

AN ASSESSMENT OF ENHANCED SUPERVISION HOUSING



April 2017

New York City Board of Correction

An Assessment of the New York City Department of Correction's
Implementation of Adult Enhanced Supervision Housing

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Executive Summary

Background

In January 2015, the NYC Board of Correction (“Board”) approved the first amendments in nearly a decade to the City’s Minimum Standards (“Standards”) for the care, custody, correction, treatment, supervision, and discipline of all persons in NYC Department of Correction (“DOC” or “Department”) custody. These amendments codified and built upon many of the major punitive segregation reforms the Board and Department had initiated.¹ Since April 2014, the Department has cut its punitive segregation population by 80%, from over 600 to a current daily population of roughly 110 people.

At the same time as the Board debated these amendments, the Department proposed to the Board a new restrictive housing unit, Enhanced Supervision Housing (ESH), that it believed to be a critical part of its punitive segregation reform and violence reduction plans. The Board ultimately approved a modified version of the proposal which created placement criteria, additional procedural safeguards, programming, training, and steady staff requirements. The Board also created a requirement for itself, to meet within two years of implementation to discuss “the effectiveness and continued appropriateness of ESH.” In support of compliance with this requirement and in pursuit of the Board’s City Charter mandate to evaluate the Department and make recommendations on areas of key correctional planning, this report studies the first twenty-two months of adult ESH placements (February 2015 - November 2016) and conditions in ESH through December 2016 via data analysis, interviews with staff and people in custody, field observations, and policy reviews.

What is ESH?

ESH is intended to house individuals who present “a significant threat to the safety and security of the facility if housed elsewhere” and was established to provide the Department the ability “to protect the safety and security of inmates and facilities, while promoting rehabilitation, good behavior, and the psychological and physical well-being of inmates.”² Upon placement in ESH, individuals receive notice, a placement hearing, and a placement determination. The Minimum Standards prohibit DOC from placing 16- to 21-year-olds and people with serious mental or serious physical disabilities or conditions in ESH.³ People in ESH units receive seven lock-out hours, rather than the generally required fourteen hours, and are subject to other restrictions.⁴ Every 45 days, each person in ESH is entitled to a review of the appropriateness of continued ESH placement. There are four ESH incentive levels that vary in terms of restrictiveness. People placed in ESH Level 1 are kept in restraints during the seven-hour lockout period but may progress out of restraints to ESH Level 2, 3, and 4 where they are afforded additional privileges and more time out of cell for good behavior and program participation. Correction officers assigned to ESH are required to receive 40 hours of specialized training and at least 25% of the staff assigned to ESH must be assigned to steady posts.

Since November 2016, ESH has seen a rapid expansion and the Department has decided to revise its directive for the units and use restraint desks in some of the housing units. The new directive has not yet been finalized. Due to the

¹ “Punitive segregation” and other corrections-specific terms are defined in the glossary that closes this report.

² N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(a) (Jan. 23, 2016).

³ Variances granted on February 14, 2017 allow the Department to place 18- to 21-year-olds in ESH until August 14, 2017.

⁴ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, LOCK-IN § 1-05(b)(2) (Jan. 23, 2016).

recentness of the introduction of the restraint desks in ESH, Board staff did not assess their appropriateness or effectiveness.

This Assessment

This report examines compliance with existing ESH Standards and includes findings and recommendations that speak more broadly to the appropriateness and efficacy of the Standards themselves and how ESH should be improved moving forward.⁵ The findings presented in this report relate solely to adults placed in ESH.

DOC lacks the electronic data management systems that would facilitate tracking and analyzing critical areas related to ESH implementation and the Minimum Standards, such as due process, restrictions, and program participation. This is a significant barrier to effective assessment and evaluation. To conduct this assessment, Board staff matched available data on individuals placed in ESH to various department-wide data systems. Board staff also pulled a sample of placements and manually collected information to examine implementation of the due process afforded to individuals in ESH. The Board will continue to work with the Department and Correctional Health Services (CHS) to help develop the systems that will facilitate better tracking, management, and ongoing evaluation of ESH as well as the Department's use of other restrictive housing units.

Positive findings from the Board's assessment include that the Department:

- Placed individuals in ESH who met at least one ESH placement criterion, with most placements meeting multiple ESH criteria;
- Provided individuals in ESH timely notice, placement hearings, and written placement determinations;
- Excluded people with known serious mental or serious physical disabilities or conditions from placement in ESH;
- Provided programming and developed a structured approach to programming in ESH; and
- Provided most correction officers working in ESH 40 hours of specialized training.

While many of the ESH Standards have been implemented and met by the Department, additional findings and recommendations for improving ESH are presented below. Areas for improvement include policies and practices related to progression through ESH and periodic reviews, medical care access, lock-out, and steady staffing. Board staff also identified numerous opportunities for improving fairness and transparency in the Department's implementation of ESH due process. Finally, the challenges associated with monitoring ESH due to limited data management systems should be reviewed carefully. This assessment generated questions where additional explanation, data, or analysis from the Department is necessary.

⁵ While the Board has at various times permitted the Department to house young adults in ESH, the findings presented in this report relate solely to adults placed in ESH. The Board will issue findings related to young adults and ESH in a forthcoming report.

Key Findings and Recommendations to Guide Improvement of ESH

Determining who goes into ESH

Findings

- DOC doubled the number of ESH units in operation from October to December 2016, significantly increasing the population housed in ESH.
- The average daily population of adults housed in ESH grew from an average of 15 adults in February 2015 at opening to an average of 90 adults in November 2016, significantly less than the 250-person capacity permitted by the Standards.
- A total of 348 adults were housed in ESH from February 2015 through November 2016. Sixteen adults were placed in ESH multiple times. All people placed in ESH were men.⁶
- A higher proportion of the ESH population was black and Hispanic compared to the DOC population overall. Ninety-four percent (94%, n=327) of people placed in ESH were either black or Hispanic, compared to 88% of DOC's overall average daily population.
- Ninety-four percent (94%, n=346) met the criteria for a maximum risk classification level.
- The Board received conflicting statements about how individuals are identified for placement in ESH. While not official DOC policy, some staff reported that ESH is typically used as a response to a recent serious incident or as a step-down from punitive segregation.
- Nearly half of people (49%, n=178) in ESH were housed in a general population housing area (as opposed to punitive segregation) immediately prior to placement.
- Ninety-seven percent (97%, n=354) of all ESH placements met at least one ESH placement criterion.
- Seven percent (7%, n=27) of the total 366 placements in ESH were discontinued: 15 were discontinued prior to a placement hearing and 12 after a placement hearing upon a finding that ESH placement criteria were not met. These twelve people spent between 5 and 24 days in ESH and averaged 13 days in ESH before they were transferred out.
- All but one individual who was in ESH long enough to receive a placement determination met at least one ESH placement criterion. Seventy-seven percent (77%, n=262) of placements were for assaults, 44% (n=148) for serious or persistent violence, 39% (n=131) were placed for possession of a scalpel, 29% (n=97) for SRG (gang) activity, 20% (n=69) for participation in a slashing or stabbing, and 11% (n=37) for being an influential gang leader. None of the ESH placements during this period were based on events occurring when individuals were out of custody.

Recommendations

- Use restrictive housing rulemaking to clarify how ESH fits into a continuum of restrictive options and the Department's broader violence reduction strategy.
- Require DOC to conduct an analysis of the ESH look-back period and examine the time between incidents or activities used to justify placement and actual placement in ESH. This analysis will help the Department and the Board assess the appropriateness of the current

⁶ No studies or reports were done about individuals' gender identities. The Department of Correction housed people placed in ESH as men, but it is possible that there are individuals in these units that identify as women or as gender non-binary.

look-back period outlined in the Standards for activities used to justify placement. This analysis will also help the Department and Board better understand whether ESH is being used to respond to more immediate safety concerns and how placement in ESH may or may not relate to individuals' experiences with and perceptions of the DOC disciplinary process.

- Create a multi-disciplinary team to evaluate individuals recommended for restrictive housing (including ESH) and assess whether a less restrictive housing option is appropriate and available for each recommendation.

Placement in ESH

Findings

- People in custody expressed confusion about why they were being placed in ESH. Furthermore, while it appears restrictions were rarely imposed at the time of ESH placement, many individuals in ESH believed their visit restrictions were related to their placement in ESH.
- The ESH notice form provided to individuals placed in ESH lists all restrictions that may be imposed but does not include notice as to whether the Department has recommended any specific, individualized restrictions.
- Placement hearings did not include discussion or explanation of ESH levels or the restraint desks.
- Placement determinations were not made or discussed at placement hearings themselves but were provided to individuals in writing after hearings.
- DOC adjudication captains do not receive written guidance or training on ESH due process policies to guide decision-making.
- While the Minimum Standards currently do not require an appeal process for ESH, DOC policies do. Very few people (n=6) appealed placement in ESH and nearly all (n=5) appeals were decided by a staff member who had earlier recommended the appellant for ESH placement.

Recommendations

- Incorporate procedural justice principles into all aspects of ESH due process and ESH placement. Research has shown that individuals are more likely to cooperate with law enforcement when processes are fair and they perceive they have been treated fairly.⁷ Incorporating procedural justice principles means providing individuals with a voice and ability to participate in the process, treating people with respect throughout the process, ensuring individuals understand the process and how decisions are made, ensuring decision-making is unbiased and there is a neutral decision-maker, and demonstrating interest in individuals' personal situation by providing assistance with the process. While current ESH due process policies allow for the participation of the person in custody, changes to the ESH placement process should be made to improve transparency and perceptions of fairness. They include,

⁷ See TOM R. TYLER, WHY PEOPLE OBEY THE LAW (2006) and Lorraine Mazerolle et al., *Procedural Justice, Routine Encounters and Citizen Perceptions of Police: Main Findings from the Queensland Community Engagement Trial (QCET)*, 8 J. Experimental Criminology 343 (2012).

for example, clarifying and including additional information regarding recommended restrictions on notice forms and developing an FAQ for people upon placement. The Board and the Department should also discuss piloting different formats for adjudication hearings that would include a better explanation of the ESH placement criteria, a review of an individual's current restrictions and the stated justification for any proposed restrictions, the use of hearing facilitators, and a follow-up process to explain written decisions provided to individuals after hearings.

- Provide ESH adjudication captains, correction officers, and staff involved in placement decisions training on procedural justice principles and written policies to guide placement decisions.
- Consider whether the Minimum Standards should address appeals of ESH placement. DOC should update its policies to ensure that the person rendering appeal decisions is not involved in recommending placement.

Progress through and out of ESH

Findings

- Only 9% (n=19) of all placements with the opportunity for a periodic review (n=209) were terminated because of a periodic review.
- On average, individuals received 1.6 fewer periodic reviews than they should have given their length of placement in ESH.
- Over half of individuals (54%, n=150) released from ESH were released from DOC custody, either transferred to state custody or discharged from custody into the community. Fourteen percent (14%, n=39) were released from ESH to a general population unit, 9% (n=26) were transferred to punitive segregation, 4% (n=12) were transferred to an accelerated program unit, and 3% (n=9) were moved to a Restrictive Housing Unit.
- For individuals who have been released from ESH, lengths of stay in ESH ranged from less than a day to 527 days, with an average length of stay of 114 days (4.8 months) and median length of stay of 77 days (2.6 months). For individuals still in ESH (on December 14, 2016), the median length of stay for individuals housed in ESH was 85 days (2.8 months) and the average length of stay was 155 days (5.1 months), with one individual having served 636 days in ESH.
- Twenty-nine percent (29%, n=100) of people placed in ESH had movements in and out of ESH housing units between the ESH placement and exit dates. These 100 individuals were involved in a total of 167 housing movements during their ESH placement period. Seventy-two percent (72%, n=121) of all movements (n=167) were between ESH and punitive segregation. Sixteen adults were placed in ESH multiple times and received due process multiple times.
- While correction officers and program counselors may provide information to inform periodic reviews, decisions regarding progression to less restrictive ESH levels and exit from ESH are determined solely by the Deputy Warden for ESH.
- In conversations with Board staff, incarcerated people expressed confusion about what they must do to be transferred out of ESH.

Recommendations

- Create a rebuttable presumption regarding an individual's length of stay in ESH that assumes progression through ESH levels unless an individual engages in problematic behavior or does not participate in an individualized program plan.
- Establish a multi-disciplinary team to conduct periodic reviews. Allow people in custody to attend periodic reviews so there can be a discussion as to whether they are meeting the goals of an individualized plan and are ready to transition levels or out of ESH.
- Develop a written policy about how movement in and out of ESH housing units affects the timing of periodic reviews and when due process is triggered for a new placement when someone returns to ESH. Develop a system for tracking compliance with this policy.
- Analyze whether movement between ESH and punitive segregation is related to incidents occurring while individuals are in ESH or whether movement is related to longer prior sentences to punitive segregation requiring a reprieve.

Programming

Findings

- Programming has been offered since ESH opened in February 2015. The Department's approach and type of programming offered in ESH has changed over time. Programming offered includes vocational training, book distribution, homelessness prevention services, substance abuse responses, "Challenge Journals," skill-building, and others.
- Participation in programming is now tied to a level system to incentivize progression out of ESH.
- Programming goals are the same for all individuals in each ESH level.

Recommendations

- Conduct needs assessments to inform individualized programming plans and goals. Modify goals based on an individual's literacy, education level, and capacity to complete programming.
- Ensure program staff are part of the multidisciplinary team reviewing and determining an individual's progress during a periodic review.
- Communicate with people in ESH about how progress toward program goals will be considered during periodic reviews.

Access to treatment

Findings

- A significant portion of people placed in ESH have mental health needs (66%, n=242) and an even higher portion of people placed in ESH have substance use disorders (77%, n=279).
- Nearly a quarter (24%, n=239) of all health encounters and 28% (n=1,016) of all mental health encounters for ESH patients were not seen due to either DOC non-production or CHS cancellations. CHS staff do not receive training on ESH placement determinations and operations.
- There is no set schedule for CHS medical rounding in ESH units.

- People housed in ESH expressed concerns about lack of privacy and confidentiality during conversations conducted during medical rounds.

Recommendations

- Improve access to health and mental health services in ESH as part of the access action plan being developed jointly by DOC and CHS for the Board.
- Provide mental health and substance use treatment programming to ESH patients and regularly report on the number of patients in need of and receiving mental health and substance abuse disorder treatment services in ESH.
- Develop written policies for CHS staff on how to clear individuals for ESH. This should go beyond checking electronic medical records and should involve review or development of mental health or substance abuse treatment plans (for individuals in need of treatment).
- Establish regular CHS rounding schedules and staffing plans that account for the restrictive nature of ESH and the increased number of ESH units.

Conditions in ESH

Findings

- Correction officers working in ESH have expressed concern that people housed in ESH act with impunity. Several correction officers have stated that they are sometimes reluctant to act, even where it is necessary to restore order, because they are afraid action will result in a use of force (UOF) and employee disciplinary charges.
- Facility-wide and ESH area lockdowns resulted in individuals in ESH receiving an average of 12% (n=27.5 hours) fewer hours of out-of-cell time per month than they are entitled to (213 hours, on average).⁸
- There were a total of 179 UOF incidents in ESH involving adults — 70% (n=126) involved the use of chemical agents. In 20% (n=36) of the UOF incidents, the reason identified for the use of force was an assault on staff.
- There were also six allegations of an unreported UOF made by adults housed in ESH. In addition, there were six logbook entries that did not meet the Department’s definition of a “reportable incident” and appear to involve assaults on or harm to staff. There were also 24 splashings committed by adults in ESH.
- DOC issued 142 infractions for alleged involvement in inmate-on-inmate fights and assaults in ESH.⁹
- Forty-three percent of all placements in ESH (43%, n=157) had one or more injuries reported during their ESH placement periods. There was a total of 346 injuries sustained by people in ESH from February 2015 to November 2016. Nearly one-third of injuries were due to DOC use of force (29%, n=100), 15% were a result of self-injury (n=53), and 14% were a result of recreational activity (n=49).

⁸ Individuals in ESH Levels 2 through 4 are also subject to lockdowns but are afforded more than the seven hours of minimum out-of-cell time.

⁹ N.Y.C. DEP’T OF CORRECTION, Monthly Security Statistical Reports – Fiscal Years 2015-2017.

Recommendations

- Provide CHS staff, correction officers, and other staff in ESH additional training on mediation and conflict resolution. Continue the Department's ongoing efforts to train correction officers on the use of force policy and de-escalation tactics.
- Explore new approaches to managing violence in ESH. Consider restorative justice approaches and the "cure violence" health model¹⁰ which promote engagement with individuals to addresses the root causes of violence and behavior problems.

ESH management

Findings

- The Department does not appear to have provided ESH-specific staff guidance, uniform operating standards, or procedures until nearly a year after ESH incentive levels were first introduced in practice. The latest ESH operating manual still has no mention of ESH levels, restraint desks, or the logbooks that are maintained in ESH units.
- Staff in ESH are assigned regularly to ESH housing areas but are not regularly assigned to specific ESH units. A snapshot of correction officers assigned to ESH in October and November 2016, found 88% were regularly assigned to the ESH housing area, but were not assigned to specific ESH units. Many correction officers who work in ESH rotate between the various ESH housing units which operate differently depending on ESH level.
- Seventy-six percent (76%, n=58) of the 76 correction officers in the snapshot had received at least 40 hours of specialized training provided by the Department, though none of this training was particular to the operation of ESH.

Recommendations

- Align written policies and practice. Provide training and guidance to DOC and CHS staff as changes to the ESH model are made.
- Establish more steady posts assignments to ESH units so that correction officers get to know people in their assigned unit and the operating procedures and policies related to their unit's ESH incentive level(s).

Monitoring

Findings

- There are no benchmarks for measuring the progress or success of ESH, nor is there a research-based model outlining how the current approach in ESH will improve safety and reduce violence.

¹⁰ See CURE VIOLENCE, ESSENTIAL ELEMENTS, <http://cureviolence.org/the-model/essential-elements> (last visited April 25, 2017).

- 60-day reports to the Board on ESH lack important metrics to evaluate ESH effectiveness, and the metrics presented in these reports have not been updated since ESH was first implemented.
- DOC lacks data management systems to electronically track data on ESH. This is a barrier to effective management and evaluation.

