NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Commissioner

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Derrick D. Cephas, Esq. Acting Chair & Vice-Chair
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

Dear Acting Chair Cephas:

As a part of the variance granted for ESH on November 14, 2017, the Board imposed a condition requiring, in part, that "Restraints, including restraint desks, shall not be used except to control an incarcerated person who presents an immediate risk of self-injury or injury to others…When restraints are necessary, the Department shall use the least restrictive forms of restraints that are appropriate and should use them only as long as the need exists, not for a pre-determined period of time." This condition was based on a Standard 23-5.9 of the American Bar Association on the Treatment of Prisoners. The Department's position is that the criteria for placement in ESH Level 1 – recent, including repeated, participation in an actual or attempted slashing or stabbing, or engagement in activity that caused serious injury to an officer, another inmate, or any other person – is narrow in scope and properly identifies a small category of inmates who have demonstrated actual serious harm to others and, without an ability to have direct engagement and conduct a thoughtful assessment of behavior, those inmates remain a clear and present danger of imminent risk or serious harm to others. Therefore, use of the program desks (also referred to as restraint desks) in ESH Level 1[1] during out of cell time is addressing the imminent risk of serious harm these inmates present, and maximizes the Department's ability to maintain continuous engagement with inmates in an attempt to change behavior while ensuring the safety of staff and others. Further, inmates placed in ESH Level 1 are not compelled to use the program desks for a pre-determined period of time since inmates may choose whether to use the program desks during out of cell time and are offered at least hourly opportunities to be removed from the program desks to use the bathroom, take a shower, make a phone call or return to their cells. The Department agrees that moving towards shorter periods of review of an inmate's ESH placement and recommendation for advancement is necessary and has taken steps to do that.

In moving away from a solely punitive model, ESH was designed to focus on direct, inmate engagement with enhanced programming geared towards facilitating rehabilitation, addressing the root causes of violence, and minimizing idleness while still limiting violent inmates' contact with other inmates within a secure, structured setting. The common programmatic threads are self-awareness, a better understanding on why they are housed in ESH, and self-determination to leading a value added life. The Department has stated previously that ESH has been a work in progress. The use of program desks was added to allow for safer in-person engagement as opposed to past practice of cell-study or no contact at all. The use of program desks is a correctional practice in

[1] In Level 1 units, inmates are provided with seven (7) hours out of cell time. Those young adults who attend school receive an additional three (3) hours of out of cell time. During the out of cell time, inmates are placed in the program desk when they are not engaging in other activities; as inmates are afforded the opportunity to attend one hour of recreation, take a shower, or have a visit all of which is conducted out of the program desk. Additionally, inmates are afforded hourly opportunity to be removed from the program desk for such purposes as placing a phone call, using the bathroom, or returning to the cell. Handheld video is maintained for all offered options. Recreation is 1 hour – outdoors – and no restraints are used.

states such as Colorado, California, New York State, and Washington State, where its use has facilitated the provision of programming and other idleness reduction activities in a safe manner. In contrast to our use, these jurisdictions often use program desks in conjunction with punitive segregation units and administrative segregation, where the inmate is either in their cell or placed in the program desk during out-of-cell time – which the Department is not able to do.

The importance and value of the review to the success of ESH cannot be underestimated. The Department uses reviews to gauge an inmate's long-term rehabilitation, program engagement, and adherence to unit rules, ultimately making recommendations for ESH level advancement or transfer out of ESH.[2] Historically, the process for these reviews have not been perfect. However, the review is now more based on information gathered from both documents and dialogue with the inmate and staff, focusing on the inmate's actions and behavior that caused ESH placement, their conduct and program performance during the review period, and what goals or intentions they have if they are advanced to the next ESH level. Over time the Department has increased its focus on the transparency and fidelity of ESH, and reviews now include the inmate as an active participant in the review process, and staff of all types participate in the decision-making process. The reviews are now scheduled in advance and in a pre-determined location. They are conducted by a multi-disciplinary team (comprised of support staff (social services, administrative staff and observers, including clinicians) and uniform staff (e.g., Assistant Bureau Chief, Deputy Warden of ESH, Captains, and Correction Officers). Today, reviews are a dynamic communication, including affirmations, feedback, and objective reporting on incidents and log book entries, between staff and the inmate. Collectively, these improvements have bolstered the perceived legitimacy of the review process for all participants. We invite board members to observe some of these reviews.

