

## New York City Department of Correction

### Young Adult ESH Compliance Audit – November 2020

Pursuant to the six (6) month limited variance granted by the NYC Board of Correction on November 10, 2020 allowing for the continued use of Enhanced Supervision Housing (ESH) for young adults (18 to 21 years old), the related variance conditions require a monthly audit on compliance with the following provisions of the Board's Minimum Standards:

- § 1-05(b) (Lock-in), specifically, the number of out-of-cell hours per young adult;
- § 1-08(f) (Access to Courts and Legal Services, including Law Library);
- § 1-06 (Recreation);
- § 1-02(c)(2) (Classification), specifically, the number of programming hours offered to each young adult and the number of hours each young adult participated in programming; and
- Education services, specifically the number of young adults brought to school and, for each young adult, the time each young adult was brought to school and the time each young adult was taken out of school.

#### **Audit Parameters**

The audit is conducted through a manual review of housing area logbooks and programming attendance data on four (4) randomly selected dates from each month. The scope of the audit encompasses only those housing units within ESH in which young adults are housed within the audit period. During this audit period, young adults were housed in up to four (4) ESH housing areas.

This audit report covers the following four (4) dates in the month of November 2020:

- November 5
- November 12
- November 17
- November 24

In addition, on-site inspections of the ESH unit kiosks and typewriters were conducted on four (4) randomly selected dates:

- November 6
- November 20
- November 27
- November 30

#### **§1-05(b) Lock-in**

A manual review of housing area logbooks was performed to determine whether seven (7) or fourteen (14) hours of out-of-cell time were afforded to the young adults based on their housing level. This audit report also provides individualized data related to each young adult's out-of-cell time during the reporting period.

#### **§1-08(f) Access to Courts and Legal Services, including Law Library**

A manual review of Law Library Logbooks was conducted to determine whether Law Library services were afforded. In addition to the logbook review, on-site inspections were conducted to

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determine if the kiosks and typewriters located within the various young adult ESH housing areas were operational.

#### **§1-06 – Recreation**

A manual review of housing area logbooks was conducted to determine whether one (1) hour of outdoor recreation was afforded.

#### **§1-02(c)(2) (Classification), Provision of Programming**

A manual review of programming attendance data was conducted to determine the number of programming hours offered to each young adult and the number of hours each young adult **chose to** participate in programming.

#### **Education**

A manual review of education attendance data was conducted to determine the number of young adults brought to school and, for each young adult, the time each young adult was brought to school and the time each young adult was taken out of school.

#### **Audit Findings**

##### **§1-05(b) Lock-in**

All young adults in ESH are afforded lock-out based on their housing level: seven (7) hours for Level I and Level II and fourteen (14) hours for Level III. On all four (4) dates audited, institutional **lock-out** and **lock-in** were consistently recorded in the Lock-In/Out Logbook for each of the levels.

All young adults in ESH are housed in single occupancy cells within their respective housing area. Each ESH housing area consists of multiple single occupancy cells located on two (2) tiers – the lower tier and the upper tier. Young adults in Level I and Level II are afforded seven (7) hours of lock-out time each day. For each young adult in these two levels, the specific time that he locks out depends on his tier's lock-out schedule. For example, one (1) day the lower tier locks out in the am and the upper tier locks out in the pm. The following day the upper tier locks out in the am and the lower tier locks out in the pm. Regardless of the lock-out schedule for ESH young adults in Levels I and II, they are all afforded seven (7) hours of lock-out time on any given day. Young adults in Level III, who are afforded fourteen (14) hours of lock-out time, are not subject to a tier lock-out schedule. Young adults in Level III are all afforded lock-out during both the am and pm hours, regardless of the tier in which they are housed. On any given day, a young adult may be out to court or transferred in or out of the ESH Unit. These young adults may not be included in the out-of-cell time reporting.

##### **Level I**

Young adults in Level I are afforded seven (7) hours of out-of-cell time each day. Listed below is individualized data related to each young adult's total out-of-cell time in Level I, based on a manual review of the Lock-In/Out Logbook, for the dates audited. The out-of-cell time is the hours each day that a young adult **chooses to** be out of his cell during institutional lock-out periods. The data reflects the young adults present in the unit for the institutional lock-outs on each audit date.

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### November 5, 2020

There were no young adults in Level I on this audit date.