Recommendations

- The Department should create a model, based on research, outlining how the ESH structure and programming intends to improve safety and reduce violence. The Department should use this model to develop benchmarks and define what “success” looks like in ESH.
- Update Board metrics requested from the Department in the 60 day reports on ESH and continuously update metrics to account for changes to ESH protocols as they are made.
- Require DOC to collect, track, and systematically share with the Board individual-level data on all restrictive housing placements including:
 - Characteristics of people in custody, e.g., age, race, classification level, gang (SRG) status, Enhanced Restraint/Red I.D., mental health/substance use needs;
 - Placement criteria (with dates of incident(s) or activities used for placement);
 - Restrictions imposed (prior to and during placement);
 - Entry and exit dates, as well as exit reasons;
 - Housing history (housing unit and level prior to placement, housing unit and level during and following placement, dates of movement and level progression, reasons for movement/progression);
 - Program participation;
 - Number and outcomes of periodic reviews.
- Require DOC to track and regularly report to the Board information by type of restrictive housing including:
 - Monthly admissions and average daily population (ADP);
 - Length of stay overall and by level;
 - High utilizers of restrictive housing and individuals in restrictive housing units with multiple placements;
 - Look-back period used for placement in restrictive housing units;
 - Injuries, uses of force, assaults on staff, unusual incidents, assaults on other people in custody, other infractions related to individuals during placement in restrictive housing units, and post-program misconduct.

I. Background

On January 13, 2015, the Board of Correction (“Board” or “BOC”) amended its Minimum Standards to create Enhanced Supervision Housing (ESH).¹ The Department of Correction (“Department” or “DOC”) had first proposed the new restrictive housing area in October 2014. The purpose of creating ESH was to address the increase in serious violence among incarcerated people in New York City jails and to integrate a new restrictive housing unit as the Department reformed its use of punitive segregation.² When the Board passed the ESH standards, it also created new standards limiting the use of punitive segregation.³

ESH is intended to house individuals who present “a significant threat to the safety and security of the facility if housed elsewhere”⁴ and was established to provide the Department the ability “to protect the safety and security of inmates and facilities, while promoting rehabilitation, good behavior, and the psychological and physical well-being of inmates.”⁵ The Minimum Standards were also amended to allow seven daily lock-out hours in ESH units, rather than the generally required fourteen hours.⁶ The Board prohibited placement of 16- to 21-year-olds in ESH and tailored the ESH standards to address the challenges posed by, and the needs of, incarcerated adults.

The key components of ESH are codified in Standard § 1-16 and include provisions regarding (1) placement criteria to limit discretion and ensure ESH is reserved for individuals who present the most direct security risk; (2) exclusions (adolescents, young adults, and people with the serious mental illnesses or physical disabilities) to mitigate potential harm; (3) conditions, programming, and services to facilitate rehabilitation, address the root causes of violence, and minimize idleness; (4) staffing (40 hours of training and at least 25% assigned to steady posts) to ensure safety and consistency in management; (5) full due process protections to ensure procedural justice; and (6) Board monitoring to create transparency and accountability.

The Standards require the Board to convene to discuss “the effectiveness and continued appropriateness of ESH” no later than two years after implementation of ESH.⁷ This report examines the components of ESH and presents findings and recommendations that are intended to inform the Board’s assessment and discussion.

While the Board has at various times permitted the Department to house young adults in ESH, the findings presented in this report relate solely to **adults** placed in ESH. The Board will issue findings related to young adults and ESH in a forthcoming report.

¹ See generally N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16 (Jan. 23, 2016). The Minimum Standards section on Enhanced Supervision Housing is attached hereto as Attachment A and is available at [http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/title40boardofcorrection/chapter1correctionalfacilities?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork_ny\\$anc=JD_T40C001_1-16](http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/title40boardofcorrection/chapter1correctionalfacilities?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$anc=JD_T40C001_1-16).

² See N.Y.C. BOARD OF CORRECTION, NOTICE OF ADOPTION OF RULES, 142 THE CITY RECORD 215 (2015).

³ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, LIMITATIONS ON THE USE OF PUNITIVE SEGREGATION § 1-17 (Jan. 23, 2016).

⁴ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(b) (Jan. 23, 2016).

⁵ *Id.* at § 1-16(a).

⁶ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, LOCK-IN § 1-05(b)(2) (Jan. 23, 2016).

⁷ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(i)(2) (Jan. 23, 2016).

II. Assessment Purpose & Methodology

DOC policies and procedures related to ESH have changed significantly since ESH was established. For example, since the Minimum Standards on ESH were promulgated, DOC developed, implemented, and subsequently modified incentive levels in ESH units. Along with these changes, the Department made changes to the programming offered in ESH.

This report is not a formal evaluation; rather, it describes ESH implementation and the population housed in ESH to date. DOC's policies and compliance with the Minimum Standards on ESH and lessons learned over the course of implementation are also discussed. Finally, recommendations and implications for the Board's upcoming rulemaking on restrictive housing are presented for consideration in this report's Executive Summary.

The findings in this report are based on a wide range of sources including:

- All available documentation related to ESH policies and procedures;
- Interviews with DOC and CHS staff tasked with implementing ESH;
- Detailed field observations and monitoring of ESH units by Board staff;
- Administrative data captured by DOC and CHS; and
- Inmates' files containing all ESH due process paperwork, and complaints submitted to the Board.

A full list of sources is outlined in Attachment B.

III. Timeline of Enhanced Supervision Housing Implementation

Timeline of ESH Implementation	
2015	
January 13, 2015	Board voted to amend Minimum Standards to create Enhanced Supervision Housing (ESH) units, excluding its use for 16- through 21-year-olds and people with serious mental or physical disabilities or conditions.
February 19, 2015	DOC issued its first Directive on ESH policies and procedures (Directive 4497).
February 21, 2015	ESH Minimum Standards took effect. ⁹
February 23, 2015	DOC began moving inmates into ESH.
July 1, 2015	Deadline for DOC to provide people in ESH with both voluntary and involuntary and both in- and out-of-cell, programming. This programming must be aimed at facilitating rehabilitation, addressing root causes of violence, and minimizing idleness.
2016	
Around January 2016	DOC began implementing three “phases” in ESH with “phase” one being the most restrictive.
February 1, 2016	Incentive-based programming model tied to new ESH levels introduced to ESH leadership.
May 1, 2016	“Passport to Success” ESH program orientation process started in ESH units.
July 12, 2016	Board granted DOC’s variance request permitting placement of young adults 19- through 21-years-old in ESH until October 11, 2016.
July 26, 2016	DOC issued an updated Directive on ESH procedures and policies (Directive 4497R) to reflect Department’s ability to house young adult inmates in ESH.
September 8, 2016	Chief of Department approved the first placement of a young adult into ESH.
October 11, 2016	Board granted DOC’s variance requests to permit placement of 18 through 21 year-olds in ESH (19 through 21 year-olds in ESH until January 11, 2017 and 18 year-olds until April 11, 2017). ¹⁰
November 1, 2016	Chief of Department approved the first placement of an 18-year-old in ESH.
November 16, 2016	The Department issued a Command Level Order outlining ESH policy, formalizing an ESH level structure, changing terminology from phases to levels, which include ESH level 1 requiring the use of restraint desks during all out of cell time.
December 9, 2016	The Department updated its ESH due process forms to require placement adjudication consider the use of restraint desks as a potential individualized restriction.
2017	
January 11, 2017	Board’s variance permitting 19- through 21-year-olds in ESH expired.
January 20, 2017	Board issued a Notice of Violation of Minimum Standards to DOC for its continued operation of ESH for young adults ages 19 through 21. ¹¹
February 14, 2017	Board granted the Department’s variance request permitting the housing of young adults ages 18 through 21 in ESH until August 2017. ¹²
March 30, 2017	The Department shared a revised draft ESH directive soliciting Board feedback.

⁸ See Records of Variance Action, N.Y.C. Board of Correction (Oct. 11, 2016), *available at* <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> and <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/October-11-2016/post/2016.10.17%20-%20Record%20of%20Variance%20Action%20ESH%20%2818%29.pdf>.

⁹ See Notice of Violation of Minimum Standards from Derrick D. Cephas, Chair, N.Y.C. Board of Correction, to Joseph Ponte, Commissioner, N.Y.C. Department of Correction (Jan. 20, 2017), *available at* http://www1.nyc.gov/assets/boc/downloads/pdf/99910-0674_2017-01-20%2010-13-30.pdf.

¹⁰ See Records of Variance Action, N.Y.C. Board of Correction (Feb. 14, 2017), *available at* <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Feb-14-2017/2017.02.14%20-%20Record%20of%20Variance%20Action%2019-21.pdf> and <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Feb-14-2017/2017.02.14%20-%20Record%20of%20Variance%20Action%2018.pdf>.

IV. ESH Utilization & Population

On February 23, 2015, DOC opened its first ESH housing unit at the Otis Bantum Correctional Center (OBCC) on Rikers Island. As of January 27, 2017, there were three ESH units operating as ESH Level 1 units, three operating as ESH Level 2 units, and one operating as an ESH Levels 3 and 4 unit. In October 2016, the Department opened a new ESH unit solely for young adults. That unit is now operating as an “entry unit” for young adults though all young adults who are new to ESH are not initially placed there. All ESH units are at OBCC.

The ESH standards cap ESH capacity at 250 individuals at any time,¹¹ but since its establishment, the population housed in ESH has not approached the permitted maximum capacity.

Table 1

ESH Units		
Unit	Opening Date	Current Level*
1st	2/23/2015	Level 2
2nd	4/6/2015	Level 1 (Restraint Desks in Use)
3rd	8/2/2015	Level 2
4th	10/12/2016	Young Adult Entry Unit (Restraint Desks in Use)
5th	11/18/2016	Levels 3 and 4
6th	11/22/2016	Level 1 (Restraint Desks in Use)
7th	12/5/2016	Level 1 (Restraint Desks in Use)
8th	12/28/2016	Level 2
* As of January 27, 2017.		

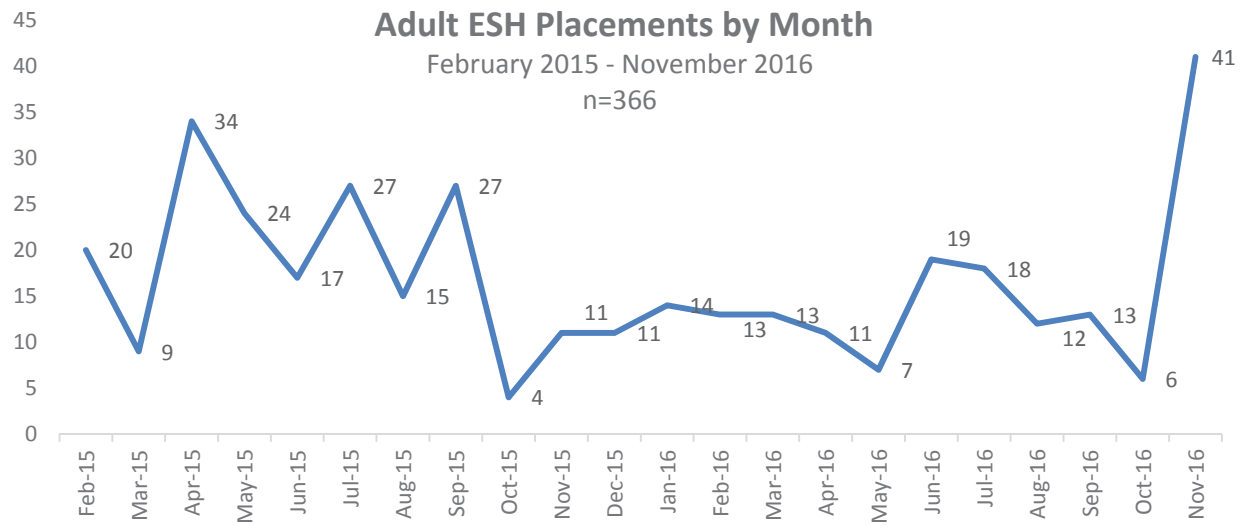
PLACEMENTS & AVERAGE DAILY POPULATION

From February 2015 to November 2016, the number of ESH placements per month ranged between a minimum of four placements in October 2015 to a maximum of 41 placements in November 2016. The average daily population (ADP) in ESH ranged from a minimum of 15 adults in February 2015, when ESH first opened, to a maximum of 90 adults in November 2016.

From October 2016 to November 2016, the ESH ADP for adults saw a 44.5% increase as DOC expanded the number of ESH housing units for adults from three to five units. This expansion of ESH coincided with the Department formalizing ESH “incentive levels” in policy and creating ESH “Level 1” which requires individuals to be in restraints during lockout hours. See timeline on page 3.

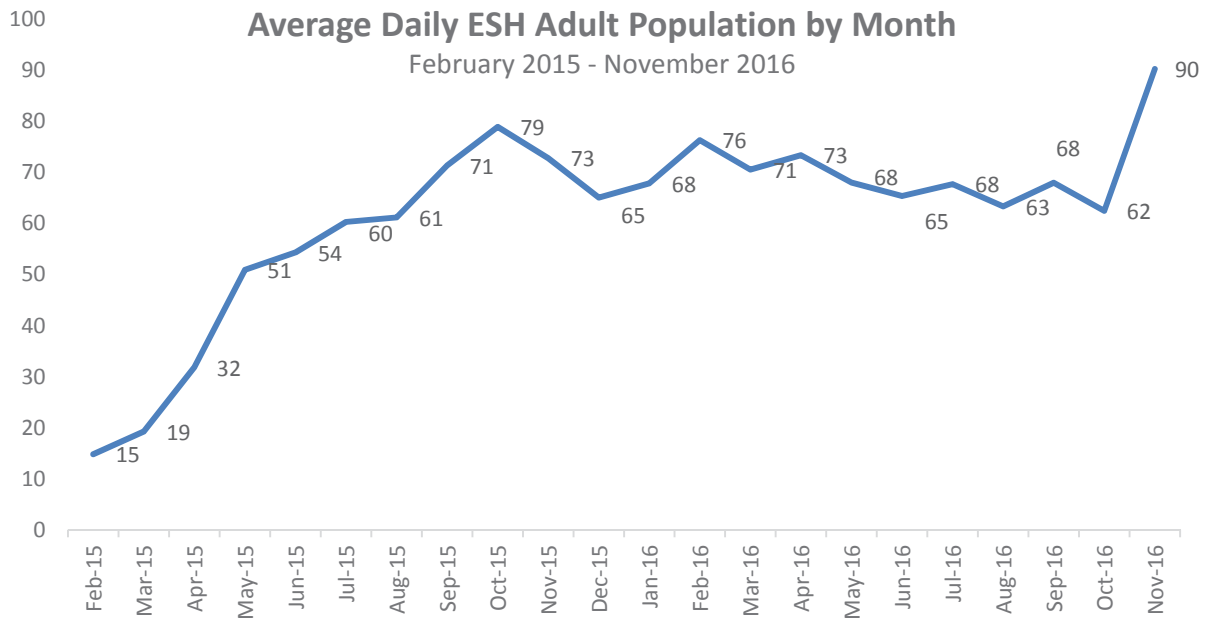
From February 23, 2015 through November 30, 2016, a total of 348 adults were housed in ESH, representing a total of 366 adult ESH placements. Sixteen individuals had more than one placement. Of those sixteen, fifteen individuals had two placements and one individual had three placements during this period.

¹¹ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(c)(4) (Jan. 23, 2016).



SOURCE: Number of monthly placements in ESH based on ESH placement information provided by the Department of Correction.

Figure 1



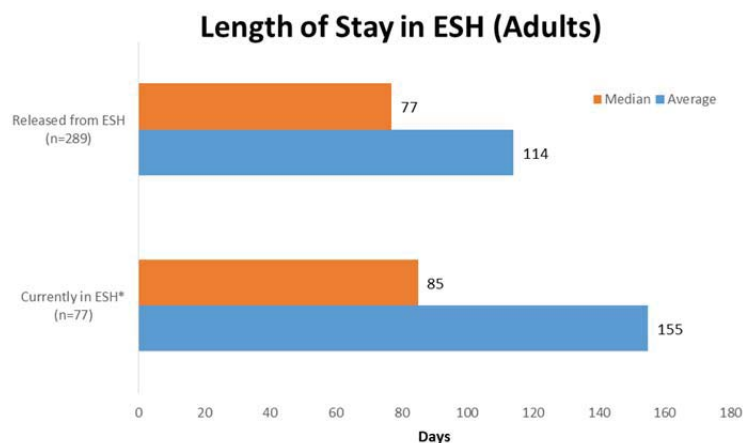
Source: ADP calculated from Department of Correction 5am Daily Census and Young Adult Restrictive Housing

Figure 2

LENGTH OF STAY

The length of stay in ESH for people who were eventually released from ESH ranged from less than a day to 527 days with an average length of stay of 114 days and median length of stay of 77 days.¹²

A snapshot of the 77 individuals, who were placed between February 2015 and November 2016 and were still in ESH as of December 14, 2016, had an average length of stay in ESH of 155 days and a median length of stay of 85 days with one individual having served as many as 636 days in ESH.



SOURCE: Calculated from ESH placement and released dates provided by the Department of Correction.
* Refers to inmates in ESH as of December 14, 2016.

Figure 3

HOUSING MOVEMENTS

Nearly half (49%, n=178) of the individuals placed in ESH were transferred from a general population housing unit, 18% (n=66) were transferred from administrative segregation, and 11% (n=41) were transferred into ESH from punitive segregation.

Over half of individuals released from ESH (54%, n=150) were discharged from DOC custody entirely (42%, 115 were transferred to state custody). Fourteen percent (14%, n=39) were transferred to general population housing, 9% (n=26) were sent to punitive segregation, 4% (n=12) were released to an Accelerated Program Unit, and 3% (n=9) were moved to a restrictive housing unit.

¹² Of the 366 ESH placements, 289 had an ESH release date.

Table 2

Housing Location Prior to ESH Placement		
General Population	178	49%
Administrative Segregation	66	18%
Punitive Segregation	41	11%
Restraint	38	10%
Accelerated Program Unit	18	5%
Restricted Housing Unit	9	2%
New Admission	4	1%
General Population / Max Custody	3	1%
Protective Custody	2	1%
Isolation	1	< 1%
Mental Observation	1	< 1%
Punitive Segregation Lite	1	< 1%
Total	362*	100%
SOURCE: Department of Correction.		
*Three individuals placed had no public record in DOC's system from which to determine their prior housing unit. One of these individuals was placed multiple times.		

Table 3

Release Location After Exit from ESH		
General Population	39	14%
Punitive Segregation	26	9%
Accelerated Program Unit	12	4%
Protective Custody First 48 Hours	10	4%
Restricted Housing Unit	9	3%
Administrative Segregation	9	3%
Restraint	9	3%
Mental Observation	8	3%
Isolation Punitive Segregation	3	1%
Maximum Security	2	1%
Maximum Security Gen. Pop. Escort	1	< 1%
Punitive Segregation Lite	1	< 1%
Medical Dorm	1	< 1%
Released from DOC Custody	150	54%
Total	280*	100%
SOURCE: Department of Correction.		
*Three individuals placed had no public record in DOC's system from which to determine their prior housing unit.		