Looking ahead, the Department is focused on strengthening the multi-disciplinary team review process, better documenting and sharing the results of those reviews, and conducting the reviews in a shorter timeline, with the immediate goal being thirty (30) days. Operationalizing ESH Unit Team Meetings (focused on addressing operational issues and day-to-day challenges), adding additional programming (Cure Violence, Code of the Warrior, MasterMind and gang intervention), implementing an inmate orientation within the first 72 hours of arrival in ESH, and adding an informal check-in at the 10-day period of placement are all priorities.

The length of the Department's period of review is not arbitrary, but rather a deliberate and research-based determination. By describing the Department's initial research, the Department is committed to continuing its assessment of this model. The manner in which behavior is changed varies from person to person and is influenced by the complexity of the targeted behavior[3], attitude, motivation and willingness to change the target behavior, and the ability of the person to have knowledge, self-regulation skills and social skills to maintain the behavioral change.[4] In earlier studies, behavior change was reported to need a minimum of 21 days[5], but more current research suggests that behavior change can happen anywhere from 18 days to 254 days[6] depending on the circumstances and underlying issues. Furthermore, research clearly supports the following key concepts, upon which the Department relied in developing its period of review:

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[2] Thirty (30) days is a multi-disciplinary re-evaluation benchmark for Medicare and Medicaid Services, Physical Therapy, Occupational Therapy, Educationally based Behavior Intervention Plans and Speech therapy (Centers for Medicare and Medicaid Services. (2012, September 5). Physical, Occupational and Speech Therapy Services. Retrieved from Centers for Medicare and Medicaid Services: https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medical-Review/Downloads/TherapyCapSlidesv10_09052012.pdf) and SAMHSA for re-evaluation/assessment of people with Substance Abuse Treatment for Persons With Co-Occurring Disorders (Center for Substance Abuse Treatment. Substance Abuse Treatment for Persons With Co-Occurring Disorders. Rockville (MD): Substance Abuse and Mental Health Services Administration (US); 2005. (Treatment Improvement Protocol (TIP) Series, No. 42.) 4 Assessment. Available from: https://www.ncbi.nlm.nih.gov/books/NBK64196/).

[3] Lally, P., & Van Jaarsveld, C.H.M., & Potts, H. W. W., & Wardle, J. (2009). How are habits formed: Modelling habit formation in the real world. 40, 998-1009. doi: 10.1002/ejsp.674.

[4] Ryan, P. (2009). Integrated Theory of Health Behavior Change: Background and Intervention Development. 23(3), 161-172. doi: 10.1097/NUR.0b013e3181a42373. Prochaska, J.O., Redding, C.A., & Evers, K. (2002). The Transtheoretical Model and Stages of Change. In K. Glanz, B.K. Rimer & F.M. Lewis, (Eds.) Health Behavior and Health Education: Theory, Research, and Practice (3rd Ed.). San Francisco, CA: Jossey-Bass, Inc.

[5] Maltz, M. (1960). Psycho-Cybernetics. Simon & Schuster.

[6] Lally, et al., (2009).