### November 12, 2020

There was one (1) young adult in Level I; his out-of-cell time on this audit date was 6 hours 45 minutes. (Lower Tier)

### November 17, 2020

There was one (1) young adult in Level I; his out-of-cell time on this audit date was 2 hours 45 minutes; young adult **chose not** to participate in the majority of afforded out-of-cell time. (Lower Tier)

### November 24, 2020

There was one (1) young adult in Level I; his out-of-cell time on this audit date was 1 hour; young adult **chose not** to participate in the majority of afforded out-of-cell time. (Lower Tier)

### Level II

Young adults in Level II are afforded seven (7) hours of out-of-cell time each day. Listed below is individualized data related to each young adult's total out-of-cell time in Level II, based on a manual review of the Lock-In/Out Logbook, for the audit dates. The out-of-cell time is the hours each day that a young adult **chooses to** be out of his cell during institutional lock-out periods. The data reflects the young adults present in the unit for the institutional lock-outs on each audit date.

### November 5, 2020

There were two (2) young adults in Level II; their out-of-cell times on this audit date were:

1. 4 hours 15 minutes (Lower Tier)
2. 5 hours 15 minutes (Lower Tier)

### November 12, 2020

There were five (5) young adults in Level II; the out-of-cell times for those present on this audit date were:

1. 7 hours 11 minutes (Lower Tier)
2. 7 hours (Upper Tier)
3. 6 hours 15 minutes (Lower Tier)
4. 3 hours 15 minutes; young adult **chose not** to participate in the majority of afforded out-of-cell time. (Lower Tier)

On this audit date, one (1) Upper Tier young adult was out to court for most of the day and, as a result, he did not participate in lock-out options.

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### **November 17, 2020**

There were five (5) young adults in Level II; their out-of-cell times on this audit date were:

1. 7 hours 25 minutes (Lower Tier)
2. 4 hours 20 minutes (Upper Tier)
3. 4 hours 20 minutes (Upper Tier)
4. 7 hours 5 minutes (Lower Tier)
5. 6 hours (Lower Tier)

### **November 24, 2020**

There were five (5) young adults in Level II; their out-of-cell times on this audit date were:

1. 6 hours 15 minutes (Lower Tier)
2. 7 hours 2 minutes (Upper Tier)
3. 7 hours 2 minutes (Upper Tier)
4. 5 hours 15 minutes (Lower Tier)
5. 4 hours 15 minutes (Lower Tier)

### Level III

Young adults in Level III are afforded fourteen (14) hours of out-of-cell time each day. Listed below is individualized data related to each young adult's total out-of-cell time in Level III, based on a manual review of the Lock-In/Out Logbook, for the audit dates. The out-of-cell time is the hours each day that a young adult **chooses to** be out of his cell during institutional lock-out periods. The data reflects the young adults present in the unit for the institutional lock-outs on each audit date.

### **November 5, 2020**

There was one (1) young adult in Level III; his out-of-cell time on this audit date was 11 hours 20 minutes. (Lower Tier)

### **November 12, 2020**

There were no young adults in Level III on this audit date.

### **November 17, 2020**

There were no young adults in Level III on this audit date.

### **November 24, 2020**

There were no young adults in Level III on this audit date.

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### §1-08(f) Access to Courts and Legal Services, including Law Library

#### Law Library Coordinator

In ESH, there are four (4) Law Library Coordinators assigned to areas in which young adults were housed.<sup>1</sup> A manual review of the Law Library Logbooks indicated that the Law Library Coordinators were in these areas to provide assistance on two (2) of the four (4) days audited – November 5 and 24, 2020.<sup>2</sup> However, on November 12, 2020, due to a Law Library Officer shortage, three (3) housing areas, labeled A, C, and D were not provided Law Library services in the morning and afternoon sessions. In addition, on November 17, 2020, due to a Law Library Officer shortage, three (3) housing areas, labeled A, B, and C were not provided Law Library services in the morning and afternoon sessions. The Director of Law Library advised that Law Library Coordinators were addressed and reminded of the proper operation of service provision.

With the exception of November 12, 2020, in the three (3) housing areas labeled A, C, and D, and November 17, 2020, in the three (3) housing areas labeled A, B, and C, the audit was able to verify by auditing available records that the duration of each Law Library Coordinator's time, in ESH areas during the dates audited, was in compliance with the provisions of the Minimum Standards i.e., a minimum of two (2) hours. On some of the audit dates, some young adults did not request Law Library assistance.

Listed below is a total count of young adults housed in ESH, for each date audited, and the total number of young adults that were assisted by the Law Library Coordinators.

#### **November 5, 2020**

There were three (3) young adults in ESH on this audit date. No young adults **chose to** request Law Library services.

#### **November 12, 2020**

There were six (6) young adults in ESH on this audit date. Law Library services were not provided on this audit date.