There were 100 people with movement in and out of ESH units between the ESH placement and exit dates reported by the Department, and these 100 individuals accounted for 167 ESH "in and out" movements. Seventy-two percent of movements (72%, n=121) were between ESH and punitive segregation, the other 28% (n=46) of movements were to and from restrictive housing units, accelerated program units, punitive segregation light, medical units, administrative segregation, protective custody, and a psychiatric unit.¹³

There was also a subset of individuals who were moved in and out of ESH frequently. There was one person placed in ESH who was moved between ESH and punitive segregation six times and protective custody once. Another two people moved between ESH and punitive segregation six times and isolation once, and two people moved between ESH and punitive segregation five times.

More analysis is required to determine whether these movements were a result of new incidents occurring while in ESH units or whether ESH is being used as a reprieve from longer sentences to punitive segregation for incidents occurring prior to ESH placement.

¹³ One individual spent one day in a psychiatric unit.

DEMOGRAPHICS & CUSTODY STATUS

All people placed in ESH were men.¹⁴ The racial composition of people placed in ESH during the assessment period was 61% black (n=213), 33% Hispanic (n=114), 2% white (n=6), and 2% other (n=6). A higher portion of the ESH population was black and Hispanic compared to the DOC population overall. Ninety-four percent (94%, n=327) of people placed in ESH were either black or Hispanic, compared to 88% of DOC's overall average daily population.

The age of adults in ESH ranged from 22 to 48 years old and averaged 27 years old. Forty-eight percent (48%, n=168) of adults in ESH were 25 years old and under, compared to 15% (n=1468) of the average daily population in DOC as a whole.

While the majority of adults housed in ESH were pretrial detainees (65%, n=239), there was a smaller proportion of pretrial detainees in ESH compared to the DOC population overall (77%). Nearly all people placed in ESH were facing or were sentenced to felony charges (96%, n=350).

Table 4

Racial and Ethnic Breakdown of ESH Population vs. Department-wide Population				
Race / Ethnicity	ESH Population	Percent	DOC Overall Population	Percent
Black (Non-Hispanic)	213	61%	5,338	55%
White (Non-Hispanic)	6	2%	685	7%
Other (Non-Hispanic)	6	2%	446	5%
Hispanic	114	33%	3,325	34%
No Public Record	9	3%		
Total	348	100%	9,794	100%
SOURCE: Race & Ethnicity for ESH inmates recorded in Department of Correction Inmate Identification System.				
NOTE: Race & Ethnicity reported for Average Daily Population in N.Y.C. DEP'T OF CORRECTION, POPULATION DEMOGRAPHICS REPORT: FISCAL YEAR 2017 FIRST QUARTER (undated), available at http://www1.nyc.gov/assets/doc/downloads/pdf/FY17_1st_QUARTER_2016_demog.pdf (on file with author).				

Table 5

Age Breakdown of Adult ESH Population and Department-wide Population				
Age	ESH Population	Percent	DOC Overall Population	Percent
22-25	168	48%	1,468	15%
26-29	93	27%	1,337	14%
30-39	73	21%	2,483	25%
40-49	14	4%	1,702	17%
SOURCE: Age for ESH inmates recorded in Department of Correction Inmate Identification System.				
NOTE: Age reported for Average Daily Population. N.Y.C. DEP'T OF CORRECTION, POPULATION DEMOGRAPHICS REPORT: FISCAL YEAR 2017 FIRST QUARTER (undated), available at http://www1.nyc.gov/assets/doc/downloads/pdf/FY17_1st_QUARTER_2016_demog.pdf (on file with author).				

¹⁴ No studies or reports were done about individuals' genders identities. The Department of Correction housed people in ESH as men, but it's possible that there are individuals in these units that identify as women.

SECURITY DESIGNATIONS & CLASSIFICATION LEVELS¹⁵

The majority of individuals (63%, n=220) in ESH were members of a Security Risk Group (SRG)¹⁶ or gang-affiliated, as determined by DOC. A third (33%, n=115) of those placed had “Red ID” status, a DOC designation given to individuals who are found to have used or possessed a weapon or other dangerous instruments while in Department custody.¹⁷

DOC’s risk classification score is assigned upon admission to DOC custody and reassessed every 60 days.¹⁸ Factors used to derive the score include securing orders, RAP sheet, Sentence Commitment Orders, warrants, detainees, pre-sentence reports, probation reports, and institutional behavior.¹⁹

The classification score for people placed in ESH ranged from 4 to 39 with an average classification score of 19.5. Of the 366 ESH placements reviewed, 94% (n=346) met the criteria for a maximum risk classification level (a classification score of 13 or more); 5% (n=17) had a medium custody classification (a score between 7 and 12), and 1% (n=3) had minimum custody classification (a score between 4 and 6) prior to their ESH placement.

CLINICAL DESIGNATIONS

The Minimum Standards require the exclusion of people with serious physical or mental health conditions from ESH housing.²⁰ Individuals housed in ESH were more likely to have mental health needs than the overall DOC population.²¹ The majority, two-thirds (66%, n=242), of ESH placements involved a person who was receiving mental health services before placement. No individuals placed in ESH had a diagnosis for a serious mental illness (SMI). Over three-quarters of ESH placements (77%, n=279)

¹⁵ While BOC can look up individuals’ infraction histories on a case-by-case basis, the Board’s staff do not currently have the ability to query or pull broad samples of DOC data on infraction histories for defined time periods. This kind of data pull would be required to compare infraction histories for people in ESH to those of the DOC population as a whole over the course of the period studied. BOC will continue to work with the Department to obtain the data pulls that would facilitate this kind of analysis for future assessments.

¹⁶ N.Y.C. DEP’T OF CORRECTION, OPERATIONS ORDER 03/12, MONITORING AND MANAGING SECURITY RISK GROUPS AND WATCH GROUPS, sec. III(A), at 2 (eff. Mar. 17, 2012) (“Security Risk Group (SRG): A group, designated by the Commissioner upon the Intelligence Unit’s recommendation, possessing common characteristics that distinguish the group from other inmates or groups of inmates as a discrete entity that jeopardizes the safety of the public, staff or other inmates(s) and/or the security and order of the facility”).

¹⁷ See N.Y.C. DEP’T OF CORRECTION, DIRECTIVE No. 4518R-C, RED ID AND ENHANCED RESTRAINT STATUS INMATES, sec. III(A), at 2 (eff. Sept. 28, 2016) (“Red ID status inmate: An inmate who, because of his/her use and/or possession of a weapon or dangerous instrument while in Department custody, is issued an identification card with a red background and placed into one of [several] risk code designations . . .”).

¹⁸ See generally N.Y.C. DEP’T OF CORRECTION, DIRECTIVE No. 4100R-D, CLASSIFICATION (eff. Mar. 10, 2014).

¹⁹ *Id.*

²⁰ See N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(c)(1)(iii) (Jan. 23, 2016).

²¹ In fiscal years 2015 and 2016, approximately 42% of DOC’s ADP was receiving mental health services. See NEW YORK CITY MAYOR’S OFFICE OF OPERATIONS, PRELIMINARY MAYOR’S MANAGEMENT REPORT: PRELIMINARY FISCAL YEAR 2017 76 (Feb. 2017), available at <http://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2017/doc.pdf>.

involved individuals with a substance use disorder prior to placement. None of the people placed in ESH has a serious physical disability.²²

Table 6.

Clinical Designations for Adult ESH Placements		
	Number	Percent
Receiving mental health services before placement	242	66%
SMI before placement	0	0%
Substance use disorder before placement	279	77%
Serious physical disability before placement	0	0%
<p>SOURCE: Correctional Health Services Data as of January 30, 2017 matched to adults placed in ESH from February 2015-November 2016.</p> <p>NOTE: Metrics present information available in data sources at the time of query and are subject to change based on workflow. The data presented reflects query-specific logic, parameters, and sources as outlined in the data dictionary and/or legend and should not be compared to similarly noted reports without appropriate crosswalks to identify variations in approach.</p>		

²² CHS clinical staff conduct a case by case review of individuals recommended for ESH placement and determine whether a physical disability is serious enough to preclude placement. Less serious disabilities such as visual or hearing disabilities are addressed through appropriate medical treatment.

V. Due Process

Significant due process protections were included in the ESH standards prior to their adoption and subsequently in the Department's ESH policy. ESH Standards require notice of ESH placement, placement determination hearings, and periodic reviews of placement in ESH every 45 days.²³ These regulations were intended to address, in part, concerns that the broad criteria for ESH placement could invite misuse or overuse.

DUE PROCESS AUDIT

Board staff reviewed all ESH placements between February 23, 2015 and November 30, 2016 and conducted an in-depth file audit on a random sample of 40 people placed in ESH during this timeframe. This audit included a total of 42 placements, with two people having more than one placement in ESH.

In addition, Board staff audited all 24 placements made in ESH from November 15, 2016 through November 30, 2016. This sample was selected to better understand placements made after the Department's introduction of ESH Level 1 where restraint desks are in use.

Board staff also reviewed ESH files for the six individuals who filed appeals of their placement in ESH. In total, Board staff conducted a detailed review of ESH paperwork related to 66 placements.

ESH files include an individual's ESH due process forms, supporting documentation and evidence used to substantiate decision-making, and, if available, audio recordings of placement hearings. Audio recordings of placement hearings were available for 69% (n=46) of audited placements and for all placement hearings for individuals who filed appeals (n=6). Board staff listened to a total of 50 placement hearings.²⁴

PLACEMENT CRITERIA

To place an individual in ESH, the Department must establish that an individual "presents a significant threat to the safety and security of the facility if housed elsewhere."²⁵ The Standards enumerate six criteria, any one of which may qualify a person for placement in ESH. An ESH placement determination must 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;

²³ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(f)-(h) (Jan. 23, 2016).

²⁴ Two appeals were related to placements that were also reviewed in the sample audited.

²⁵ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(b) (Jan. 23, 2016).

- (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.

When used to justify an individual's placement, activities while incarcerated must have occurred within the preceding five years, and activities when a person is not incarcerated must have occurred in the preceding two years.²⁶

While Board staff confirmed that the incidents and activities used to justify ESH placement fell within the look-back period permitted by the Standards (i.e., within the past 5 years), the Board's due process audit did not specifically analyze the time between an individual's actual placement in ESH and the incidents or activity used to justify placement.

RECOMMENDATION FOR PLACEMENT

When an Assistant Deputy Warden or higher ranking member of DOC Command determines that an individual meets one or more of the criteria for ESH placement they complete a 'Recommendation for Initial Placement of Inmate in Enhanced Supervision Housing' form (ESH-1). This form requires sign off from the Deputy Warden of Security, the Operations Security Intelligence Unit (OSIU), and a Chief or Deputy Chief of Security.²⁷ Completion of the ESH-1 form initiates a person's placement in ESH. Once the Deputy Warden or higher ranking member of the Command determines that an individual meets one or more of the criteria for ESH placement, that person is also supposed to be processed for Enhanced Restraint Status.²⁸

OSIU staff report that recommendations for ESH are often made in response to a serious security incident such as a slashing or serious assault on staff. People leaving punitive segregation are also routinely reviewed and considered for ESH placement. Individuals considered for ESH placement do not receive a copy of their recommendation form but it is placed in their ESH placement folder and reviewed by an adjudication captain as part of the placement process.

The Board's random file audit found 90% (n=38) of placements had a Security Risk Group (SRG) affiliation listed on their recommendation form. Of placements made in the last two weeks of November 2016, 96% (n=23) had an SRG affiliation.

²⁶ *Id.* at § 1-16(b)(6).

²⁷ See N.Y.C. DEP'T OF CORRECTION, OTIS BANTUM CORRECTIONAL CENTER, INST'L ORDER NO. 106/16, ENHANCED SUPERVISION HOUSING (ESH), sec IV(E)(9), at 12 (eff. Nov. 16, 2016).

²⁸ See *id.* at sec. IV(B)(2), at 6.

Table 7 presents the housing location prior to ESH placement for audited placements as recorded on their ESH placement recommendation form.

Board staff also looked at the number of days between a recommendation for ESH and the date of actual placement in ESH. In the random sample, the time between recommendation and placement ranged from zero to 37 days with a mean of ten days and a median of eight days. For individuals placed in the last two weeks of November 2016, the time from recommendation to placement averaged 18 days.

The Minimum Standards give medical staff the authority to determine if a person should be excluded from ESH placement or moved to a more appropriate housing unit.²⁹ After DOC makes a recommendation for placement, CHS staff are typically notified by email regarding an inmate's placement in ESH. Once notified, CHS conducts a review of the individual's electronic medical record to see whether they have a serious mental illness. CHS also checks its records for any known cognitive deficits and any serious or recent self-injury. Until recently, an individual's ESH placement *level* has not been taken into consideration by CHS staff as part of their placement review, meaning CHS staff were not specifically clearing people for placement in ESH Level 1 where restraint desks are in use. CHS and Department staff have met to create placement protocols regarding the use of restraint desks.

Table 7

Housing Location Prior to ESH Placement as Recorded on ESH Recommendation Form		
Random Sample Audit		
Location	Number	Percent
General Population Maximum Security	16	38%
Administrative Segregation	8	19%
Punitive Segregation	7	17%
No Custody Level Recorded	6	14%
Restraint Unit	3	7%
General Population	1	2%
Protective Custody	1	2%
Total	42	100%
Placements in Last Two Weeks of November 2016		
Location	Number	Percent
Restraint Unit	13	54%
Punitive Segregation	6	25%
General Population Maximum Security	4	17%
Administrative Segregation	1	4%
Total	24	100%
SOURCE: Department of Correction.		

PLACEMENT NOTICE

Upon placement in ESH, the Minimum Standards require that individuals receive written notice within 24 hours that states the grounds relied on and the facts supporting placement and any individual restrictions the Department intends to impose during the inmates' confinement in ESH.³⁰ The notice must inform the individual of their upcoming ESH placement review hearing, the right to review the evidence relied upon by the Department prior to the hearing, and their right to submit a written statement for consideration, to call witnesses, and present evidence.³¹

The Department has consistently provided people placed in ESH with timely notice. Ninety-five percent (95%, n=40) of the random sample audited received a timely notice of placement (within 24 hours of

²⁹ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(c)(2) (Jan. 23, 2016).

³⁰ See *id.* at § 1-16(f).

³¹ *Id.*

their placement date). All individuals placed in the last two weeks of November received timely notice according to the dates recorded on their forms.³² DOC records indicate that a significant portion (71%, n=17) of this group refused to sign their placement forms.

ESH placement notice forms identify all restrictions that may be imposed as a result of placement in ESH but do not indicate which recommendations, if any, have been recommended by the Department for the individual.

PLACEMENT HEARING

The Minimum Standards require that people recommended for ESH housing receive a placement hearing “within three (3) business days of service of notice on an inmate of initial ESH placement.”³³ The Minimum Standards further require that the placement hearings consist of:

- i. a review of the facts upon which the Department relies to place the inmate in ESH . . . and a determination of whether such facts exist and whether they support, by a preponderance of the evidence, the conclusion that the inmate presents a current significant threat to the safety and security of the facility such that ESH is appropriate;
- ii. consideration of the time that has elapsed since the occurrence of the activity or behavior relied on by the Department to support ESH placement;
- iii. a review of the individual restrictions proposed by the Department and a determination of whether each is supported by evidence of the legitimate safety and security concerns related to that individual inmate;
- iv. consideration of any relevant information provided by medical staff;
- v. consideration of any credible and relevant evidence submitted or statements made by the inmate at the hearing; and
- vi. consideration of any other evidence deemed relevant to the ESH status determination or imposition of individual restrictions.

Individuals placed in ESH are also entitled to written notice of the adjudication captain’s decision.³⁴ Department procedures further specify that adjudication captains have two business days to render a decision as to whether to continue placement in ESH or any related restrictions.³⁵ This decision is communicated to the Deputy Warden of ESH who then has 72 hours from the conclusion of the placement hearing to serve the individual with the determination.³⁶

Of the 366 placements in ESH between February 23, 2015 and November 30, 2016, 7% (n=27) were discontinued. Fifteen placements were discontinued prior to an ESH placement hearing – one due to self-harm and three because they were discharged from Department custody within days of placement in ESH. Twelve placements were discontinued after a placement hearing upon a finding that ESH

³² Board staff did not independently verify dates and information recorded on ESH forms with individuals directly.

³³ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(g)(1) (Jan. 23, 2016).

³⁴ *Id.* at § 1-16(g)(6).

³⁵ See N.Y.C. DEP’T OF CORRECTION, OTIS BANTUM CORRECTIONAL CENTER, INST’L ORDER NO. 106/16, ENHANCED SUPERVISION HOUSING (ESH), sec IV(E)(9), at 12 (eff. Nov. 16, 2016).

³⁶ See *id.*

placement criteria were not met. These twelve people spent between five and 24 days in ESH and averaged 13 days in ESH before they were transferred out.

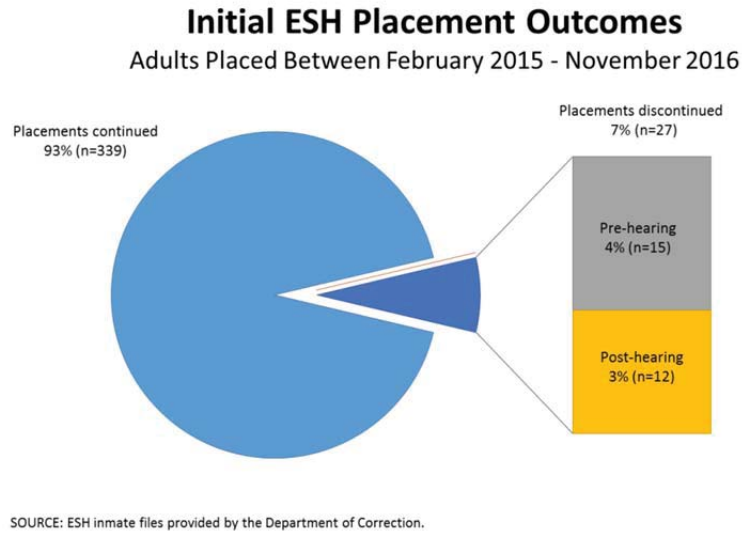


Figure 4

The Department has consistently provided people placed in ESH with timely placement hearings. In the random sample of ESH files audited, 93% (n=39) of placements³⁷ received a timely hearing (within three business days of notice of placement). Of placements in the last two weeks of November 2016, 96% (n=23) received a timely hearing.

Board staff listened to a total of 50 hearings, including all placement hearings for individuals who subsequently filed placement appeals. Placement hearings ranged from a minimum of around five minutes to just over 22 minutes, depending on the level of participation by the person being adjudicated and amount of evidence reviewed in the hearing.

