

**The Bronx  
Defenders**

**Redefining  
public  
defense**

Jennifer Jones Austin, Chair  
Margaret Egan, Executive Director  
Members of the Board of Correction  
New York City Board of Correction  
1 Centre Street, Rm. 2213  
New York, NY 10007  
Via email

**Re: The Bronx Defenders' written comments regarding The Department of Correction (DOC)'s ongoing placement of 18-21 year olds in Enhanced Supervision Housing (ESH)**

Dear Chair Jones Austin, Executive Director Egan, and Members of the Board,

Incarceration itself seriously damages young people's mental health, and increased isolation on top of that causes irreversible harm. Locking someone in a cell for extended periods of time, cutting them off from social interaction and delivering them meals through a door slot causes permanent harm to those subject to it every single day. In recognition of the unique harms solitary confinement inflicts upon young people, the Board of Correction in 2015 prohibited DOC from using it for people under 22. Six years later, we know for a fact that young people are still being isolated in cells for hours at a time, cut off from social interaction and fed meals through a slot in ESH. The Bronx Defenders has found that DOC inflicts this punishment lightly, carelessly, and often in error.

All of our fears about ESH for young people at the time of its creation and promotion by DOC as an alternative to solitary confinement have come true. People in custody are placed in ESH as a punitive measure. They then theoretically earn their way out with good behavior, but it looks very different on paper than it is in practice for our clients who experience it. It is even more arbitrary than punitive segregation; it is overly reliant on lock-in time as well as the outrageous tool of shackling people to desks; and a placement there has no definitive end. Time and again we have identified clients who were placed in ESH without a meaningful hearing, or for a non-qualifying offense, or were just forgotten there and never moved up the levels. By the time we, their advocates, figure it out, they have already spent weeks in isolation and often the damage is already done.

We recently learned that dozens of people were potentially placed in punitive segregation wrongfully because of a data error in entering the offense of conviction in the DOC system. We had at least one client released from solitary confinement because of this data error. Had we not uncovered this unconscionable and careless mistake, he too may have found himself in ESH for 90 days or more. Guilty convictions on infractions are used to place people in ESH and yet there is often no meaningful factfinding before determining guilt. The person is unrepresented by counsel and yet the consequences could result in a *year* of placement in ESH. (The Bronx Defenders represented a client who spent a full year in ESH.)

For DOC to claim that there is an “emergency” that requires continuing to house 18-21 year olds in ESH is outrageous and an absolutely improper use of an emergency declaration. Given DOC’s regular creation of new restrictive housing units, there is no shortage of options for young people who cannot be housed in general population. “Secure” units, which are on paper no different from ESH, continue to operate, as does the Transitional Restorative Unit (TRU). In fact, the mere claim that ESH is a security necessity for DOC currently, after housing young people there on an allegedly temporary basis for so many years proves that ESH is not an effective mechanism to support young people through incarceration and reduce violence. ESH will never accomplish those things. Young people’s brains are not yet able to measure consequences in the same ways that adult brains do. The same reasons that the Board decided to prohibit young people from being held in punitive segregation in 2015 should mean a complete and final end to ESH. Young people need actual, functional engagement and support, and that type of support never involves shackling, isolation, and deprivation.

We anticipate that on March 9th, the Board will be deciding, once again, whether to authorize DOC to continue utilizing ESH to hold young people, and we encourage the Board to keep one of our clients’ stories in mind. In December, our client was going through one of the most mentally challenging times of his life. Months had gone by without receiving a hug from his mom, barely anything happening in his case, the holidays approaching, everything was becoming unbearable. We made a mental health referral, in hope of securing some semblance of help and support from DOC. Instead, DOC seized the opportunity to hold a hearing for a 90-day-old infraction that had already resulted in unfounded allegations against him, and what followed was nothing short of a clear abuse of power and restrictive housing placement. For weeks, DOC ignored his legal team’s inquiries and complaints. To date, DOC has refused to provide proof of our client’s alleged written waiver of the 5 business day adjudication rule, a rule clearly spelled out in the directives and minimum standards. Even after they conceded that an adjudication for another non-violent offense was made in violation of his due process rights, he was placed in ESH for 90 days. According to his paperwork, his placement was predicated on adjudications riddled with already established due process violations, and yet today, he remains in ESH, shackled to a desk, grappling with the reality that DOC can do whatever they want to him, and that there is nothing he or anyone else can do about it.

We strongly urge the Board to put an end to DOC's torture of young people without any accountability or oversight. In allowing DOC to issue these "emergency declarations" and continue to house young people in ESH, the Board is consenting to young men enduring irreversible trauma, for months on end. All the problems that the Board identified in July 2017 remain: extensive lockdowns, violations of lockout schedules, operational issues related to staffing and management, safety concerns, and a general lack of engagement and a complete lack of transparency. DOC has proven it cannot handle the responsibility of conducting a fair and functional disciplinary system. In public meetings, DOC repeatedly refers back to stated policies and procedures but do not accurately report what compliance with those policies looks like on the ground. Additionally, we have seen and heard from our clients that the more convoluted a policy is, the more complicated on the ground compliance with that policy becomes (for example, variances granted with long lists of conditions). The consequences of allowing this practice to continue, *regardless of imposed conditions*, means continued systemic abuse, unfettered autonomy and irreversible and irreparable harm to the young men in DOC custody.

DOC has now been in violation of the Board's minimum standards for over a week. They have provided absolutely no evidence of a true emergency, and their refusal to change their practices stands in blatant disregard of the Board's authority as an oversight body. The minimum standards are critical to protecting our clients in custody from the many human rights violations that would undoubtedly run rampant in our city jails without them.

We urge the Board to uphold the values and principles that form the foundation for the minimum standards and immediately issue DOC a Notice of Violation. Our young clients are depending on this Board now, more than ever.

Respectfully submitted,

The Bronx Defenders