#### **November 17, 2020**

There were six (6) young adults in ESH on this audit date. Law Library services were not provided on this audit date.

#### **November 24, 2020**

There were six (6) young adults in ESH on this audit date. Of the six (6) young adults, one (1) young adult **chose to** request and was provided Law Library services.

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<sup>1</sup> To facilitate the provision of Law Library services, within their assigned areas, Law Library Coordinators provide services to all individuals regardless of whether it is during the individual's lock-out period.

<sup>2</sup> This is evidenced by the Law Library Coordinators signing in and out of the Law Library Logbook on each of the audit dates.

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#### Kiosks and Typewriters

During this audit period, young adults were housed in up to three (3) housing areas in ESH, labeled A-C. Young adults in ESH are provided with access to a minimum of one (1) kiosk and one (1) typewriter. The Director of Law Library advised that a requisition form has been submitted to the facility storehouse to release new typewriters to replace the inoperable ones. Law Library staff are to coordinate the typewriter placement process. Listed below are the numbers of kiosks and typewriters in each ESH housing area, including the status of their operability for the dates audited:

#### **November 6, 2020**

On this audit date, young adults were housed within the two (2) young adult ESH housing areas, labeled A-B. The numbers of kiosks and typewriters in each area and their operability were as follows:

- A: One (1) Kiosk (**inoperable**) / One (1) Typewriter (**inoperable**)
- B: One (1) Kiosk (**inoperable**) / One (1) Typewriter (**inoperable**)

#### **November 20, 2020**

On this audit date, young adults were housed within the three (3) young adult ESH housing areas, labeled A-C. The numbers of kiosks and typewriters in each area and their operability were as follows:

- A: One (1) Kiosk (**inoperable**) / One (1) Typewriter (**inoperable**)
- B: One (1) Kiosk (operable) / One (1) Typewriter (operable)
- C: One (1) Kiosk (operable) / One (1) Typewriter (**inoperable**)

#### **November 27, 2020**

On this audit date, young adults were housed within the two (2) young adult ESH housing areas, labeled A-B. The numbers of kiosks and typewriters in each area and their operability were as follows:

- A: One (1) Kiosk (operable) / One (1) Typewriter (operable)
- B: One (1) Kiosk (operable) / One (1) Typewriter (**inoperable**)

#### **November 30, 2020**

On this audit date, young adults were housed within one (1) young adult ESH housing area, labeled A. The number of kiosks and typewriters in this area and their operability were as follows:

- A: One (1) Kiosk (operable) / One (1) Typewriter (**inoperable**)

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#### §1-06 – Recreation

All young adults in ESH are afforded a minimum of one (1) hour of recreation per day, seven (7) days per week in the outdoor recreation area, except in inclement weather when the indoor recreation area is used.

The audit reviewed recreational data for each of the four (4) audit dates – November 5, 12, 17 and 24, 2020 – to ascertain the total number of young adults that participated in recreation and the length of time that each young adult participated in recreation.

#### November 5, 2020

There were three (3) young adults in ESH on this audit date. Please note the following:

- One (1) young adult **chose to** participate in afforded recreation.
- Two (2) young adults **chose not** to participate in afforded recreation.

#### November 12, 2020

There were six (6) young adults in ESH on this audit date. Please note the following:

- All of the six (6) young adults **chose not** to participate in afforded recreation.

#### November 17, 2020

There were six (6) young adults in ESH on this audit date. Please note the following:

- One (1) young adult **chose to** participate in afforded recreation.
- Five (5) young adults **chose not** to participate in afforded recreation.

#### November 24, 2020

There were six (6) young adults in ESH on this audit date. Please note the following:

- One (1) young adult **chose to** participate in afforded recreation.
- Five (5) young adults **chose not** to participate in afforded recreation.

#### § 1-02(c)(2) (Classification), Provision of Programming

Young adults in ESH are placed in housing units exclusively with other young adults (18 to 21 years old). Young adults who are 19 to 21 years old can also be commingled in units with adults (22 years old and older). In the commingled housing areas, the provision of programming is provided to each tier separately through two programming sessions. The hours of programming afforded may vary by tier within a housing area. In the young adult exclusive housing areas within ESH, tablets are intended to be utilized in the provision of programming and offered to young adults regardless of whether it is during the individual's lock-out period. The Programs Division is in the process of rolling out the provision of tablets over the coming months. In addition, in the young adult exclusive housing areas, on days when support programming staff are present, young

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adults may request individualized counseling while other programming components are being held. Due to the coronavirus, Program Counselors did not remain in the housing areas to provide programming services in the same manner as they did in the past. The Department provides to young adults self-guided programming packets as part of programming materials that include activity packets, interactive journaling, and worksheets and were also provided books and other educational materials. In addition, social services are afforded by counselors, which can either be requested by a social service slip or during a counselor's tour when an inquiry is made that may be designated as social service. Social service includes the provision or referral of a support service, or case-management related engagement and discussion. Social service is designated separately in the report as it is a rendering of a request and/or has follow-up that is related to case management.