Most hearings followed a similar format. Generally:

1. Placements hearings started with a brief description of the purpose of the hearing;
2. The adjudication captain then reads the criteria for placement in ESH outlined in the Standards and DOC policy;
3. The adjudication captain then lists the individual's infraction that are used to justify placement;
4. After listing infractions, the adjudication captain asks the individual if he or she would like to request a witness, hearing facilitator, or interpreter. Individuals are also asked if they would like to state anything for the record.;
5. Finally, the adjudication captain informs the individual that a determination for placement will be made within two business days and informs the individual of the Department's appeal process.

³⁷ This is calculated from all placements not discontinued prior to a hearing.

All individuals are informed of their right to attend their ESH placement hearing in their ESH placement notice, and 76% (n=32) of individuals in the random audit sample did so. Sixty-three percent (63%, n=15) of individuals placed in the last two weeks of November attended their placement hearing. Of individuals in ESH whose placement records were audited, none requested a hearing facilitator and only one inmate called a witness to inform his placement decision.

Board staff found that the infractions cited and discussed at hearings did not consistently correspond to those directly referenced in individuals' Notice of Placement in ESH, making it difficult for individuals in ESH to prepare meaningful arguments against placement. In some cases, adjudication captains referenced infractions that did not relate to ESH criteria (e.g., possession of tobacco) in addition to other incidents that did. In other cases, the Department cited incidents related to dismissed infractions to support placement.

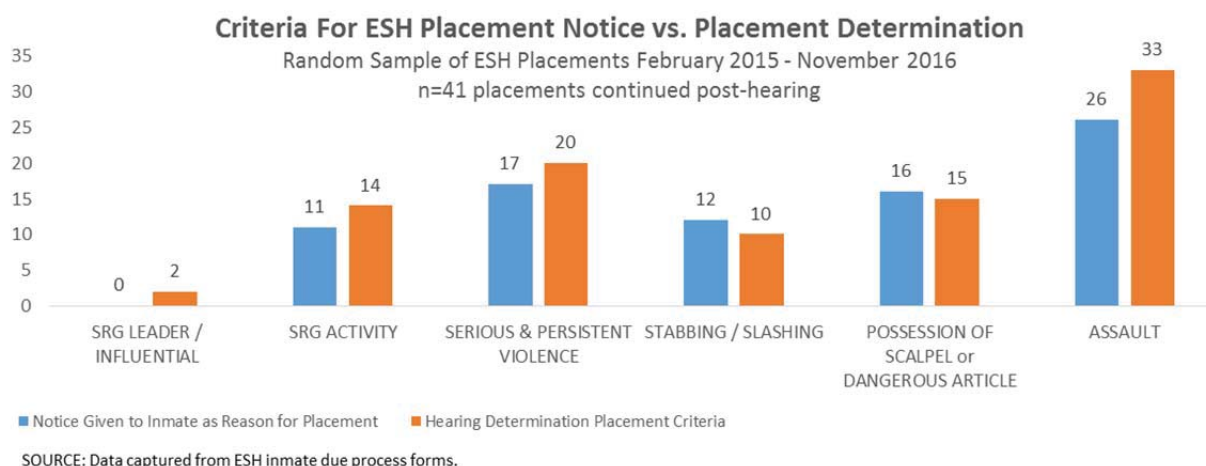


Figure 5

At placement hearings, adjudication captains routinely inform individuals placed in ESH that the purpose of the hearing is not to dispute or re-litigate infraction charges for which they had already been afforded due process and found guilty. Individuals are informed that the hearing is only to determine whether they meet the criteria for ESH placement and not to challenge the evidence underlying a placement recommendation based on prior infractions. As a result, many individuals were confused as to the purpose of the hearing and questioned the utility of calling witnesses if they would not be permitted to dispute the bases for ESH placement. Additionally, one person noted that it was impossible for him to call witnesses related to incidents the Department cited, which occurred during a previous period in DOC custody, as he did not know the whereabouts of witnesses and significant time had passed.³⁸

People placed in ESH were told that they would receive the adjudication captain's decision in writing after the hearing, which is standard practice in all DOC adjudication hearings.

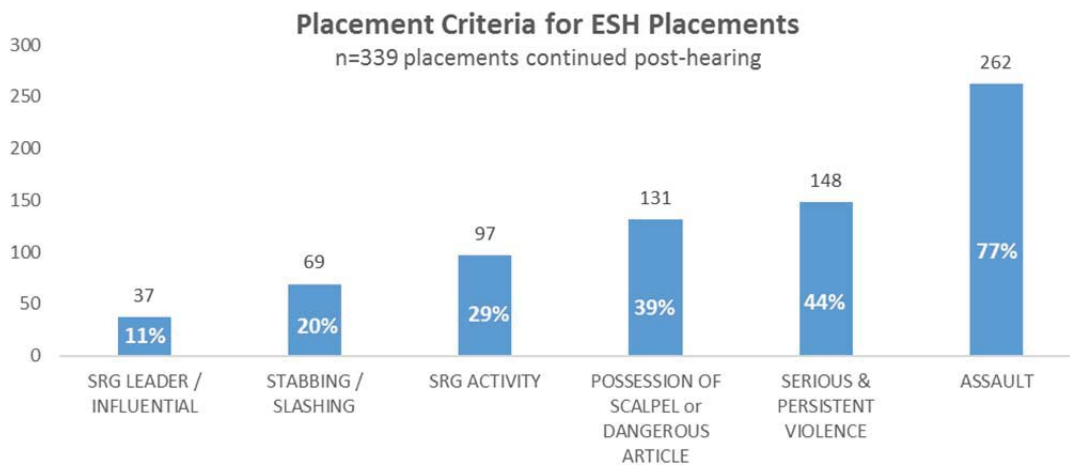
³⁸ The Minimum Standards do not prohibit the Department from considering an individual's infraction history relating to his or her prior incarcerations, provided that the look-back is limited to the preceding five years. See N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(b) (Jan. 23, 2016) ("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").

PLACEMENT DETERMINATION & REASON FOR ESH PLACEMENT

People can be placed in ESH for meeting one or more of the ESH placement criteria outlined in the Minimum Standards. Of the 339 placements continued after a placement hearing, 77% (n=262) were placed for assaults, 44% (n=148) for serious or persistent violence, 39% (n=131) for possession of a scalpel, 29% (n=97) for SRG (gang) activity, 20% (n=69) for participation in a slashing or stabbing, and 11% (n=37) for being an influential gang leader.³⁹ None of the ESH placements during this period were based on events that occurred when people were out of DOC custody.

The Standards allow the Department to consider a single incident or rule violation as meeting multiple ESH placement criteria. Assault is the criterion most frequently cited for an individual's placement in ESH. Assault is also often an aspect of other criteria, including involvement in a gang-related assault and causing serious injury to another person.

Of the 262 placements for assault, over half (51%, n=133) were classified as an assault on an inmate, while 23% (n=59) were classified as an assault on staff, 26% (n=67) were for assault on both an inmate and staff, and 1% (n=2) involved an assault on inmate and other.⁴⁰ One placement was continued despite the adjudication captain's determination that no placement criteria had been met and the adjudication captain's decision that the individual should not be placed in ESH.⁴¹



SOURCE: Data captured from ESH-3 Forms "Notice of Hearing Determination for Enhanced Supervision Housing" for inmates placed in ESH from February 2015 - November 2016.

Figure 6

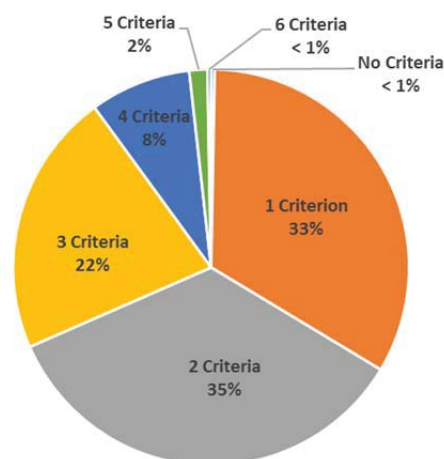
³⁹ All placement statistics are derived from criteria recorded on each individual's placement hearing determination form (ESH-3 Form). Department staff indicate on the ESH forms which placement criteria are met. There are six criteria or options provided on the forms, which do not directly parse the wording of ESH standards.

⁴⁰ "Other" is not defined on the Department's Hearing Determination Form (ESH-3). See N.Y.C. DEP'T OF CORRECTION, DIRECTIVE NO. 4497R-A, ENHANCED SUPERVISION HOUSING (ESH) (eff. July 26, 2016).

⁴¹ The Department has informed the Board that it took corrective action in this case and that the individual was removed from ESH. Review of the Department's data system shows that this individual was in ESH for a total of 28 days, having been transferred to ESH on November 10, 2016 and removed therefrom on December 8, 2016. Meanwhile, a different Department record reports the individual was removed from ESH on December 14, 2016.

Number of ESH Criteria Met for ESH Placements

n=339 placements continued post-hearing



SOURCE: Data captured from ESH-3 Forms "Notice of Hearing Determination for Enhanced Supervision Housing" for inmates placed in ESH from February 2015 - November 2016.

Figure 7

RESTRICTIONS

The Minimum Standards provide, "[t]o the extent the Department imposes restrictions on an ESH inmate that deviate from those imposed on inmates in the general population, such restrictions must be limited to those required to address the specific safety and security threat posed by that individual inmate."⁴² The Minimum Standards also require the review hearing to include "a review of the individual restrictions proposed by the Department and a determination of whether each is supported by evidence of the legitimate safety and security concerns related to that individual inmate."⁴³ The determination must address whether the restriction is supported by a preponderance of the evidence and be in writing.⁴⁴

At the time someone is recommended for placement in ESH, the Department may choose to recommend that certain restrictions be imposed, including noncontact restrictions, mail-monitoring, and package restrictions.⁴⁵ As noted above, the ESH notice form provided to individuals placed in ESH lists all restrictions that may be imposed but does not include notice as to whether the Department has in fact recommended any specific restrictions for the individual receiving the notice.

Adjudication captains rarely impose individual restrictions during ESH placement hearings. Of the 339 placements continued after a placement hearing, 5% (n=16) had specific restrictions identified on their placement determination forms that are provided to them after their hearings. There were ten

⁴² N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(d)(1) (Jan. 23, 2016).

⁴³ *Id.* at § 1-16(g)(3)(iii).

⁴⁴ *Id.* at § 1-16(g)(6).

⁴⁵ See N.Y.C. DEP'T OF CORRECTION, DIRECTIVE NO. 4497R-A, ENHANCED SUPERVISION HOUSING (ESH), Attachment A, Recommendation for Initial Placement of Inmate in Enhanced Supervision Housing (ESH-1 Form) (eff. July 26, 2016).

placements with non-contact visits added, seven had mail restrictions, two placements had restraint desk during lockout times indicated as a restriction, and one placement had a packages restriction.⁴⁶

Many of the individuals in ESH were already subject to visit restrictions prior to placement. An analysis of a snapshot of the 77 adults in ESH on December 9, 2016 found that over half (52%, n=40) had a non-contact visit restriction during their stay in ESH. Of those with a restriction, 95% (n=38) had a non-contact visit restriction that was issued prior to ESH placement. Eighty-seven percent (87%, n=33) of those restrictions were restrictions for the duration of an inmate's incarceration, subject to six-month reviews of that status.

Board staff found that there is confusion among people housed in ESH regarding the relationship between ESH placement and the imposition of non-contact visit restrictions. Many people in ESH believe that non-contact visit restrictions have been imposed as a result of ESH placement itself. Several ESH inmates have reported they were not informed of their non-contact restrictions in advance of visits.

Some adults in ESH have reported they do not want to have visits if they are non-contact visits because they do not want their loved ones and children to see them in a booth.⁴⁷ The Department recently repaired lights and glass in seven of the booths used for non-contact visits in OBCC. Visibility and audibility within those booths had been limited.

Eighty-eight percent (88%, n=21) of the 24 adults placed in ESH in the last two weeks of November 2016 were placed in ESH Level 1 housing units where restraint desks are used during out of cell time. None of the placement notices served to these individuals referenced that any individual restrictions were recommended to be imposed during placement.⁴⁸ There was no mention of ESH placement level on any paperwork for these placements. Only two of the 24 placements in the last two weeks of November had restraint desk restrictions specifically referenced on the placement determination forms provided to them after their placement hearing.

In general, there was a lack of discussion of specific restrictions during placement hearings and lack of understanding on the part of individuals placed in ESH as to when restrictions were imposed and why they were necessary. The Department lacks a centralized tracking system that would allow for a complete analysis of all the restrictions imposed on people in custody. This makes identifying exactly when and why restrictions were imposed and whether due process was provided difficult to assess.

⁴⁶ Inmates may have multiple restrictions.

⁴⁷ The Board received a total of ten visit appeals from adults in ESH. Seven were denied, one was granted, one was modified, one was moot.

⁴⁸ ESH placement notice forms (ESH-2 forms) were updated on November 17, 2016 to include restraint desks in the list of restrictions that *may* be imposed on an individual placed in ESH. While 15 of the 21 placements in ESH Level 1 received this updated notice form, none of these notices explicitly identified the Department's intent to impose the restraint desk or any other restriction on these individuals. The other six placements during this period received out-of-date notice forms. Three of those placements were provided notice with forms dated September 17, 2016, which included restraint desks as a possible restriction that *may* be imposed, and three placements were provided notice with a form dated February 19, 2015 with no reference to restraint desks as a possible restriction. None of the six placements made with out-of-date forms included any individualized discussion of the Department's intent to impose a restraint desk restriction. It was not until December 9, 2016, after individuals had already been placed in new ESH Level 1 units, that the Department updated its ESH recommendation form (ESH-1) to allow for specification of the restraint desk as a recommended restriction for consideration by the adjudication captain. This form is provided to placement hearing adjudication captains prior to placement hearings.

APPEAL OF PLACEMENT

The Minimum Standards are silent on whether and how individuals may appeal their placement in ESH. The Department's policy on ESH, however, describes a process whereby individuals can appeal their placement and related restrictions.⁴⁹ Appeals must be made in writing⁵⁰ within twenty-one (21) days of receipt of the individual's 'Notice of Hearing Determination for Enhanced Supervision Housing' form.⁵¹ Appeals as well as all documented facts and circumstances surrounding the placement and related restrictions are reviewed by the Deputy Warden of ESH (or his or her designee).⁵²

The Board is aware of only one individual who was released from ESH after filing an Article 78 appeal. This individual insisted in court that he was due for release from ESH and the judge instructed DOC to look into the matter. During the pendency of the Article 78 appeal, the Department released the individual from ESH, thereby leading to the appeal's dismissal. The Department explained to the Board that his release from ESH was based on a 45-day periodic review of his placement – his ninth while in ESH.

Six individuals appealed their placement in ESH. Several individuals objected to the use of dismissed infractions to justify placement. Others expressed confusion regarding the timing of their placement in ESH and objected to the use of past incidents for which they had already received punishment. For example, an appellant wrote, "I paid my price. . . . How am I a threat to the safety and security of the institution and other inmates when I was placed back into GP [general population] after serving 30 days in punitive segregation?" Another wrote, "I don't understand how 28 months later they could use my affiliation with my co-defendant to affect me now." Another person did not feel it was fair to use behavior from prior incarcerations on Rikers as justification for his current placement in ESH.⁵³ Someone else did not understand why enhanced supervision housing was being imposed when he was infraction free in the general population for 13 months prior to placement and was acquitted, based on a credible witness testimony, for the slashing incident used to justify his placement. One individual expressed concern that the Enhanced Restraint status imposed in connection with his placement in ESH would be "detrimental to [his] image for court."

None of the six appeals were granted. The same DOC staff member who had initially recommended the inmate for placement in ESH adjudicated five out of the six appeals.⁵⁴ One appeal involved an individual

⁴⁹ See generally N.Y.C. DEP'T OF CORRECTION, DIRECTIVE NO. 4497R-A, ENHANCED SUPERVISION HOUSING (ESH), sec. IV(G), at 9-10 (eff. July 26, 2016).

⁵⁰ Individuals may use Department Form ESH-4, 'Request for Appeal of Enhanced Supervision Placement and/or Restrictions,' to appeal the placement decision.

⁵¹ The Department provides individuals notice of the adjudication captain's decision regarding their placement in ESH through Department Form ESH-3, Notice of Hearing Determination for Enhanced Supervision Housing.

⁵² Individuals may, as with any administrative decision, appeal placement in ESH at any time via legal action in writ court through an Article 78 proceeding.

⁵³ To determine whether an individual qualifies for ESH placement, under ESH Minimum Standards, the Department is permitted to consider activity when an individual is incarcerated occurring during the preceding 5 years. See N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(b)(6) (Jan. 23, 2016).

⁵⁴ The Department's policy that sets forth a process by which an individual is considered for placement in ESH. An individual is considered for ESH placement upon recommendation of an Assistant Deputy Warden or higher, the Operations Security and Intelligence Unit (OSIU), and the Assistant Chief of Security. As mentioned above, appeals are determined by the Deputy Warden for ESH. For five of the six ESH appeals, the Deputy Warden who decided the appeal initiated the appellant's ESH placement recommendation process.

placed in ESH despite the Operations Security and Intelligence Unit's determination not to recommend the individual for placement. Five out of the six appeals included the same boilerplate and conclusory bases for upholding ESH placement with no additional justification provided.⁵⁵

PERIODIC REVIEW

The Minimum Standards require the Department to review individuals' placement in ESH every 45 days to determine whether they continue to present a "significant threat to the safety and security of the facility" so as to warrant continued placement in ESH.⁵⁶ The Department must provide individuals in ESH written notice of the periodic review at least 24 hours before a review and inform them of the right to submit a written statement for consideration at the review.⁵⁷

At the periodic review, the Department must consider:

- i. whether continued ESH placement is warranted;
- ii. whether each individual ESH restriction imposed on the inmate should be continued, relaxed, or lifted;
- iii. the inmate's attitude and behavior since his placement in ESH, including information about his participation in and the availability of programming;
- iv. any effect ESH placement or the individual ESH restrictions may have had on the inmate's mental and physical health;
- v. any written statement that the inmate may have submitted for consideration at the review;
- vi. any other factors relevant to the review; and
- vii. if the Department decides to continue his ESH placement, actions or behavioral changes that the inmate might adopt to advance his rehabilitation and lead to his release from ESH or the lifting of individual restrictions.⁵⁸

In conversations with Board staff, the Deputy Warden for ESH stated that this decision involves consideration of the totality of an individual's circumstances, including the seven factors listed above.

