

Name of Facility: Erie County Penitentiary	Variance #97-V-01	
New:	Renewal: X	
Relief from Standard # 7040.3	Application by: Sheriff Howard	Date rec.: 11/10/09
Beds at standard: 888	Variance Beds Requested This Variance: 8	
Total Variance Beds this Facility: 53	Current Population: 888	95.4% 11/12/09
Last Approved: September 15, 2009	Length of Approval: 60 days	Expiration: 12/1/09
Recommendation: [REDACTED]	Length Recommended: [REDACTED]	By: D. Clark

SUMMARY OF VARIANCE REQUEST

Sheriff Howard is requesting an extension of this variance which authorizes the penitentiary to house an additional eight (8) inmates in K-Unit for a total of 60.

RECOMMENDED CONDITIONS

At a Commission Meeting held on November 17, 2009 this variance will be presented before the Commission. Commission staff recommends that if this variance is approved, the following conditions be included in the approval letter regarding this variance.

- (1) The Erie County Penitentiary is authorized to house an additional eight (8) inmates in K-Unit for a total of 60.
- (2) Inmates housed in the above-noted area *must* be provided with a bunk, cot, or at a minimum a "boat" to be used as a bed.
- (3) "Active supervision" must be provided on a 24-hour basis, pursuant to 9NYCRR Section 7003.2(c).
- (4) Inmates housed in the above-noted area receive the same services and programs as the general population.
- (5) The county shall not exceed the rated MFC for the purpose of boarding inmates. The Commission does not approve variances for the purpose of generating revenue.
- (6) The county shall continue to complete the Commission's "Daily Count Sheet" and fax it to this office on a daily basis.
- (7) The facility shall ensure that the ratio showers prescribed by Section 7040.5(c)(2) are maintained in each variance housing area. Facility staff working in variance housing areas shall inspect and document in the housing log, the number of operable showers in the housing area.
- (8) **Erie County shall provide a monthly report on its progress towards creating a unified classification system for both facilities.**

HISTORY

2009	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 9/09 Meeting 60 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 8/09 Meeting 30 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 7/09 Meeting 30 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 6/09 Meeting 30 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 5/09 Meeting 30 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 4/09 Meeting 30 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 3/09 Meeting 30 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 1/21 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 11/18 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 9/16 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 7/08 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 5/08 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 3/08 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 2/08 Meeting 30 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	██████████ Approved at 1/08 Meeting 30 days

FACILITY SITE VISIT

Last reviewed for this variance: November, 2009

By: D.Clark, E. Purdy

Outstanding issues:

Numerous- see staff write up for details.

ANY OPEN Minimum Standard Violations:

See staff write up for details.

CONSTRUCTION/RENOVATION PLANS

Construction progress, if building additional capacity.

Yankee Compound's MFC was set at 90 and is now reflected on the JDPRS.

OTHER VARIANCES IN EFFECT

Variance # 97-V-25: Authorizes the penitentiary to house 45 inmates in various areas of the facility.

MISCELLANEOUS INFORMATION

All site visit information must have been done within 90-days prior to presentation at the Commission Meeting.

The following information is required for variance write-ups:

Facility: Erie County Correctional Facility

**Variance #: 97-V-01 Request for the following housing variances:
Kilo Dorm - SUPERVISED BY CORRECTION OFFICERS**

Date of Site Visit: November 2009

Name of Person Who Conducted the Last Site Visit to Facility:

Erin Purdy, Deborah Clark

Date of Last Cycle Visit that Standard violations were identified:

February 27-March 3, March 20-21, September 12, 2007 October 4-5, 2007, November 5-9, 2007, January 29-February 1, 2008, April 17, 2008.

Commission staff started and completed a cycle evaluation on November 5-9, 2007 and January 29-February 1, 2008 and April 17, 2008. Follow up conducted October 2008. Evaluation started in May 2009. Commission staff conducted a follow up visit on November 4-6, 2009

ANY OPEN Minimum Standard Violations:

CORRECTIONAL FACILITY:

1. **Overcrowding** – County refuses to board out inmates, which causes the correctional facility to run at capacity. The facility has not violated the capacity for individual housing areas in over 6 months.

The Erie County Jail Management Division has experienced overcrowding since 1997, they completed additional bed space in 2000 and continue to experience overcrowding with peak populations in the summer. However the facility's population did not peak during the summer of 2009.

