure Unit or when separation orders or capacity constraints prevent the placement of qualifying young adults in the Secure Unit. Further, Secure Unit does not necessarily provide sufficient security and separation immediately following the most egregious acts of violence, in consideration of other circumstances. Given these circumstances, the Department is unable to shift its safe housing strategy for young adults who engage in serious acts of violence against staff and their peers.

In submitting this letter, we ask for the Board's consideration of this six (6) month limited variance renewal request to permit the continued use of ESH for young adults in reflection of its vital role in maintaining safe and secure facilities while the Department awaits the Board's restrictive housing rulemaking. We look forward to continuing to work with the Board in order to ensure safe and appropriate housing for everyone in the Department's care.

Sincerely,

A handwritten signature in blue ink that reads "Cynthia Brann". The signature is written in a cursive, flowing style.

Cynthia Brann

cc: Margaret Egan, Executive Director