Within seven days of the review, the Department must provide the individual a written report of the periodic review and the conclusions reached at the review.⁵⁹ The Minimum Standards also provide that the Department may transfer people out of ESH to more appropriate housing at any time, when appropriate.⁶⁰

⁵⁵ These appeal decisions stated: "Basis for Determination: Based on the criteria for placement in Enhanced Supervision Housing Unit, [and continued] disregard for Departmental Rules and Regulations, and the hearing Determination for Enhanced Supervision Housing."

⁵⁶ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(h)(1) (Jan. 23, 2016).

⁵⁷ *Id.* at § 1-16(h)(2). The Department must provide "necessary assistance" to inmates who are unable to read or understand the notice of periodic review. *Id.*

⁵⁸ *Id.* at § 1-16(h)(3).

⁵⁹ *See id.* at § 1-16(h)(3).

⁶⁰ *See id.* at § 1-16(h)(4).

Most people placed in ESH have been in ESH longer than 45 days and were thus eligible for at least one periodic review. Approximately 66% of adult placements (n=243) in ESH between February 23, 2015 and November 30, 2016 remained in ESH for at least 45 days and should have received at least one periodic review on or before December 31, 2016. Of the 243 adult placements entitled to a periodic review, 86% (n=209) received at least one.

Of the 209 adult placements that received at least one periodic review, 48% (n=101), received fewer than the required number of periodic placement reviews each should have received.⁶¹ On average, each received approximately 1.6 fewer periodic placement reviews than he should have received given how long they had been in ESH.⁶²

Few of the periodic placement reviews resulted in termination of placement in ESH. Of the 680 ESH periodic reviews that were held for the adults placed in ESH between February 23, 2015 and November 30, 2016, only 3% (n=19) of reviews led to the termination of ESH placement. That is, only 9% (n=19) of the 209 ESH placements with the opportunity for a periodic review were terminated because of a periodic review.

Board staff also reviewed the 81 available periodic review determination reports (Form ESH-7) (on file for the 66 placements that were part of the file audit).⁶³ Review of these records found that some individuals had shown improved behavior but were nevertheless kept in ESH due to insufficient participation in “mandated” and “non-mandated” programs. In other cases, the Department cited incidents that occurred prior to ESH placement as justification for continued placement in ESH, even where the individual had participated in programming and demonstrated improved behavior and compliance with Department rules while in ESH.

⁶¹ Board staff calculated the number of 45-day periodic reviews each individual should have received given his length of stay in ESH.

⁶² Board staff calculated the difference between the actual and projected number of periodic ESH placement reviews for each of the 209 adult placements in ESH that received at least one period review. For each of the 101 who received fewer than the projected number of periodic placement reviews, Board staff calculated the average difference between the actual and projected number of periodic ESH placement reviews across the 101 adult ESH placements. The numbers ranged from a low of one to a maximum of seven and averaged to 1.6.

⁶³ Individuals staying in ESH more than 90 days were entitled to multiple reviews.

VI. Minimum Standards and Services

HEALTH & MENTAL HEALTH CARE ACCESS IN ESH

The Minimum Standards require medical staff to see all people housed in ESH at least once a day so they can make referrals to medical and mental health services where appropriate.⁶⁴ This requirement is also reflected in the Department's ESH Directive and ESH Command Level Order (CLO).⁶⁵ Department policies further require that all individuals in ESH be locked into their cells at noon to permit staff to attend daily ESH meetings and to enable medical rounds,⁶⁶ and that an ESH correction officer escort clinical staff as he or she walks through the unit to solicit medical complaints.⁶⁷ Mental health staff have an office in OBCC where they meet patients from ESH housing units with appointments.

Sixty-six percent (66%, n=666) of all scheduled health encounters⁶⁸ and 63% (n=3199) of all scheduled mental health encounters⁶⁹ for ESH patients were completed. The Department did not produce 14% (n=142) of scheduled health encounters, and 8% (n=402) of scheduled mental health encounters. CHS cancelled⁷⁰ 10% (n=97) of scheduled health encounters and 20% of scheduled mental health encounters.

Table 8

Outcome of Scheduled Health and Mental Health Encounters for Adult ESH Placements				
	Health	%	Mental Health	%
Seen	666	66%	3199	63%
Not Produced by DOC	142	14%	402	8%
CHS Cancelled*	97	10%	1016	20%
Refused & Verified**	70	7%	232	5%
Out to Court	32	3%	263	5%
Left without Seen	1	< 1%	3	< 1%
TOTAL	1008	100%	5115	100%
SOURCE: Correctional Health Services data as of January 30, 2017 matched to adults placed in ESH from February 2015 through November 2016.				
NOTE: Metrics present information available in data sources at the time of query and are subject to change based on workflow. The data presented reflects query-specific logic, parameters, and sources as outlined in the data dictionary and/or legend and should not be compared to similarly noted reports without appropriate crosswalks to identify variations in approach.				
*“CHS Cancelled” refers to encounters that CHS rescheduled to ensure either provider continuity or that priority patients are seen.				
** “Refused and Verified” means that the Department produced the inmate to clinical staff, clinical staff explained to the inmate the risks of refusing clinical services, and the inmate proceeded to sign the refusal form or, in situations where he refused to sign the informed refusal form, a witness was present and documented said refusal.				

⁶⁴ See N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16 (h)(1) (Jan. 23, 2016).

⁶⁵ See N.Y.C. DEP'T OF CORRECTION, DIRECTIVE NO. 4497R-A, ENHANCED SUPERVISION HOUSING (ESH), sec. IV(D), at 5-6 (eff. July 26, 2016) and N.Y.C. DEP'T OF CORRECTION, OTIS BANTUM CORRECTIONAL CENTER, INST'L ORDER No. 106/16, ENHANCED SUPERVISION HOUSING (ESH), sec IV(D), at 8 (eff. Nov. 16, 2016).

⁶⁶ See N.Y.C. DEP'T OF CORRECTION, OTIS BANTUM CORRECTIONAL CENTER, INST'L ORDER No. 106/16, ENHANCED SUPERVISION HOUSING (ESH), sec IV(J), at 19 (eff. Nov. 16, 2016).

⁶⁷ See N.Y.C. DEP'T OF CORRECTION, OTIS BANTUM CORRECTIONAL CENTER, E.S.H. OPERATING MANUAL, para. XXII(A), at 20 (undated).

⁶⁸ These numbers include all scheduled and add-on medical encounters.

⁶⁹ These numbers include all mental health service types.

⁷⁰ “CHS Cancelled” refers to encounters that CHS rescheduled to ensure either provider continuity or that priority patients are seen.

As of January 30, 2017, there were a total of 366 sick call encounters for adults who were placed in ESH between February 2015 and November 2016.

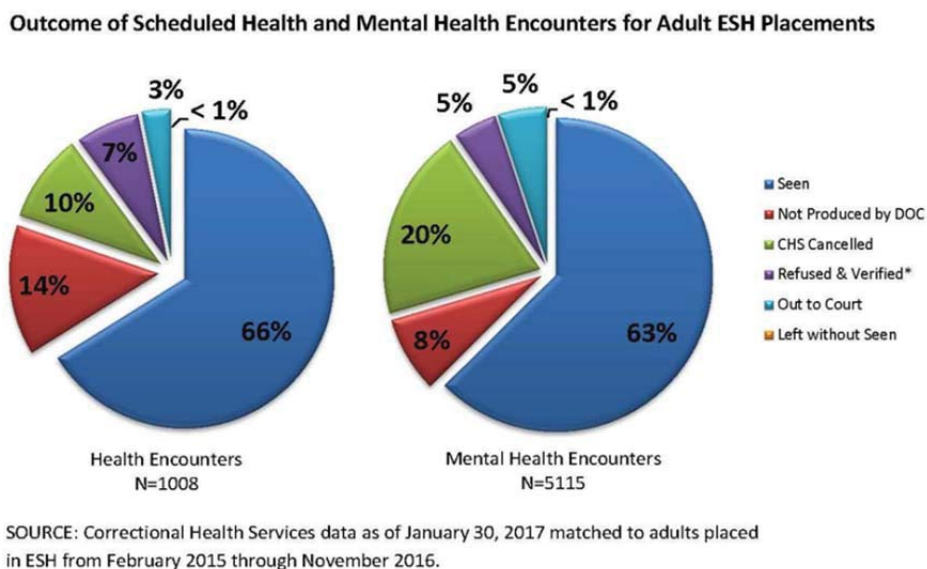


Figure 8

Conversations with individuals in ESH and Department staff, as well as logbook entries in the ESH units, suggest that clinical staff make frequent medical and mental health rounds, sometimes called “medical bing rounds” in ESH logbooks. Logbook entries reviewed by Board staff indicate that clinical staff made or attempted medical and mental health rounds daily. Medical rounds occur during lock-in. While the Department’s CLO indicates that individuals are locked in for medical rounds daily at noon, in practice, there is no set schedule.

Patients in ESH frequently complain to the Board about a lack of confidentiality during medical rounds when they are required to talk to medical staff through cell doors while locked-in. CHS staff indicate that rounding during lockout, where clinicians and people in ESH might be able to have more privacy to speak, would be logistically difficult and would require two rounds per day in ESH units with tiered lockout schedules. CHS staff noted that the purpose of daily rounds is to identify and detect patients who may be decompensating. If patients need sick call, they are added to the sick call list.

There are two mental health clinicians assigned to ESH units. There is no special training on ESH for CHS staff. From the time ESH units first opened in February 2015 through late fall of 2015, CHS staff attempted to run mental health group therapy sessions in ESH units. CHS staff stopped offering mental health group sessions due to lack of participation and safety concerns related to threats made against staff by ESH patients. CHS staff report patients often do not understand why they are placed in ESH and do not know when they will be transitioned out of the unit, which makes clinical engagement difficult.

TIME OUT OF CELL (LOCK-OUT/LOCK-IN)

The Minimum Standards require that DOC afford individuals in ESH the opportunity to be outside of their cells for at least seven hours per day.⁷¹ Department policies further require that the minimum seven hours of lockout must be held between 5 am and 9 pm,⁷² and that no more than half of the people housed in an ESH unit can be locked out during any lock-out period.⁷³

The Department has implemented a system where individuals in ESH units are subdivided into lockout cohorts or tiers within the units. For instance, individuals housed are grouped by tiers – upper or lower tier – and one tier is scheduled to lock out for seven hours in the morning, between 5 am and noon, while the other locks out for seven hours in the afternoon, between 1 and 8 pm. The lockout periods alternate by tier such that the tier that locks out in the morning one day will lock out in the afternoon the following day. The entire unit is locked in during the intervening periods, i.e., between noon and 1 pm and from 8 pm till 5 am the following day. These mandatory lock-ins coincide with correction officer tour changes.

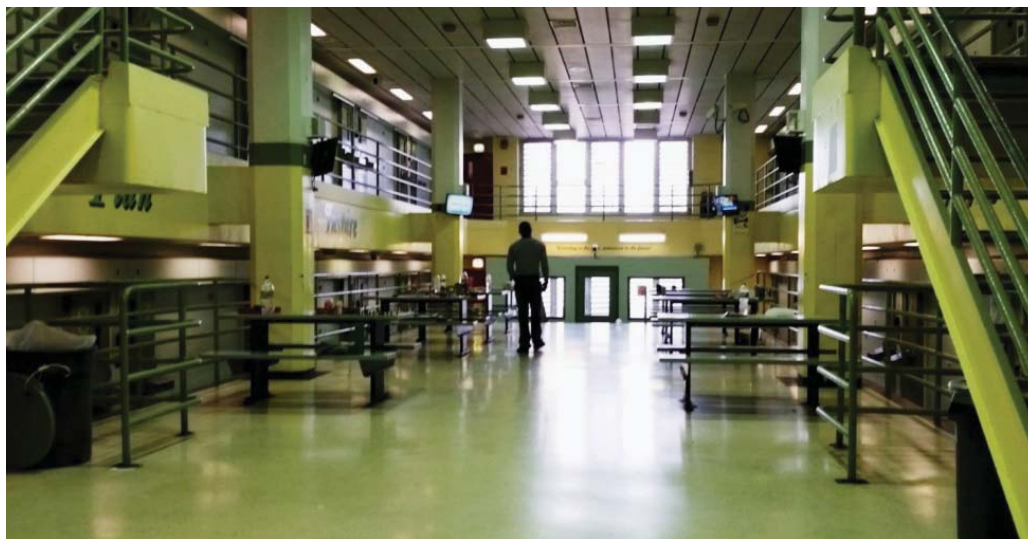


Figure 9

For the ESH Level 3 units, intended to have 10 hours of daily lock-out, it is not possible for both tiers in the house to each be afforded 10 hours of lock-out between 5 am and 9 pm, when taking into account the institutional lock-in during the afternoon tour change. For ESH Level 4 units, where 14 hours of daily lock out is policy and where the tier system is eliminated, it is unclear how lock-out operations in those

⁷¹ See N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, LOCK-IN § 1-05(b)(2) (Jan. 23, 2016).

⁷² See N.Y.C. DEP'T OF CORRECTION, OTIS BANTUM CORRECTIONAL CENTER, E.S.H. OPERATING MANUAL, para. XIII(A), at 15 (undated); N.Y.C. DEP'T OF CORRECTION, DIRECTIVE NO. 4497R-A, ENHANCED SUPERVISION HOUSING (ESH) sec. IV(I)(9), at 12 (eff. July 26, 2016); and see N.Y.C. DEP'T OF CORRECTION, OTIS BANTUM CORRECTIONAL CENTER, INST'L ORDER NO. 106/16, ENHANCED SUPERVISION HOUSING (ESH), sec IV(I)(9), at 16 (eff. Nov. 16, 2016).

⁷³ See N.Y.C. DEP'T OF CORRECTION, OTIS BANTUM CORRECTIONAL CENTER, E.S.H. OPERATING MANUAL, para. XIII(B), at 15 (undated); N.Y.C. DEP'T OF CORRECTION, DIRECTIVE NO. 4497R-A, ENHANCED SUPERVISION HOUSING (ESH), sec. IV(I)(9)(a), at 12 (eff. July 26, 2016); and see N.Y.C. DEP'T OF CORRECTION, OTIS BANTUM CORRECTIONAL CENTER, INST'L ORDER NO. 106/16, ENHANCED SUPERVISION HOUSING (ESH), sec IV(I)(9), at 16 (eff. Nov. 16, 2016).

units are consistent with the Department's ESH Operating Manual, which specifically prohibits the practice of locking out more than half of the unit during any given lockdown.

In conversations with Board staff, several correction officers in ESH acknowledged that daily lockdown sometimes begin 15 to 45 minutes late, especially in the morning. Correction officers explained that there is only one correction officer in the unit during the overnight or midnight tour and that they cannot lock out inmates at 5 am, when lockdowns are scheduled to begin, until there are at least two correction officers on the floor. They further explained that sometimes the new tour of correction officers do not arrive at the unit until after their scheduled 5 am start time because they are held at roll call or are late to the post for other reasons.

Facility and ESH area lockdowns also affect individuals' lockdown time. During a lockdown, all incarcerated people must be in their cell and all movement, services, and programming cease. The number of reported ESH housing area lockdowns⁷⁴ from March 2015 through December 2016 ranged from zero to 19 and averaged 2.5 per month and 4.5 hours each. In addition, over the same period, the number of facility-wide lockdowns at OBCC ranged from zero to nine with an average of four per-month averaging four hours each.

To put this in context, individuals in ESH are entitled to an average total of 213 hours of out-of-cell time per-month (7 hours per day)⁷⁵ but received 27.5 fewer hours of out-of-cell time on average due to facility-wide and ESH area lockdowns. From October to December 2016, there was a 110% increase in the number of lockdowns affecting ESH units (area and facility-wide lockdowns).⁷⁶ Many of the lockdowns occurred consecutively. Future reports will further explore the reporting and impact of lockdowns.

The Board's review of ESH logbooks⁷⁷ and conversations with Department staff and individuals housed in ESH⁷⁸ suggest that timely lockdown in ESH continues to be a challenge.⁷⁹ Complaints related to lock-ins are the third most frequent type of complaint received by the Board from people housed in ESH.⁸⁰

⁷⁴ Lockdown information is derived from the Department's IRS 24 Hour Report data matched to the Department's 5 am Daily Census Report to determine which units referenced were ESH units at the time of the lockdown.

⁷⁵ Individuals in ESH levels 2-4 are also subject to lockdowns but are afforded more than the 7 hours of minimum out-of-cell time.

⁷⁶ There were a total of 11 lockdowns in October, 17 in November, and 21 in December 2016. Of the December lockdowns, 19 were of the ESH area and two were facility wide lockdowns: six lockdowns were due to "tension," five for assaults on staff, three related to slashings, three related to fights, two related to use of force, and one for a bomb threat.

⁷⁷ As part of the assessment, Board staff reviewed logbooks for two of the blended ESH housing units (for adults and young adults). The review covered a four-day period: Sunday, December 11, 2016 through Wednesday, December 14, 2016.

⁷⁸ Board staff also completed observations of four different ESH units and spoke to incarcerated individuals and Department staff during those visits.

⁷⁹ For instance, logbook entries at one unit suggest that inmates in the morning lockdown group on December 11th were afforded the full seven hours. Meanwhile, those in the morning lockdown groups on December 12th and 14th, as well as the afternoon lockdown group on December 14th, had less than seven hours of lockdown. At another unit, logbook entries suggest that individuals in the afternoon lockdown group on December 13th and December 14th were afforded the full seven hours of lockdown. Meanwhile, neither the morning nor the afternoon lockdown groups on December 11th and December 12th received the full seven hours of lockdown.

⁸⁰ The most frequent type of complaints received by the Board include complaints related to visit restrictions followed by complaints related to medical/mental health rounds.

These range from complaints about intermittent excessive lock-ins to lock-ins lasting days. Board staff have also observed individuals in ESH exercise the option to lock in during regularly scheduled lockout hours. In ESH Levels 1 units, some individuals have told Board staff they would rather be locked in than restrained to desks during lock-out.

RECREATION

The Minimum Standards require the Department to provide all incarcerated individuals the opportunity to participate in outdoor recreation for at least one hour a day, seven days a week,⁸¹ during daylight hours.⁸² The Minimum Standards further require the Department to provide incarcerated people with appropriate outdoor clothing, including coat, hat, and gloves, upon request, when they go to outdoor recreation in cold or wet weather.⁸³ Where there is inclement weather, the Department must provide indoor recreational opportunities.⁸⁴ There are no exceptions to these requirements for individuals housed in ESH.