2. Classification

- There is no unified classification system. (OPEN since 2002)
- Policy and procedure needs and annual review. OPEN
- Need an objective instrument for Doublecelling, Inmate workers, and reclassification. OPEN
- The classification instrument needs to be updated to reflect the needs of the inmate population. OPEN
- No coordination between Holding Center and Correctional Facility.
OPEN

- Commission staff provided a 3 day technical assistance program for Erie from June 2-4, 2009
 - **After the technical assistance program Erie County Classification staff (Captain Hartman) completed a comprehensive draft unified classification Policy and Procedure. The tentative date for implementation was September 2009. Facility Administration has not implemented the unified classification system. OPEN**
3. **Maintenance –Facility has made significant improvements in addressing maintenance issues. The roof is being replaced.**
 4. **It should be noted that during the site visit the facility had no Ajax for cleaning the facility. (new violation)**
 5. **Unions-** The courts recently ruled that supervision of inmates can be conducted by deputies or teamsters and is not based on the status of the inmate.

The Correctional Facility operates with two separate and distinct security work groups. The Teamster (Deputies) representatives supervise unsentenced inmates and CSEA (Correction Officers) representatives supervise sentenced inmates. Each union member is only accountable to the supervisors in their respective union. Both unions' members are accountable to the Chief and Superintendent of the Correctional Facility. Major operational inconsistencies.

The major operational issues continue to magnify at the correctional facility due to no supervision of correctional facility deputies. The facility still has no Chief; the deputies are not responsible to the Corrections Captain. The highest ranking authority at the correctional facility for deputies on the afternoon shift, night shift, weekends and holidays is a deputy sergeant. OPEN

6. **Food Service -** Commission staff that the quantity of food being served to inmates has improved. However, Commission staff found security issues pertaining to the kitchen. [REDACTED]

[REDACTED] New issue. OPEN

7. **Exercise – The facility has changed their policy regarding light rec and no rec. If the physician determines that the inmate should not attend exercise or should be placed on light exercise, than the inmate acknowledges such in writing.**

8. **Security and Supervision** - Commission staff continue to find unsecured doors in areas that are supervised by deputies. **All doors were secured during the Commissions tours over a 3 day period.**
 - **Prisoner Property Storage (barrier)** - The facility informed Commission staff that they are awaiting Buildings and Grounds to order materials and construct a cage, no time line was offered on the starting and completion of this barrier. **OPEN since 2006**
 - **The Facility was not providing active supervision** [REDACTED] (OPEN)
9. The Commission in previous reports has told the facility that in many of the housing units at the correctional facility only one staff member per shift, per housing unit is needed pursuant to the staffing analysis. The facility administration has told Commission staff that Sheriff Howard feels this is a safety issue and two staff is assigned to each housing unit during the day and afternoon. While touring the facility Commission staff found that correction officers do not leave their post unless relieved. However, Deputies consistently leave the housing post without a proper relief, leaving one officer on the unit. It is obvious by this practice that the deputies do not feel that having one officer on the housing unit is a safety issue. **OPEN**
10. **Commission staff found that staff** [REDACTED] **in order to provide active supervision were leaving their posts, and violating the requirements of active supervision outside the housing unit. OPEN**
11. **Commission staff found that so far this year 100 grievances have been submitted for consideration. Many of the grievances were accepted however no corrective action was taken. Additionally Commission staff found an incident where an inmate was retaliated against for filing a grievance.**
12. **Commission staff found that inmates in deputy housing areas were being locked in for unjustified extended periods of time.**
13. **Commission staff was inundated with inmate complaints from housing areas supervised by deputies ie. Unable to obtain grievance forms, being locked in for excessive time periods, lack of cleaning supplies.**

Update on Capital Construction Project:

Yankee Building: The Yankee Compound project is complete.

Any Special Conditions which should be added to the Variance:

Commission should consider requiring that the JMD provide the necessary resources to develop and implement a unified classification system.

Status: Draft developed, not implemented by JMD administration.

Justification for Why Variance should or should Not be Extended:

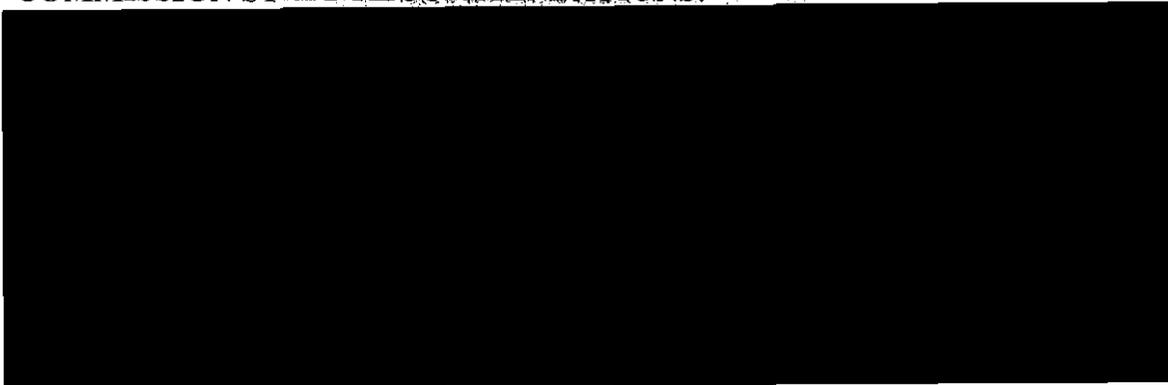
Justification for why the variance **should** be approved:

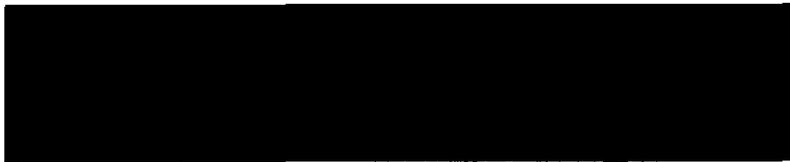
- The JMD requires every possible variance beds in each facility to house the inmate population because the county refuses to board out inmates.
- Erie County Has hired a significant number of deputies and deputy sergeants.
- The county won the recent court case and can currently commingle unsentenced and sentenced inmates.

Justification for why the variance **should not** be approved:

- Commission staff is concerned at the continued failure of the Erie County Sheriff Deputy supervisors and line staff to observe the fundamental requirements of proper security and inmate service delivery while assigned to housing areas controlled by deputies. Numerous violations pertaining to inmates supervised by deputies. Such deficiencies clearly continue to point to a lack of effective supervisory and administrative oversight and accountability of housing areas supervised by deputies. Deputy staff behaviors observed during the follow up visits continues to demonstrate the administration's failure to manage those areas of the Correctional Facility supervised by deputies.
 - No unified classification system
 - Continued Overcrowding since 1997.
 - **Two separate and distinct unions.**
 - **Basic Minimum standard violations for inmates supervised by deputies at the CF**
 - **County refuses to board out inmates when necessary.**
 - **The highest ranking official at the CF on off shifts and weekends for the deputies is a Sergeant.**

COMMISSION STAFF RECOMMENDATIONS:





Reviewed by Regional Supervisor:

TM

Date:

11/12/09

Name of Facility: Erie County Penitentiary	Variance # 97-V-25
New:	Renewal: X
Relief from Standard # 7040.3	Application by: Sheriff Howard
	Date rec: 11/10/09
Beds at standard: 888	Beds Requested This Variance: 129
Total Variance Beds This Facility: 53	Current Population: 888
	95.4% 11/12/09
Last Approved: September 15, 2009	Length of Approval: 60 days
	Expiration: 12/1/09
Recommendation: [REDACTED]	Length Recommended: [REDACTED]
	By: D. Clark

SUMMARY OF VARIANCE REQUEST

Sheriff Howard is requesting an extension of this variance to add 129 beds to various housing areas throughout the facility. At the **February 2007** Commission Meeting, the Commission reduced this variance to **45 variance beds**.

RECOMMENDED CONDITIONS

At a Commission Meeting held on November 17, 2009 this variance will be presented before the Commission. If approved, the recommendations for this variance are as follows:

- 1) The Erie County Penitentiary is authorized to house additional inmates in the following areas:

<u>Area</u>	<u>Capacity</u>	<u>Variance</u>	<u>Total</u>
J-Dormitory	48	8	56
A-1 Unit	15	7	22
A-2 Unit	24	12	36
C-1 Unit	24	6	30
C-2 Unit	24	12	36
Total		45	

- 2) "**Active supervision**" shall be maintained in all housing areas in accordance with the requirements of 9NYCRR Section 7003.2(c).
- 3) Inmates who are housed in the above-noted areas **must** be provided with a bunk, cot, or at a minimum a "boat" to be used as a bed.
- 4) Inmates housed in all of the above-noted areas receive the same services and programs as the general population.