The audit reviewed programming attendance data on each of the four (4) dates audited to ascertain the number of programming hours offered to each young adult and the number of hours each young adult **chose to** participate in programming. Program participation hours are based on the number of hours each young adult **chooses to** participate in programming. The data reflects the young adults present in the housing area during programming on each audit date.

Please note that on any given day, a young adult may be out to court or transferred in or out of the ESH Unit. These young adults may not be included in the programming reporting. It is important to note that young adults returning from court during programming hours are offered the opportunity to participate in programming upon their return.

Listed below are the numbers of programming hours offered and participated based on housing areas and their assigned levels.

#### November 5, 2020

- ❖ A: Level II – There were two (2) young adults housed in this area. In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.
- ❖ B: Level III – There was one (1) young adult housed in this area. No programming was offered on this audit date due to security considerations.

#### November 12, 2020

- ❖ A: Level II – There was one (1) young adult housed in this area. He was offered between five (5) to fifteen (15) minutes of in-person programming. The young adult **chose to** participate in in-person programming and his participation time was as follows:
  1. Young adult participation: 15 minutes
- ❖ B: Level I – There was one (1) young adult housed in this area. He was offered and **chose to** participate in new programming packets and between five (5) to fifteen (15) minutes of in-person programming. The young adult participation time in the new programming packets and in-person programming was as follows:
  1. Young adult participation: 6 minutes



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- ❖ C: Level II – There were four (4) young adults housed in this area. They were offered social services, programming packets, and between five (5) to fifteen (15) minutes of in-person programming. One (1) young adult **chose not** to participate in all afforded programming. The remaining three (3) young adults **chose to** participate in social services, programming packets, and in-person programming. The young adult participation times for social services, programming packets, and in-person programming were as follows:

1. Young adult participation: 26 minutes
2. Young adult participation: 12 minutes
3. Young adult participation: 12 minutes

#### November 17, 2020

- ❖ A: Level II – There was one (1) young adult housed in this area. In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.
- ❖ B: Level I – There was one (1) young adult housed in this area. He was offered and **chose to** participate in between five (5) to fifteen (15) minutes of in-person programming. The young adult participation time for in-person programming was as follows:

1. Young adult participation: 9 minutes

- ❖ C: Level II – There were four (4) young adults housed in this area. They were offered programming packets and between five (5) to fifteen (15) minutes of in-person programming. Two (2) young adults **chose to** participate in programming packets and in-person programming. The remaining two (2) young adults **chose to** participate in programming packets and **chose not** to participate in in-person programming. One (1) young adult's participation time in in-person programming could not be determined. The Program Division addressed the counseling staff on the importance of accurately tracking the time frames of participation and provides follow-up training to counseling staff on the proper completion of documents, as needed. The remaining young adult participation time for in-person programming was as follows:

1. Young adult participation: 5 minutes

#### November 24, 2020

- ❖ A: Level I – There was one (1) young adult housed in this area. In-person programming did not occur in the unit on this audit date due to social distancing, personnel, and operational considerations related to the coronavirus.
- ❖ B: Level II – There were five (5) young adults housed in this area. They were offered and **chose to** participate in programming packets and between five (5) to fifteen (15) minutes of in-person programming. The young adults' participation times for programming packets and in-person programming were as follows:

1. Young adult participation: 5 minutes

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2. Young adult participation: 10 minutes
3. Young adult participation: 5 minutes
4. Young adult participation: 10 minutes
5. Young adult participation: 5 minutes

#### **Education**

The NYC Department of Education offers educational services to all young adults in ESH. A young adult can enroll in educational services by completing and submitting the “Request for Educational Services” form upon admission. In addition, a young adult can enroll in educational services by completing the aforementioned form and submitting it to any programs office in the facility after admission. On September 21, 2020, the NYC Department of Education began providing educational materials on a weekly basis to enrolled young adults; each package contained learning materials for one week. In addition, a hotline was established for the enrolled young adults so that they could call to speak with a teacher if they had any questions or needed support.

The audit reviewed educational data for each of the four (4) audit dates, November 5, 12, 17 and 24, 2020.