Consistent with the Minimum Standards, the Department's written policies for ESH require that people housed there be afforded at least one hour of outdoor recreation per day, seven days a week, weather permitting.⁸⁵ While the written ESH policies are silent on alternatives to outdoor recreation in inclement weather, the ESH CLO does clarify the conditions under which people in ESH may participate in outdoor recreation. For instance, those in ESH Level 1 units who go to recreation must do so in "single cell pens,"⁸⁶ while those in ESH Level 2 and higher may attend congregate recreation.⁸⁷

In general, entries in the logbooks suggest that individuals in ESH are afforded daily opportunities to participate in recreation. Overall participation in recreation varies from unit to unit and even within units, between the morning and afternoon lockouts. In one unit, daily participation across a four-day period ranged from 21% to 50%, while in another unit no one went to recreation during any of the four days covered in the logbook review. Recreation in the latter – an ESH Level 1 unit – was announced daily between 6:30 and 7 am,⁸⁸ before sunrise, while the earliest recreation announced during the four-day period in the former – an ESH Level 2 unit – was 8:30 am.

Board staff observations corroborate the complaints from individuals in ESH asserting that they are not provided alternatives to or accommodations for outdoor recreation, even on very cold days. On December 15, 2016,⁸⁹ Board staff observed only two people in the afternoon lockout group at one ESH unit go outside for congregate recreation. Neither had on coats, hats, gloves, or sweatshirts. One individual wore socks over his hands to protect them as he did dips on the metal bars outside, and both

⁸¹ See N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, RECREATION § 1-06(c) (Jan. 23, 2016).

⁸² See *id.* at § 1-06(b).

⁸³ See *id.* at § 1-06(d)(2).

⁸⁴ See *id.* at § 1-06(c).

⁸⁵ See N.Y.C. DEP'T OF CORRECTION, DIRECTIVE NO. NO. 4497R-A, ENHANCED SUPERVISION HOUSING (ESH) sec. IV(I)(10), as 12 (eff. July 26, 2016) and N.Y.C. DEP'T OF CORRECTION, OTIS BANTUM CORRECTIONAL CENTER, INST'L ORDER NO. 106/16, ENHANCED SUPERVISION HOUSING (ESH), sec IV(I), at 10 (eff. Nov. 16, 2016).

⁸⁶ See N.Y.C. DEP'T OF CORRECTION, OTIS BANTUM CORRECTIONAL CENTER, COMMAND LEVEL ORDER, ENHANCED SUPERVISION HOUSING (ESH), sec. IV(J) (eff. Nov. 16, 2016) ("All inmates [in Level One] will attend recreation in single cell pens").

⁸⁷ See *id.*

⁸⁸ Recreation was announced in the unit each day at 6:30 am on December 12th through the 14th and at 6:55 am on December 11th.

⁸⁹ The high and low temperatures that day were 36 and 21 degrees Fahrenheit, respectively.

asked to go back inside after being outside for approximately 15 minutes. Both independently explained to Board staff that they were unaware that cold weather clothing was or should be available.⁹⁰ When Board staff visited that same unit again the following day, Board staff learned that nearly the entire unit was at the indoor gym.

ACCESS TO LEGAL SERVICES - LAW LIBRARY

The Minimum Standards require that incarcerated people have access to law library at least five days per week including at least one weekend day.⁹¹ On days the law library is open, individuals must be allowed law library access for at least two hours.⁹² The Department may reduce or eliminate law library hours in ESH as long as it provides them another way to access legal materials to permit effective legal research.⁹³

Board staff observations and conversations with Department staff and people incarcerated in ESH suggest that how inmates in ESH access law library services depends on the ESH housing unit to which they are assigned. People housed in four of the eight ESH units conduct legal research on electronic kiosks located in law library spaces in those four units.

Meanwhile, those in the remaining ESH housing units must depend on correction officers assigned to law library to make rounds in their units, collect the inmates' legal research and document requests, and bring the requested items back to them. These units do not have in-unit law library space, kiosks, and legal coordinators do not conduct rounds in these units.

⁹⁰ Department representatives have stated that the Department provides cold weather clothing, including jackets and sweatshirts, to individuals who wish to participate in outdoor recreation. However, Board staff's observations, as well as conversations with Department staff and individuals housed in ESH, indicate that this practice is inconsistently applied.

⁹¹ See N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ACCESS TO COURTS AND LEGAL SERVICES § 1-08(f)(2) (Jan. 23, 2016).

⁹² See *id.* at § 1-08 (f)(4).

⁹³ See *id.* at § 1-08 (f)(6).

Table 9

Access to Law Library in ESH		
Hours of Operation: Tuesday to Saturday 8 am to 8 pm		
ESH units	Current Level	Type of Law Library Access
1st	Level 2	Legal Coordinator comes to unit. Two kiosks in law library space in unit.
2nd	Level 1 (Restraint Desk in Use)	Legal Coordinator comes to unit. One kiosk in law library space in unit.
3rd	Level 2	Legal Coordinator comes to unit. One kiosk in law library space in unit.
4th	Young Adult Assessment Unit (Restraint Desk in Use)	No law library kiosk or law library space in unit. Law library officer rounds in the unit and collects inmate requests for law library materials and research.
5th	Levels 3 and 4	Legal Coordinator comes to unit. Kiosk in law library space in unit.
6th	Level 1 (Restraint Desk in Use)	No law library kiosk or law library space in unit. Law library officer rounds in the unit and collects inmate requests for law library materials and research.
7th	Level 1 (Restraint Desk in Use)	No law library kiosk or law library space in unit. Law library officer rounds in the unit and collects inmate requests for law library materials and research.
8th	Level 2	No law library kiosk or law library space in unit. Law library officer rounds in the unit and collects inmate requests for law library materials and research.
SOURCE: Department of Correction (January 31, 2017).		

GRIEVANCE

Department policy allows people in custody to file grievances in person or in writing by completing a pre-printed grievance form and placing it in the grievance mailbox in each unit. Individuals can also submit grievances by a third-party request, e.g., 311 or Constituent Services.⁹⁴ At least three times a week, Inmate Grievance and Request Program (IGRP) staff are required to visit specialized housing units where grievants' access to the IGRP office or the grievance and request box may be limited.⁹⁵ This applies to ESH. While IGRP staff have indicated that their goal is to visit individuals in ESH twice a day, Mondays through Fridays, so far they have been unable to do so due to limited staffing. IGRP staff recently informed Board staff that there are now two IGRP supervisors assigned to OBCC and that they are now able to provide greater coverage in ESH.

⁹⁴ See N.Y.C. DEP'T OF CORRECTION, DIRECTIVE NO. 3376, INMATE GRIEVANCE AND REQUEST PROGRAM, sec. II(F) (eff. Mar. 19, 2014). On January 1, 2017, the Inmate Grievance Resolution Program merged with the Office of Constituent Services in an effort to resolve constituent matters, streamline an efficient process to reduce redundancies and improve timely resolution of incarcerated individuals' concerns.

⁹⁵ See *id.*

VII. Programming

To meet the goal of promoting rehabilitation, ESH standards require DOC to provide “programming aimed at facilitating rehabilitation, addressing the root causes of violence, and minimizing idleness” in ESH housing units. The deadline to begin ESH programming was July 2015, but the Department has offered programming in ESH since opening.⁹⁶ All programming and services offered to people incarcerated in ESH take place directly in ESH housing units themselves.

Tracking programming enrollment and participation is particularly challenging because DOC does not have an information management system designed for this. While DOC’s contracted program providers have their own case management systems for tracking individual participation, DOC does not. Individual-level program participation in ESH is captured by hand and recorded on spreadsheets by program staff. DOC does not routinely record programming participation by individual ESH housing area and has only recently started capturing program participation by ESH Level.⁹⁷ Aggregate participant statistics are presented in the Department’s regular ESH reports and do not report unique individuals receiving services.

Table 10

Programs Offered in ESH Over Implementation Period February 2015 - Present
Individualized Correction Achievement Network (ICAN): Program that offers OSHA classes, workshops, and vocational training to prepare an inmate for release. The Fortune Society and the Osbourne Association, provide ICAN services both in jail and the community. Following an inmate’s release, one of the organizations will continue to provide services, which include: paid internships and assistance with job placement and housing. Among the services offered in jails is: vocational training, interview and resume preparation, creative writing classes, and anger management classes.
The Challenge Journal Series: Offered in ESH Levels 2-4 and developed in collaboration with the Department of Justice, Federal Bureau of Prisons, this program focuses on helping high-risk inmates live a life free of criminal activity, violence, and drug use, emphasizing the importance of building a healthy support community.
Brooklyn Public Library: Book Distribution
Stress Reduction and Anger Management Workshops
Homebase: Homeless Prevention Services
Alcoholics Anonymous (AA): Relapse prevention through 12-step model
Daddy and Me: Parenting/Literacy Program
Narco Freedom: Court Advocacy/Substance Abuse program
Arcadia Network: Court Advocacy/Substance Use
Brooklyn Public Library: Teleconferencing and Family Reunification
Individuals Determined to Overcome Life’s Struggles (IDOLS): In ESH Level 1 units, a skill-building and self-improvement program designed to promote jail safety, reduce idle time, and prepare individuals for successful release to the community. Reentry Planners facilitate groups to help participants learn how to handle difficult situations, communicate effectively, prepare for employment, and achieve goals. Classes include employment and educational readiness, anger management, parenting, healthy relationships, healthy lifestyles, self-esteem and motivation, creative writing, self-expression, mindfulness, coping skills. Individuals who participate consistently are eligible to receive a court letter and certificates of achievement. All participants receive referrals to community-based services and individualized success packages that include resources on employment, housing, and public assistance.
SOURCE: Department of Correction.

⁹⁶ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(d)(3) (Jan. 23, 2016).

⁹⁷ This was updated as of the Department’s October-November 2016 report to the Board on ESH.

IMPLEMENTATION OF ESH LEVELS & APPROACH TO ESH PROGRAMMING

In January 2016, DOC began implementing incentive levels in ESH, and in November 2016 issued a new policy implementing ESH Levels 1-4, including the use of restraint desks in ESH Level 1. The higher the ESH placement level, the less restrictive the setting. The development of ESH levels is part of DOC's broader effort to implement a behavior modification approach. There are no official Department documents or training materials outlining the initial incentive levels deployed in ESH. According to the Department, "[t]he establishment of ESH I [in November 2016] resulted in the original ESH unit category levels increasing by 1 (i.e., ESH II was originally ESH I, ESH III was originally ESH II, and ESH IV was originally ESH III)."

Table 11

ESH Levels
<p>Level 1: Most Restrictive Unit; 7 Hours of Lockout; The shower doors must be locked when inmates are afforded showers; All inmates will be rear cuffed and leg ironed during all movement; All inmates must be 3 point searched and will be donned in full enhanced restraints when leaving the housing unit; All inmates will be restrained to restraint desk during all out of cell time in the housing area. They will be secured via leg irons; All inmates will attend recreation in single cell pens; All inmates will be secured in cell for law library; All inmates will be stripped searched prior to exiting their assigned cells; All cuffing ports must be secured at all times; At no time will both ports to the cuffing port be opened at the same time with the exception of cuffing and un-cuffing inmates; All services must cease until a cell is secure any time an inmate refuses to allow a Member of Service to secure both ports; All inmates must participate in mandated programs for consideration to move up a level; All inmates will have Commissary spending limit of \$50.00</p> <p>Level 2: Restrictive Unit; 7 Hours of Lockout; All inmates must participate in mandated programs for consideration to move up a level; Commissary Limit \$70.</p> <p>Level 3: Moderate Restrictive Unit; 10 Hours of Lockout; Alternating Tier Lockout; Enhanced Recreation (2x a week); All inmates must participate in mandated programs for consideration to move up a level; Commissary Limit \$95.</p> <p>*Levels 1-3 require 1200 hour lock in period to conduct daily ESH meetings and Medical rounds and require inmates to be in institutional clothing and shoes.</p> <p>Level 4: Least Restrictive Unit; Tier Elimination (14 hour lock out); Enhanced Recreation (3x a week); All inmates will receive non-mandated services (such as GED, OSHA, CPR, etc.); Movie Night (2nd/4th Saturday of the Month); 2100 hours lock-in; Extended lock-out period during Basketball/Football (Playoffs/Super Bowl); Commissary Limit to full range \$125.</p>
<p>SOURCE: N.Y.C. DEP'T OF CORRECTION, OTIS BANTUM CORRECTIONAL CENTER, COMMAND LEVEL ORDER, ENHANCED SUPERVISION HOUSING (ESH) (eff. Nov. 16, 2016).</p>



Figure 10

Table 12

Restraint Desks
In November 2016, the Department started using restraint desks in ESH Level 1 units. In these units, the Department secures inmates via leg irons to desks in common areas during the seven-hour lockout period. Due to the recentness of this change, Board staff did not assess the appropriateness or effectiveness of the use of restraint desks as implemented in ESH during the study period of this report.
Restraint desks or similar apparatus are used in restricted housing units in some state prisons throughout the country, including New York, to enable prisoners to engage in congregate programs and activities, such as group therapy, education and recreational programming. This apparatus is primarily used in multi-level step-down programs designed to transition inmates out of punitive segregation or similarly restrictive non-disciplinary segregation and back into general population or the community.
SOURCES: ASS'N OF STATE CORR. ADM'RS & YALE L. SCH., AIMING TO REDUCE TIME-IN-CELL: REPORTS FROM CORR. SYS. ON THE NUMBERS OF PRISONERS IN RESTRICTED HOUSING AND ON THE POTENTIAL OF POLICY CHANGES TO BRING ABOUT REFORMS 59, 63, and 70 (Nov. 2016), <i>available at</i> https://law.yale.edu/system/files/area/center/liman/document/aimingtoeducetic.pdf and Harold W. Clarke, <i>Virginia Department of Corrections' Administrative Step-Down Plan</i> , CORRECTIONS TODAY 22-5 (July/Aug. 2016), <i>available at</i> https://vadoc.virginia.gov/documents/correctionstodaystepdown.pdf .

ESH ORIENTATION

Within the first 24 hours of placement, ESH uniform staff provide an orientation to people placed in ESH where they review the rules of the unit, programming information, and the schedule of program offerings. Incarcerated people have the opportunity to ask questions and voice any concerns about placement. Program counselors meet with each placed individual and review the path he must take to advance through the ESH levels.⁹⁸ Program materials documenting how programming relates to ESH incentive levels were introduced to ESH leadership in February 2016 and were operationalized in May

⁹⁸ Information provided by the Department of Correction (January 10, 2017).

2016. Program counselors have a checklist of items covered in the orientation and both the incarcerated person and counselor sign the forms.

There are two versions of orientation booklets (“Passports to Success”) used, one for people placed in ESH Level 1 and one for people placed in Levels 2-4. All orientation documents are also available in Spanish. Program counselors report that they are in ESH units on a regular basis to encourage and assist inmates in meeting their programmatic goals.

Programmatic goals are the same for all individuals in each ESH level and are not based on an individualized assessment process. Individuals in ESH Level 1 are required to actively participate⁹⁹ in IDOLS four times per week and in regular one-on-one counseling “check-in” sessions. People placed in ESH Level 2 are required to actively participate and complete the Challenge Journal Series program and participate in ICAN programming three times per week. Some ICAN programs take only two weeks and upon completion the participant receives a certificate. The Challenge Journaling Series requires individuals to finish eight journal books. Each time a book is completed the counselor goes over it with the individual before moving to the next book. The program counselors fill out forms to inform an individuals’ 45-day review and meet with the Deputy Warden overseeing ESH.

In July 2016, the Department initiated a pilot currently operating in ESH level 4 in which incarcerated individuals earn the ability to use tablets with books, music, games, TED talks, and legal references. The tablets serve as an incentive to motivate individuals to move through the ESH levels. In total, there are 34 tablets available for use. The greatest number of tablets the Department has issued at any one time has been 19. More recently, the Department has experimented with using portable music players as an incentive in ESH Level 1 units.

Uniform and program staff report positive results and improved management of ESH units upon implementation of levels, incentives, and a clear programming structure. Staff also report improved communication between program and security staff and between incarcerated people and security staff.

PROGRAMMING CHALLENGES

Providing programming in all ESH units has required significant staff resources. Recent BOC tours in ESH units found that not all individuals housed there received ESH orientation materials or were familiar with the Passport to Success guide the Department shared with BOC staff.

Program engagement has also been a challenge. While the Department has implemented the use of restraint desks to provide a safe environment for people in ESH to receive programming, some people placed in ESH Level 1 have reported concerns that being restrained during lockout inhibits their ability to defend themselves against potential assaults when programming is offered. This was one reason people in ESH gave for not participating in programming. Other individuals in ESH expressed concern that they would never be released from ESH if they do not participate in programming. Others complained that they have participated but are still not advancing to less restrictive ESH levels. Senior corrections staff in ESH report that some ESH participants have low literacy levels making it harder for them to complete the Challenge Journal Series and therefore take longer to progress out of ESH. The Board has also received a number of complaints from people in ESH about a lack of vocational programming.

⁹⁹ The Department defines “participation” as being present and active or attending and not being disruptive. Program counselors maintain attendance sheets to record participation.

VIII. Incidents and Violence in ESH

To better understand conditions in ESH with respect to incidents and violence, Board staff matched adults placed in ESH to incidents appearing in the Department's 24 Hour Reports during individuals' ESH placement.¹⁰⁰ The Department of Correction generates the 24 Hour Report daily and it is used to track unusual incidents,¹⁰¹ such as uses of force, serious injuries to inmates or staff,¹⁰² and other events that seriously affect normal operations of DOC facilities. The Board also reviewed data on inmate infractions for inmate-on-inmate fights and assaults and reviewed use of force incidents that are reported in the Department's Monthly Security Reports by housing area. Data on injuries to people incarcerated in ESH were provided by Correctional Health Services.

USE OF FORCE

There were 179 use of force (UOF) incidents occurring between February 2015 and December 2016 that involved adults placed in ESH through November 2016.¹⁰³ Of those incidents, 70% (n=126) involved the use of chemical agents. In 20% (n=36) of the UOF incidents, the reason identified for the use of force was an assault on staff. There were also six allegations of unreported uses of force made by adults in ESH. There were no serious injuries to staff incidents or assaults on non-uniform staff involving adults placed in ESH between February 2015 and November 2016.