1. Individuals that have never engaged in the desired behavior before need time and repetition of the desired behavior to effect change.[7]

2. Behavior change is optimal when the person is supported by others going through the same change in a similar setting.[8]

3. The highest rate of relapse will happen very early after the initial change, in the absence of reinforcement and support.[9]

4. At 30 days, a person that is in a change environment and is motivated for change, with support and change focused interventions, has an enhanced likelihood of change, and behavior change is likely to be seen.[10]

Furthermore, there are evidenced-based interventions, created for detainees that teach change behavior skills in small increments. Due to the nature of the jail setting, a 30 day time frame can be meaningful to assess change, rate of change, and if additional time is afforded, will support change. Research supports the use of evidence-based approaches, including programs such as Dialectical Behavior Therapy (DBT), Interactive Journaling, and Thinking 4 a Change (T4C), which have similar implementation formats over an extended period of time. For example, T4C is an integrated Cognitive Behavioral Therapy (CBT) change program authorized by the National Institute for Corrections and is comprised of 25 lessons that build on each other and needs at least 9 weeks for implementation. The University of Cincinnati has developed a specific Cognitive Behavioral Intervention for Offenders which consists of 9 modules and 55 sessions. These modules can be broken down into 3 – 30 day levels (level 1 is modules 1-3, Level 2 is modules 3-6 and level 3 is modules 7-9). The levels of ESH (only one of which utilizes program desks) afford a participant the ability to move through a structured program and allow the participants the greatest likelihood for success and long term change. The Department's implementation of programs similar to those described here give a measurable and definitive progression for a participant to ascend through the levels of ESH to the ultimate goal of re-integration into general population and society as a whole.

The Department has worked diligently to push forward progressive reforms in managing even the most violent of our population, instituting profound changes in the management of inmates in our custody that balance the need for safety and security in an environment that fosters engagement and moves away from historically isolating correctional practices. Program desks allow inmates to safely participate in programming and practice prosocial behavior with their peers – particularly given security concerns that currently cannot be addressed, such as blades that are undetectable by the Department's available tools. The immediate safety value of program desks for this purpose – of ensuring safe, in-person engagement – cannot be overstated. The inmates housed in ESH Level 1 are among the most violent which correlates with the rates of violence noted within those units. One could deduce that in the absence of the program desks, incidents would further escalate.

The Department is constantly exploring different tools and approaches to increase engagement in a safe manner, program desks are one such tool. The value of educational services and programming for this population is instrumental to their advancement and rehabilitation and the reduction of idle time for this challenging population. Approximately ninety percent (90%) of ESH participants were previously high school drop outs. The success of our rehabilitative and educational efforts for the young adults, particularly those in restrictive housing units such as ESH, is dependent upon establishing an atmosphere conducive to learning and engagement. If young adults are fearful for their safety and concerned that attending educational services will

[7] Lally, et al., (2009). Judah G., & Gardner, B., & Aunger, R. (2012). Forming a flossing habit: an exploratory study of the psychological determinants of habit formation. doi: 10.1111/j.2044-8287.2012.02086.x. Lally, P., & Wardle, J., & Gardner, B. (2011). Experiences of habit formation: A qualitative study. 16(7), 484-489. doi: 10.1080/13548506.201155555774. Ronis, D. L., Yates, J. F., & Kirscht, J. P. (1988). Attitudes, decisions, and habits as determinants of (Lally P. &., 2009) repeated behavior. In A.R. Pratkanis, S. J. Breckler, & A. G. Greenwald (Eds.), Attitude structure and function (pp. 213-239). Hillsdale: Lawrence Erlbaum Associates.

[8] Lally et al., 2011.

[9] Ryan, 2009.

[10] Lally et al., 2009. Lally et al, 2011. Judah, 2012. Ryan, 2009.

result in bodily harm, they will either choose not to participate or their participation will be hampered by preoccupation over safety.

And the Department re-iterates that this violent population is an exception, a small percentage of our overall population (less than 1%), and a group for which the Department has committed to maintaining positive, in-person engagement and effectuating positive behavior change (even if only a few of this group chooses to actually engage) notwithstanding their violent behavior.

Sincerely,

Cynthia Brann