#### **November 5, 2020**

There were three (3) young adults in ESH on this audit date. Of the three (3) young adults, one (1) young adult was enrolled in educational services and he was provided with individualized educational materials.

#### **November 12, 2020**

There were six (6) young adults in ESH on this audit date. Of the six (6) young adults, four (4) young adults were enrolled in educational services and they were provided with individualized educational materials.

#### **November 17, 2020**

There were six (6) young adults in ESH on this audit date. Of the six (6) young adults, four (4) young adults were enrolled in educational services and they were provided with individualized educational materials.

#### **November 24, 2020**

There were six (6) young adults in ESH on this audit date. Of the six (6) young adults, four (4) young adults were enrolled in educational services and they were provided with individualized educational materials.

#### **Audit Recommendations**

Recommendations for the ESH Audit Report are reported quarterly rather than monthly per an agreement with the Board of Correction. The ESH Audit Report covering the month of August 2020 was the last ESH Audit Report which indicated recommendations. A quarterly period has

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transpired since that last audit report with recommendations, and recommendations are therefore included in this audit report.

The following recommendations were indicated in the ESH Audit Report covering the month of August. The status of the efforts to implement each of the recommendations listed below are indicated after each recommendation.

#### Law Library

- To facilitate the maintenance and operation of the kiosks and typewriters in the housing areas, the facility Warden or designee should re-instruct designated facility staff, and the Director of Law Libraries should re-instruct law library staff, to verify on a daily basis that all typewriters and kiosks are operational. When a typewriter or kiosk is identified as in need of repair, the facility administration in coordination with the Director of Law Libraries should ensure that repairs or replacements are conducted in a timely manner.

#### **Status of implementation:**

- The Director of Law Libraries re-issued written instructions to all Law Library Coordinators directing them to inspect daily the kiosks and typewriters to ensure their operability and record their findings in the Law Library Logbook. In the event that any kiosk is inoperable, the Law Library Coordinator shall call the appropriate vendor to have the kiosk serviced. In the event that any typewriter is inoperable, the Law Library Coordinator shall call the facility's storehouse and request that the typewriter be replaced. The Law Library Coordinator shall document the above corrective actions in the Law Library Logbook.
- The facility re-issued ESH Memorandum 21/20, entitled ESH Law Library Kiosk/Typewriters Maintenance and Operations, which requires the housing area staff and designated Law Library Officers to inspect daily the kiosks and typewriters to verify their operability. In the event that any typewriter or kiosk is identified to be in need of repair or has been tampered with, the aforementioned housing area staff and Law Library Officer shall immediately notify their supervisor. Supervisors have been instructed to immediately notify the Deputy Warden of ESH and the respective Law Library Coordinator of any inoperable or tampered with kiosk or typewriter. The Deputy Warden and/or Law Library Coordinator will initiate repair and/or replacement of the equipment.

#### Recreation

- Designated supervisory staff should regularly review the housing area logbook to determine whether custody staff have recorded all required information, particularly the recreation commencement times and completion times. When deficiencies are identified, the designated supervisory staff shall counsel the relevant custody staff person and instruct him or her to record all required information.

#### **Status of implementation:**

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- The facility issued ESH Memorandum #36/20, entitled Recreation and Housing Area Logbook entries, which quotes verbatim the above recommendation and emphasizes its implementation by supervisory staff.

#### Programs

- The Program Unit Supervisor should instruct all counselors to record, in the ESH Daily Programming Tier Sign-In Sheet, the commencement and completion times for each individual counseling session.

#### **Status of implementation:**

- The Executive Director of Counseling/Social Services issued a written reminder to programming staff to document the start and end times on the sign-in sheets for programming services.

The findings in the ESH Audit Report covering November 2020 require the following three (3) audit recommendations:

#### Law Library

- Law Library services were not afforded to ESH Young Adult housing areas on November 12 and 17, 2020, because the Law Library Coordinators did not have a uniform staff escort. The Director of Law Libraries should identify an alternative method of providing Law Library services when a uniform staff escort is not available.
- To facilitate the maintenance and operation of the kiosks and typewriters in the housing areas, the facility Warden or designee should re-instruct designated facility staff, and the Director of Law Libraries should re-instruct law library staff, to verify on a daily basis that all typewriters and kiosks are operational. When a typewriter or kiosk is identified as in need of repair, the facility administration in coordination with the Director of Law Libraries should ensure that repairs or replacements are conducted in a timely manner.

#### Programming

- The Program Unit Supervisor should re-instruct all counselors to record, in the ESH Daily Programming Tier Sign-In Sheet, the commencement and completion times for each individual counseling session.