Figure 11 presents the monthly uses of force related to *all* individuals housed in ESH (adults and young adults) from February 2015 through December 2016 as reported in the Department's Monthly Security Reports. The corresponding counts for inmates in Punitive Segregation (PSEG) and Restrictive Housing Unit (RHU) are presented for comparison, as these populations most closely resemble ESH in terms of their population's security concerns. There was an uptick in uses of force in ESH from October through December 2016—a period during which DOC opened a total of five new ESH units.¹⁰⁴

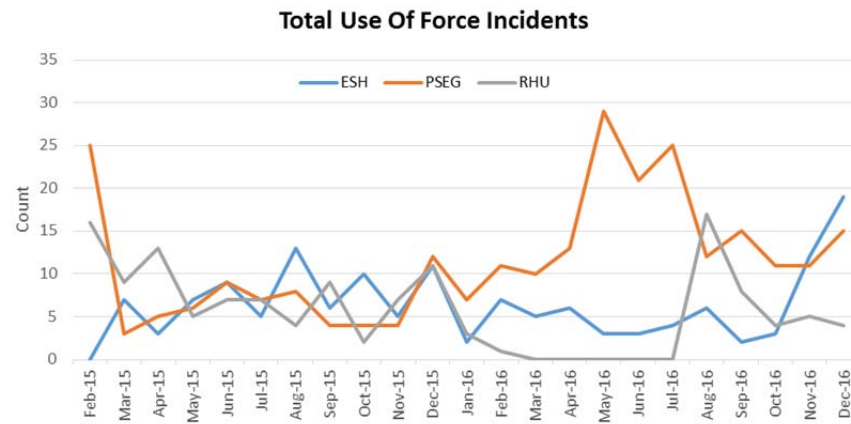
¹⁰⁰ BOC staff used ESH placement and exit dates provided by the Department to determine individuals' placement period and only counted events occurring during an individuals' ESH placement.

¹⁰¹ The Department's policy on reporting requirements for unusual incidents defines "unusual incident" as "an event or occurrence that may affect or actually does affect the safety, security and well-being of the Department, its personnel, visitors and volunteers, as well as the inmates over whom it has custody and control." N.Y.C. DEP'T OF CORRECTION, DIRECTIVE No. 5000R-A, REPORTING UNUSUAL INCIDENTS, sec. IV(C), at 4 (eff. Nov. 19, 2004).

¹⁰² A "serious injury" to staff is "a physical injury that creates a substantial risk of death or disfigurement or loss of impairment of a bodily organ" or "any injury sustained as a result of a stabbing, slashing, fire and/or explosion." See N.Y.C. DEP'T OF CORRECTION, DIRECTIVE No. 5000R-A, REPORTING UNUSUAL INCIDENTS, Appendix A, at 4 (eff. Nov. 19, 2004). Meanwhile, the types of injuries to inmates that come within the definition of "serious injury" to inmates include the aforementioned list of serious injuries to staff as well as "a fracture or break to a bone, excluding fingers or toes" and any injury "defined as serious by a physician." See *id.* Appendix A, at 2-3.

¹⁰³ BOC staff matched adults placed in ESH between February 2015 through November 2016 to incidents reported in DOC's 24 Hour Reports through December 2016.

¹⁰⁴ Note that the values in the chart are absolute numbers of incidents per month and not a normalized rate per 100 or 1000 inmates per month, as is conventionally reported. That choice is deliberate: both the number of incidents and the overall number of inmates in ESH in any given month are so low that there is inadequate statistical basis from which to extrapolate a rate. A change of even one incident more or less in any given month would lead to the rate jumping or plummeting dramatically. The relative standard error is too high to be statistically confident that any reported rate per 100 inmates would be reproducible. With sample sizes this small,

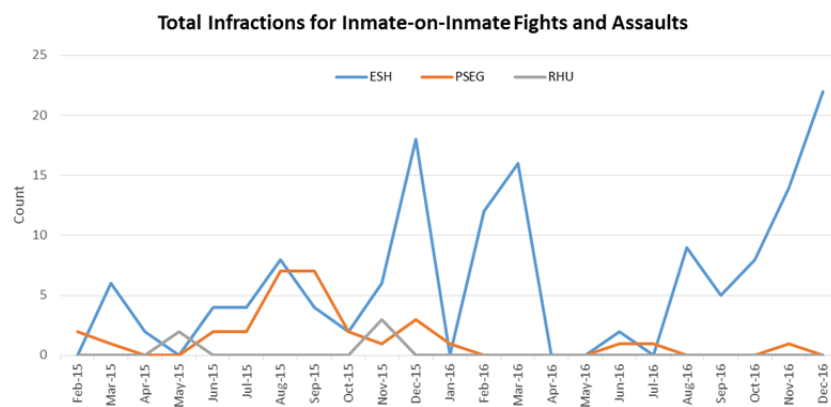


SOURCE: Department of Correction Monthly Security Statistical Reports . FY 2015-17.

Figure 11

INFRACTIONS FOR FIGHTS AND ASSAULTS

DOC issued inmates 142 infractions for their alleged involvement in inmate-on-inmate fights and assaults in ESH.¹⁰⁵ It should be noted that the circumstances, restrictions, and standard operating procedures in PSEG and RHU largely preclude the ability for one inmate to come into physical contact with another; therefore, rates of fights and assaults in PSEG and RHU are almost always well below those of other housing types. There was a sharp rise in infractions for inmate-on-inmate fights and assaults from October through December 2016. As noted earlier, this period corresponds to a significant increase in the ESH population and the opening of new ESH units.



SOURCE: Department of Correction Monthly Security Statistical Reports, FY 2015-17, matched with DOC's 5 am Daily Census Reports.

Figure 12

it is more reliable to focus on the absolute numbers of incidents when formulating interpretations and recommendations.

¹⁰⁵ N.Y.C. DEP'T OF CORRECTION, Monthly Security Statistical Reports – Fiscal Years 2015-2017 (on file).

DISRUPTIVE ACTIVITY AND OTHER VIOLENCE

Between February 2015 and December 2016, in addition to uses of force, adults in ESH were also involved in other disruptive activities, as recorded in the Department's incident reporting system.¹⁰⁶ Some of these activities came within the Department's definition of "unusual incidents."¹⁰⁷ Others that did not were still logged in Department records made by staff. But because they are not "unusual incidents" they were not deemed reportable under DOC policy.

The most common incident type in ESH were splashings.¹⁰⁸ In all, there were 24 occurrences of splashings associated with ESH inmates during this period. While four of them occurred in conjunction with other reportable incidents,¹⁰⁹ the other 20 splashings occurred independent of reportable incidents, such as a use of force.¹¹⁰ Of those 20 splashings, half happened in the last four months of 2016 (September through December), and eight occurred in ESH Level 1 units, where inmates are restrained during lockdown. None of the 20 splashings happened prior to June 2016.

As of December 31, 2016, there were seven slashing incidents involving adults in ESH, two serious injuries, and zero stabbings.¹¹¹ One of the reported slashings in ESH occurred in a new ESH Level 1 unit where inmates are restrained to restraint desks during lockdown. In this incident, two inmates got out of their restraints and attacked another inmate who was restrained while using the phone. The victim sustained an abrasion to the right side of his face and right ear and a laceration to his right back side. No weapon was recovered.

In addition, there were five occurrences of spitting and three occurrences of inmates throwing objects.¹¹² There were also six logbook entries noted in the Department's 24 Hour Reports that did not meet the Department's definition of a "reportable incident," but nevertheless occurred, and appear to involve assaults on or harm to staff. For example, in one incident, an inmate in ESH is said to have exited his cell without authorization and, without warning or provocation, punched a correction officer in the face, resulting in a contusion to the face and a closed fracture to the correction officer's nasal

¹⁰⁶ See *supra* note 101 and *infra* note 108.

¹⁰⁷ See *supra* note 101.

¹⁰⁸ "Splashing or [s]plashing [i]ncident: A splashing is any incident wherein an inmate(s) intentionally causes an employee to come in contact with any fluid or fluid like substance." N.Y.C. DEP'T OF CORRECTION, OPERATIONS ORDER 03/17, SPLASHING INCIDENTS, sec. III(D), at 1 (eff. Feb. 15, 2017). Splashing incidents do not come within the definition of unusual incidents. However, unlike other occurrences not classified as "unusual incidents," splashings are unique in that all splashing incidents are documented in the Department's Incident Reporting System (IRS). Splashings are documented as a characteristic of other incidents, not a unique record in their own right. Splashings that occur under circumstances that meet the definition of a stand-alone reportable incident, such as a use of force or other unusual incidents, are documented in the IRS record for that incident. Splashings that occur absent any circumstance that meet the definition of a reportable incident are documented as part of a logbook entry in the IRS.

¹⁰⁹ See *supra* note 101.

¹¹⁰ These 20 splashings were recorded as logbook entries in the Department's 24 Hour Reports generated from the Inmate Reporting System.

¹¹¹ Slashings, serious injuries, and stabbings are defined as unusual incidents and are uniformly reported by the Department.

¹¹² Spitting and throwing objects do not rise to the level of "unusual incidents" under department policy and are not required to be uniformly reported. The counts presented here were reported as logbook entries in the Department's 24 Hour Reports and may be fewer than the actual number of these occurrences.

bone.¹¹³ In a separate incident, an inmate is said to have flipped a dayroom table and punched a correction officer in the face after being ordered to cease his aggression. These incidents were deemed non-reportable and recorded as logbook entries.

Correction officers working in ESH have expressed concern that inmates in ESH act with impunity. Several correction officers have stated that they are sometimes reluctant to act, even where it is necessary to restore order, because they are afraid action will result in a use of force and employee disciplinary charges. Others reported that the available disciplinary sanctions are insufficient to deter inmate misconduct.

For example, on a recent visit to ESH, a member of the Board's staff was present as several correction officers watched inmates in one of the ESH houses openly smoke marijuana while restrained to desk restraints. Correction officers indicated that their only recourse is notifying the Tour Commander, making relevant entries in the housing area logbooks and behavior logbook, and writing infractions. A correction officer explained that they prefer not to approach the inmates and seize the marijuana cigarettes because it will lead to a use of force. Another commented that correction officers are inconsistent in how they respond to such situations and that sometimes the misconduct is not entered in the behavior logbook, and the infraction paperwork is not generated.

INMATE INJURIES

Data reported by Correctional Health Services indicate that 43% of all placements in ESH (n=157) had one or more injuries reported during their ESH placement period. Incarcerated people in ESH sustained 346 injuries from February 2015 to November 2016. Nearly one third of injuries were due to DOC use of force (n=100), 15% were a result of self-injury (n=53), and 14% were a result recreational activity (n=49).

¹¹³ It appears that because bone fractures do not come within the definition of "serious injuries" to staff, this incident was deemed non-reportable and therefore recorded as a logbook entry. *See also supra* note 102.

Table 14

Injury Causes Among Adults in ESH	Number	Percent
DOC use of force	100	29%
Other/Unknown	54	16%
Self injury	53	15%
Recreational	49	14%
Inmate-on-inmate fight	39	11%
Slips and falls	29	8%
Gate/Door-related	12	3%
Environmental and fire	5	1%
Occupational	2	1%
Vehicle	1	< 1%
Attack by unknown assailants	1	< 1%
Seizure-related	1	< 1%
Total	346	100%
SOURCE: Correctional Health Services data as of January 30, 2017. Injuries were verified by physical evidence or by history. Metrics present information available in data sources at the time of query and are subject to change based on workflow. The data presented reflect query-specific logic, parameters, and sources as outlined in the data dictionary and/or legend and should not be compared to similarly noted reports without appropriate crosswalks to identify variations in approach.		

ARRESTS

There were 50 reported arrest incidents involving a total of 72 individuals arrested while housed in ESH.¹¹⁴ One pertained to an incident in September 2015 involving a use of force and resulting in the arrest of 14 inmates in ESH. Additionally, there were 12 incidents involving arrests of visitors to individuals in ESH.¹¹⁵

¹¹⁴ Arrests made between individuals' ESH placement and exit dates.

¹¹⁵ Determined by matching ESH adult inmates (placed between February 2015 and November 2016) to incidents in the DOC's 24 Hour Reports through December 31, 2016.

IX. ESH Training & Staffing

CORRECTION OFFICER TRAINING

The Minimum Standards require that correction officers assigned to ESH receive forty (40) hours of special training designed to address the unique characteristics of ESH and its population.¹¹⁶ The Standards further specify that such training shall include, but shall not be limited to, recognition and understanding of mental illness and distress, effective communication skills, and conflict de-escalation techniques.¹¹⁷

The Department provides three training programs to correction officers assigned to ESH: Basic Crisis Management Skills (8 hours), Safe Crisis Management Skills (24 hours), and Emergency Service Unit (ESU) Security Skills. The latter is an eight-hour training curriculum for correction officers assigned ESH and other specialized units that covers, but is not limited to, handcuffing and escorting; correction officer security awareness; search procedures; staff communication; three-man takedowns; and use of chemical agents. One of the three training programs – Safe Crisis Management Skills – is provided to all new correction officer recruits during Academy training. All new recruits also receive Mental Health First Aid training (8 hours).

To understand whether staff in ESH had received training, Board staff looked at a two-month snapshot of corrections

Table 15

staff assigned to ESH units in October and November of 2016.¹¹⁸ Of the 76 correction officers assigned to ESH 76% (n=58) had received 40 or more hours of training in the curricula offered. Of the 24% (n=18) who

Training Received by ESH Correction Officers	
Type of Training	Percentage of correction officers who worked in ESH in October or November 2016 who received training
<u>Basic Crisis Management Skills (8 hours)</u>	55% (n=42)
<u>Safe Crisis Management Skills (24 hours)</u> A training program that provides information and strategies for identifying, preventing, and de-escalating adolescents' problematic behavior in correctional settings, schools, and other social service agencies.	96% (n=73)
<u>Mental Health First Aid (8 hours)</u> Focuses, in part, on developing attendees' understanding of anxiety disorders, depression, non-suicidal self-injury, substance use disorder and application of crisis first aid for related symptoms. This training was provided to DOC staff as an alternative to Basic Crisis Management Skills training when the latter was unavailable.	85% (n=65)
<u>Emergency Service Unit Security Skills (8 hours)</u> Covers, but is not limited to, handcuffing and escorting, correction officer security awareness, search procedures, staff communication, three-man takedowns, and use of chemical agents.	51% (n=39)
<small>SOURCE: Department of Correction. NOTE: Figures based on staff training data obtained from the Department of Correction on January 25, 2017 for officers assigned to ESH in October and November 2016.</small>	

¹¹⁶ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(e)(1) (Jan. 23, 2016).

¹¹⁷ See *id.*

¹¹⁸ The Department does not currently have a centralized data system in place that allows for the systematic tracking of trainings received by staff. DOC is working to develop an IT system that would enhance the Department's ability to track and manage compliance with staff training requirements.

received fewer than the required hours of training, 4% (n=3) did not receive any of the training.¹¹⁹

While nearly all correction officers received Basic Crisis Management training, just over half received Safe Crisis Management Skills or Emergency Service Unit Security Skills training. Most correction officers assigned to ESH received Mental Health First Aid training.

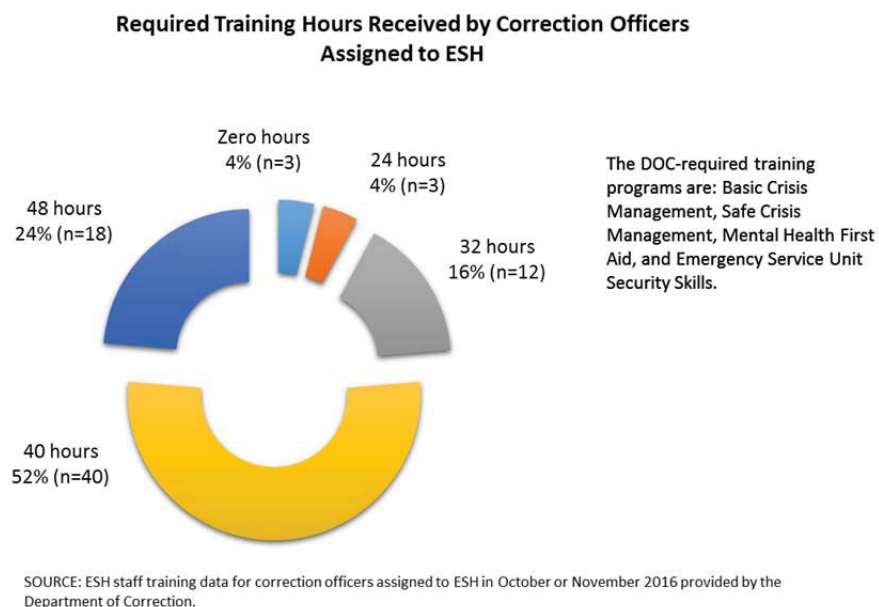


Figure 13

ADJUDICATION CAPTAIN TRAINING

There are no Minimum Standards related to training for the Adjudication Unit – the unit responsible for reviewing individuals' placement in ESH and determining whether ESH criteria are met and placement is appropriate. The Adjudication Unit has no formal ESH training materials, but staff in this unit discuss ESH policy and the criteria for placement in regular staff meetings. When ESH first opened, adjudication captains received a training comprised of a review of the ESH Department directive and forms. Since then, senior Department staff have met with adjudication captains to review and respond to their questions regarding policy and procedures. At weekly Adjudication Unit meetings, Department staff also discuss new developments. Recently, since the new Level 1 ESH units have opened, the Department's General Counsel has met with Adjudication Unit staff to discuss procedural changes related to that level, providing them additional training.

In addition to the four training programs referenced above, the Department reports that staff assigned to ESH receive periodic informal ESH-related training through daily huddles, where they review changes in ESH procedures. Even so, in Board staff's recent conversations with ESH correction officers, several correction officers shared a desire for ESH-specific training.

¹¹⁹ This period covered DOC's latest ESH 60-Day reporting period at the time of BOC's request.

STAFFING

The Minimum Standards require that at least 25 percent of the correction officers assigned to ESH be assigned to steady posts.¹²⁰ While the Standards do not define the term “steady post,” at the time ESH Standards were passed, the Board noted that correction officers with steady post assignments are more familiar with their assigned unit’s policies and practices and the individuals housed there. The Board also believed that steady correction officers would allow for more consistent management of ESH units and a safer environment.

Senior uniformed and civilian staff have stated that assigning correction officers to steady posts in ESH housing units has been challenging because they must balance the staffing in each unit with an appropriate mix of new and experienced correction officers. According to the Department, uniformed staff can be assigned to ESH in several ways: ESH captains and correction officers can recommend correction officers for an ESH assignment, correction officers can volunteer for ESH, or they can submit a formal written request to be assigned.

The Department has reported that special incentives are offered to correction officers with steady assignments in ESH who have worked in ESH for at least six months, including hazard pay and a Riker’s Island Gate One vehicle access pass. Meanwhile, at least two correction officers have reported to Board staff that they have been working at ESH for at least six months and had not received hazard pay or a Gate One vehicle access pass.

The Department is working to increase steady staffing in ESH. Data shared with the Board show that 88% (n=67) of the 76 correction officers who were assigned to ESH in October or November 2016 were routinely assigned to the ESH housing area, while only 11% (n=8) were on rotating assignment.¹²¹ Many correction officers who work in ESH are “steady” to ESH but are not routinely assigned to a specific ESH housing unit; rather, they rotate between the various ESH housing units which may operate differently depending on ESH Level.

ACKNOWLEDGEMENTS

We thank the leadership and staff of the Department of Correction and Health + Hospitals, people in custody, and the public for their knowledge and significant assistance in supporting our research and analysis. We look forward to working with you in the coming months to implement the recommendations outlined in this report.

We also acknowledge and thank Board staff, Emily Turner, Andrea Hernandez, Chai Park, Nashla Rivas-Salas, Jim Bennett, Rahzeem Gray, Shaquana Pearson, Dilcio Acosta, Diana Sang, and Alexa Herzog, who devoted countless hours to this report and to furthering our understanding of ESH.

¹²⁰ N.Y.C. BOARD OF CORRECTION, CORRECTIONAL FACILITIES, ENHANCED SUPERVISION HOUSING § 1-16(e)(2) (Jan. 23, 2016).

¹²¹ Staff training data obtained from the Department of Correction on January 25, 2017 for correction officers assigned to ESH in October and November 2016.

Attachment A

§ 1-16 Enhanced Supervision Housing.

(a) *Purpose.* The primary objective of enhanced supervision housing (ESH) is to protect the safety and security of inmates and facilities, while promoting rehabilitation, good behavior, and the psychological and physical well-being of inmates. To accomplish these objectives, ESH is designed to separate from the general population those inmates who pose the greatest threats to the safety and security of staff and other inmates. It additionally seeks to promote the rehabilitation of ESH inmates by incentivizing good behavior and by providing necessary programs and therapeutic resources.

(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.

(c) *Exclusions.*

(1) The following categories of inmates shall be excluded from ESH placement:

(i) inmates under the age of 18;

(ii) 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; and

(iii) inmates with serious mental or serious physical disabilities or conditions.

(2) Medical staff shall be permitted to review ESH placements and participate in placement review hearings. Consistent with these regulations, when ESH assignment would pose a serious threat to an inmate's physical or mental health, medical staff shall have the authority to determine that the inmate shall be barred from ESH placement or shall be moved from ESH to a more appropriate housing unit. This determination may be made at any time during the inmate's incarceration.

(3) Any inmate placed in ESH who evidences a mental or emotional disorder shall be seen by mental health services staff prior to or immediately upon ESH placement.

(4) The total number of inmates housed in ESH shall not exceed 250 at any time.

(d) *Conditions, Programming and Services.*

(1) To the extent the Department imposes restrictions on an ESH inmate that deviate from those imposed on inmates in the general population, such restrictions must be limited to those required to address the specific safety and security threat posed by that individual inmate.

(2) To the extent the Department seeks to limit an ESH inmate's access to contact visits, a hearing shall be held, as required by subdivision (g) of this section, which shall address the criteria set forth in subdivision (h) of section 1-09 of this chapter with regard to both the inmate and any individual visitors with whom the Department wishes to limit contact.

(3) No later than July 1, 2015, the Department shall provide ESH inmates with both voluntary and involuntary, as well as both in- and out-of-cell, programming aimed at facilitating rehabilitation, addressing root causes of violence, and minimizing idleness.

(4) All inmates in ESH shall be seen at least once each day by medical staff who shall make referrals to medical and mental health services where appropriate.

(e) *Staffing.*

(1) Correction officers assigned to ESH shall receive forty (40) hours of special training designed to address the unique characteristics of ESH and its inmates. Such training shall include, but shall not be limited to, recognition and understanding of mental illness and distress, effective communication skills, and conflict de-escalation techniques.

(2) At least twenty-five (25) percent of correction staff assigned to ESH shall be assigned to steady posts.

(f) *Notice of ESH Placement.*

(1) When it is determined that an inmate should be confined in ESH, that inmate shall be given written notice of such determination within twenty-four (24) hours of placement. Inmates who are unable to read or understand such notice shall be provided with necessary assistance. Such notice shall:

(i) state the grounds relied on and the facts that support the inmate's ESH placement; (ii) inform the inmate of the individual restrictions the Department intends to impose during the inmate's ESH confinement;

(iii) notify the inmate of the upcoming ESH placement review hearing; and

(iv) inform the inmate of the right to review, prior to the placement hearing, the evidence relied upon by the Department, to appear at the hearing in person, to submit a written statement for consideration, to call witnesses, and to present evidence.

(2) Reserved.

(g) *Placement Review Hearing.*

(1) Within three (3) business days of service of notice on an inmate of initial ESH placement and related restrictions, the Department shall conduct a hearing to adjudicate the inmate's ESH placement and the individual restrictions proposed. The hearing may not be adjourned except, in extenuating circumstances, by the inmate's documented request and may in no event be adjourned for longer than five (5) days.

(2) One or more hearing officers shall conduct the placement review hearing. Department staff who initially recommended the inmate for ESH placement or otherwise provided evidence to support the inmate's ESH placement shall not be eligible to serve as hearing officers at the inmate's placement review hearing.

(3) The placement review hearing shall consist of [the] following:

(i) a review of the facts upon which the Department relies to place the inmate in ESH pursuant to subdivision (b) of this section, and a determination of whether such facts exist and whether they support, by a preponderance of the evidence, the conclusion that the inmate presents a current significant threat to the safety and security of the facility such that ESH is appropriate;

(ii) consideration of the time that has elapsed since the occurrence of the activity or behavior relied on by the Department to support ESH placement;

(iii) a review of the individual restrictions proposed by the Department and a determination of whether each is supported by evidence of the legitimate safety and security concerns related to that individual inmate;

(iv) consideration of any relevant information provided by medical staff;

(v) consideration of any credible and relevant evidence submitted or statements made by the inmate at the hearing; and

(vi) consideration of any other evidence deemed relevant to the ESH status determination or imposition of individual restrictions.

(4) The inmate shall be permitted to appear at the hearing in person, submit a written statement, call witnesses, and present evidence.

(5) In the following circumstances, the inmate shall be entitled to the assistance of a hearing facilitator, who shall assist the inmate by clarifying the charges, explaining the hearing process, and assisting the inmate in gathering evidence:

(i) the inmate is illiterate or otherwise unable to prepare for or understand the hearing process; or

(ii) the inmate has otherwise been unable to obtain witnesses or material evidence.

(6) If it is determined that the ESH placement and each related restriction are supported by a preponderance of the evidence, the placement and each supported restriction may be continued. Written notice shall be provided to the inmate outlining the bases for such determinations. If it is determined that ESH placement or imposition of any individual restrictions is unsupported by a preponderance of the evidence, ESH status or unsupported individual restrictions shall be terminated immediately.

(h) *Periodic Review of Placement.*

(1) The placement of an inmate in ESH shall be reviewed every forty-five (45) days to determine whether the inmate continues to present a significant threat to the safety and security of the facility if housed outside ESH such that continued ESH placement is appropriate.

(2) At least twenty-four (24) hours prior to such periodic review, inmates shall be notified of the pending review in writing and of the right to submit a written statement for consideration. Inmates who are unable to read or understand such notice shall be provided with necessary assistance.

(3) Periodic review of an inmate's ESH status shall consider the following, with conclusions recorded in a written report made available to the inmate within seven (7) days of the review: (i) the justifications for continued ESH placement;

(ii) the continued appropriateness of each individual ESH restriction and whether any such individual restrictions should be relaxed or lifted;

(iii) information regarding the inmate's subsequent behavior and attitude since ESH placement began, including participation in and availability of programming;

(iv) information regarding the effect of ESH placement or of individual ESH restrictions on the inmate's mental and physical health;

(v) any written statement submitted by the inmate for consideration;

(vi) any other factors that may favor retaining the inmate in or releasing the inmate from ESH or any other factors that may favor the lifting of individual ESH restrictions or continuing to impose individual ESH restrictions; and

(vii) if the inmate's ESH placement is to continue, any actions or behavioral changes that the inmate might undertake to further rehabilitative goals and facilitate the lifting of individual ESH restrictions or ESH release.

(4) At any time when deemed appropriate, an inmate may be evaluated and recommended for placement in a more appropriate housing unit outside ESH.

(i) *Board Review of ESH Implementation.*

(1) No later than sixty (60) days after ESH implementation and every sixty (60) days thereafter, the Department shall submit to the Board information related to implementation of ESH and the inmates housed there. This information shall include, but shall not be limited to:

(i) the number of inmates housed in ESH, both currently and since implementation;

(ii) the frequency with which each of the criteria set forth in subdivision (b) of this section is used to support ESH placement;

(iii) rates of violence in both ESH and the general population since implementation of ESH and rates of violence for comparable time periods prior to ESH implementation;

(iv) rates of use of force in both ESH and the general population since implementation of ESH;

(v) programming and mental health resources available to ESH inmates and the extent of inmate participation in each program and resource;

(vi) training received by correction officers assigned to ESH and the number of steady posts created in ESH;

(vii) the number of inmates initially assigned to ESH but whose ESH status was terminated in a placement review hearing;

(viii) the number of inmates released from ESH into the general population through periodic review or other ESH status review mechanisms; and

(ix) any other data the Department or the Board deems relevant to the Board's assessment of ESH.

(2) The Board shall review the information provided by the Department and any other information it deems relevant to the assessment of ESH. Eighteen (18) months after implementation of ESH and no later than two (2) years after implementation of ESH, the Board shall meet to discuss the effectiveness and continued appropriateness of ESH.

Attachment B

ESH documentation reviewed:

- Board of Correction Minimum Standards on Enhanced Supervision Housing § 1-16 (Jan. 26, 2016).
- Official DOC policies and procedures related to ESH implantation:
 - Directive 4497 (February 19, 2015),
 - Directive 4497R-A (July 26, 2016),
 - Command Level Order 106/16 (November 16, 2016).
- ESH orientation materials outlining program goals, expectations, and criteria for movement through the ESH levels:
 - ESH Level 1 Checklist
 - “Passport to Success” for ESH Level 1
 - ESH Levels 2,3,4 Checklist
 - “Passport to Success” for ESH Levels 2, 3, 4.
 - 45 Day Review checklists
- Descriptions of program offerings for individuals in ESH furnished by DOC including:
 - IDOLS: Individuals Determined to Overcome Life’s Struggles
 - ICAN: Individualized Correction Achievement Networks
 - Challenge Curriculum
- Descriptions of ESH staff trainings furnished by DOC:
 - Mental Health First Aid and Training Course
 - Basis Crisis Management Skills Course
 - Safe Crisis Management
 - ESU Training

Interviews and observations conducted:

- Discussions and interviews with uniform and civilian DOC personnel involved in ESH implementation including senior uniform staff responsible for managing ESH, ESH correction officers, senior DOC staff responsible for adult programming, ESH program counselors, and representatives from the Operations Security Intelligence Unit, the Placement Adjudication Unit, Legal, Policy and Planning, Performance Management, and Intergovernmental Affairs.
- Discussions and interviews with Correctional Health Staff regarding ESH implementation and policies.
- BOC monitors’ conversations with individuals in ESH over the course of ESH implementation, including at least 9 visits to assess ESH housing areas since the end of November 2016.¹²²

Administrative Data Sources:

- DOC administrative data:
 - Census information,

¹²² BOC staff conducted detailed field observations of ESH units Thursday, December 15, 2015 and Friday December 16, 2016.

- 24 Hour Reports on incidents and use of force,
 - Inmate Information System (IIS) information, including Enhanced Restraint, Red ID and Security Risk Group (SRG) status, and housing movements, and
 - Visit information.
- Physical health, behavioral health, and care access statistics for ESH patients furnished by CHS.
- 60 day reports on ESH submitted to the Board of Correction by DOC.
- Detailed review of ESH unit logbook entries for OBCC (ESH Level 1) and (Blended ESH Level 2) from Sunday, December 11, 2016 through Wednesday December 14, 2016.
- List of all correction officers assigned to any ESH unit for any period of time in October and November (the most recent 60-day reporting period), specifying which type of assignments (steady post or rotating) each correction officer had, correction officer position (title), unit, the specific training each correction officer received prior to assignment, and start and end dates of post assignments.
- List of correction officers who are currently (as of 1/20/17) assigned to ESH units and their assignments (position by unit, start and anticipated end date of ESH assignment).
- List of all ESH-trained correction officers not currently (as of 1/20/17) assigned to ESH and their current assignment location.

Due Process Analysis Sources:

- ESH files for all adults placed in ESH from February 23, 2015 through November 30, 2016.
- Snapshot analysis of visit restrictions for all individuals in ESH on December 9, 2016.
- Random sample of ESH inmate files for 40 adults placed between February 2013 – November 2016; All adults placed in ESH from November 15, 2016 – November 30, 2016.
 - ESH inmate files included:
 - Recommendation for Initial Placement of Inmate in ESH (Form ESH-1)
 - Notice of authorization of initial placement in ESH (Form ESH-2)
 - Notice of Hearing Determination for ESH (ESH-3 Form)
 - Request for Appeal of Enhanced Supervision Placement and / Or Restrictions (Form ESH-4)
 - Notice of Appeal Determination for Inmate Placed in ESH (Form ESH-5)
 - List of Visitors for Inmate Housed in ESH (Form ESH-6)
 - Notice of ESH 45 Day review (ESH-7)
 - All supporting documentation contained in ESH inmate files.
 - Audio Recordings of ESH placement adjudication hearings, if available.

Attachment C

Programs	Dates of Programming Offered in ESH*																							
	2015												2016											
	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan
Individualized Correction Achievement Network (ICAN)																								
The Challenge Journal Series																								
Brooklyn Public Library: Book Distribution																								
Stress Reduction and Anger Management Workshops																								
Homebase: Homeless Prevention Services																								
Alcohol Anonymous (AA)																								
Daddy and Me: Parenting/Literacy Program																								
Narco Freedom: Court Advocacy/Substance Abuse program																								
Arcadia Network: Court Advocacy/Substance Use																								
Brooklyn Public Library: Teleconferencing and Family Reunification																								
Individuals Determined to Overcome Life's Struggles (IDOLS)																								

*As recorded in 60 Day ESH reports produced by DOC. Note: Each program had at least one ESH participant when offered.

GLOSSARY

Accelerated Program Unit (APU)	A housing model intended to create stability for inmates by applying an advanced inmate risk level classification system, improving staff training, increasing staff levels, and expanding programming for inmates.
Administrative Segregation (Admin. Seg.)	Administrative segregation housing is for individuals who are required to be separated from the general population for security reasons. Individuals placed in these housing areas have completed classification and new admission processing, including medical and mental health screening.
City Sentenced	An inmate who has been convicted of a crime and sentenced to a term of incarceration for one year or less, concurrent terms of one year or less, or two consecutive terms of one year or less.
Detainee	An inmate who is awaiting trial but has not been convicted of a crime(s) or an inmate who has been convicted of a crime, but not yet sentenced.
Enhanced Restraint Status	A designation given to who, having either exhibited violent behavior during his or her incarceration or exhibited violent behavior during a prior incarceration within the last five years, are subject to enhanced security restrictions. Depending on the individual, said security restrictions or restraints may include security mitts, handcuffs, waist chains, and leg irons. Inmates with Enhanced Restraint Status must be in enhanced restraints during movement to and from all service areas and places of escort.
General Population (GP)	General population housing is designated by custody level for inmates who have completed classification and new admission processing, including medical and mental health screening, and for inmates who do not require special housing.
Hearing Facilitator	A civilian or non-uniformed employee of the Department tasked with helping inmates understand the hearing process, usually a legal coordinator from the law library or a counselor. He or she is not an attorney.
Isolation	Specially designed cells for individuals who fail to clear search procedures and are suspected of possessing metallic contraband. Isolation cells are equipped with an operable sink and a toilet fitted with a mesh device so that objects cannot be flushed away. Individual are held in isolation until they passes the contraband or clear the search procedure.
Mental Observation (MO)	Mental observation housing is designated by custody level for inmates whose mental condition requires a higher level of observation than those in general population. Inmates for whom this type of housing may be appropriate include those whose mental condition requires close observation by clinical staff and those at increased risk of suicide.
New Admission (NA)	New admissions housing is designated by custody level where practicable, for newly admitted inmates who are awaiting completion of classification or new admission processing, including medical and mental health screening.

Protective Custody (PC)	Protective custody housing is designated by custody level for inmates determined to be too vulnerable for general population housing and for their own safety are assigned to protective custody housing. Inmates may be assigned to protective custody housing on a voluntary or involuntary basis. In assigning inmates to protective custody, the Department takes into account the reasons for an inmate's placement into protective custody and whether the individual has been placed voluntarily or involuntarily into protective custody.
Punitive Segregation (PS)	Punitive segregation is designated for inmates found guilty of violent Grade I infractions or Department rules or for those who are in pre-hearing detention status. Inmates are locked in 23 hours per day, with one hour of recreation, while they serve a specific sentence imposed as a result of a disciplinary hearing.
Punitive Segregation Lite (PS Lite)	Punitive segregation lite is designated for inmates found guilty of violating non-violent or Grade 2 infractions or Department rules. Also known as "bing lite," it operates like punitive segregation, except inmates receive up to seven hours of out-of-cell time per day, instead of only one hour of recreation. They can lock out into a dayroom with a television.
RAP Sheet	Official criminal history as recorded by the New York State Department of Criminal Justice Services.
Red ID Status	A designation given to an inmate who has used or been found in possession of a weapon or other dangerous instrument while in Department custody and is subject to enhanced security restrictions. When an inmate with Red ID Status is moved to and from a facility, he is restrained with handcuffs, security mitts, and waist chains. Unlike those with Enhanced Restraint Status, they are not, however, subject to enhanced restraints within the facility.
Restricted Housing Unit (RHU)	Restricted Housing Units are designated for inmates who have been found guilty of an infraction and are sentenced to a disciplinary penalty imposing a term of punitive segregation or are in pre-hearing detention status and who cannot, because of their mental condition, be housed in standard punitive segregation units. Mental health services and treatment programs are provided to assist inmates and help them assimilate back into general population or non-punitive segregation mental observation housing. Though inmates cannot opt out of assignment to an RHU, they are encouraged to participate in the non-mandatory three-level incentive program through which they can earn increased lock-out time and a reduction in their punitive segregation term upon successfully fulfilling all the requirements of the program.
Securing Order	A court order directing how an inmate should be held or released from custody.
Sentence Commitment Order	A court order outlining the authority to execute a sentence.
Serious mental illness (SMI)	Individuals, aged 18 or older, who currently have, or at any time during the past year have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the DSM-IV-TR. In order to be considered SMI, the diagnosable disorder must result in functional impairment that substantially interferes with or limits one or more major life activities. Individuals with SMI may not be placed in punitive segregation or Enhanced Supervision Housing.
Splashing	Any incident wherein an inmate intentionally causes an employee to come in contact with any fluid or fluid like substance.