- 5) Commission staff will continue to regularly monitor the effects of the double-celling program on staff and inmates as well as the general operation of the facility.
- 6) The facility will continue to maintain information on all double-cell inmates which shall include, but is not limited to: (a) name and location of the inmate; (b) date of entrance into and release from double-celling; and (c) reason for release. These records shall be made available to Commission staff for review.
- 7) The county will continue to implement its double-celling program according to the double-celling plan submitted and approved by the Commission. Additionally, the county shall advise the Commission of any substantive changes to the double-celling plan.
- 8) The county shall not exceed the rated MFC for the purpose of boarding inmates. The Commission does not approve variances for the purpose of generating revenue.
- 9) The county shall continue to complete the Commission's "Daily Count Sheet" and fax it to this office on a daily basis.
- 10) The facility shall ensure that the ratio showers prescribed by Section 7040.5(c)(2) are maintained in each variance housing area. Facility staff working in variances housing areas shall inspect and document in the housing log, the number of operable showers in the housing area.
- 11) **Erie County shall provide a monthly report on its progress towards creating a unified classification system for both facilities.**

HISTORY

2009	Recommendation Action Taken Length of Variance	[REDACTED] Approved at 9/09 Meeting 60 days
2009	Recommendation Action Taken Length of Variance	[REDACTED] Approved at 8/09 Meeting 30 days
2009	Recommendation Action Taken Length of Variance	[REDACTED] Approved at 7/09 Meeting 30 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	[REDACTED] Approved at 6/09 Meeting 30 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	[REDACTED] Approved at 5/09 Meeting 30 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	[REDACTED] Approved at 4/09 Meeting 30 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	[REDACTED] Approved at 3/09 Meeting 30 days
2009	Recommendation Action Taken Length of Variance Conditions, if changed	[REDACTED] Approved at 1/21/09 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	[REDACTED] Approved at 11/17/08 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	[REDACTED] Approved at 9/16 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	[REDACTED] Approved at 7/08 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	[REDACTED] Approved at 5/08 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	[REDACTED] Approved at 3/08 Meeting 60 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	[REDACTED] Approved at 2/08 Meeting 30 days
2008	Recommendation Action Taken Length of Variance Conditions, if changed	[REDACTED] Approved at 1/08 Meeting 30 days

FACILITY SITE VISIT

Last reviewed for this variance on: November, 2009 By: D.Clark, E. Purdy

Outstanding issues:

Numerous- See Commission staff write up for details

ANY OPEN Minimum Standard Violations:

See Commission staff write up for details

Open violations that relate to the variance request:

See Commission staff write up for details

CONSTRUCTION/RENOVATION PLANS

Construction progress, if building additional capacity.

Yankee Compound's MFC was set at 90 and is now reflected on the JDPRS.

OTHER VARIANCES IN EFFECT

Variance # 97-V-01: This variance authorizes the county to house an additional 8 inmates in K Unit.

MISCELLANEOUS INFORMATION

All site visit information must have been done within 90-days prior to presentation at the Commission Meeting.

The following information is required for variance write-ups:

Facility: Erie County Correctional Facility

Variance #: #: 97-V-25 Request for the following housing variances:
A-1 Segregation Lower Common, (Correction Officers) A-1 Segregation Upper Common, (Correction Officers) Alpha 1 Unit, (Correction Officers) Alpha 2 Unit, (Correction Officers) Charlie-1 Unit, (Deputies) Charlie-2 Unit, (Correction Officers), Juliet Dorm (Deputies)

Date of Site Visit: November 2009

Name of Person Who Conducted the Last Site Visit to Facility:

Erin Purdy, Deborah Clark

Date of Last Cycle Visit that Standard violations were identified:

February 27-March 3, March 20-21, September 12, 2007 October 4-5, 2007, November 5-9, 2007, January 29-February 1, 2008, April 17, 2008.

Commission staff started and completed a cycle evaluation on November 5-9, 2007 and January 29-February 1, 2008 and April 17, 2008. Follow up conducted October 2008. Evaluation started in May 2009. Commission staff conducted a follow up visit on November 4-6, 2009

ANY OPEN Minimum Standard Violations:

CORRECTIONAL FACILITY:

1. **Overcrowding** – County refuses to board out inmates. The county has not violated the capacity for individual housing areas in over 6 months.

The Erie County Jail Management Division has experienced overcrowding since 1997, they completed additional bed space in 2000 and continue to experience overcrowding with peak populations in the summer. However the facility's population did not peak during the summer of 2009.

2. Classification

- There is no unified classification system. (OPEN since 2002)
- Policy and procedure needs and annual review. OPEN
- Need an objective instrument for Doublecelling, Inmate workers, and reclassification. OPEN
- The classification instrument needs to be updated to reflect the needs of the inmate population. OPEN

6. **Security and Supervision** - Commission staff continue to find unsecured doors in areas that are supervised by deputies. **All doors were secured during the Commissions tours over a 3 day period.**
 - **Prisoner Property Storage (barrier)** - The facility informed Commission staff that they are awaiting Buildings and Grounds to order materials and construct a cage, no time line was offered on the starting and completion of this barrier. **OPEN since 2006**
 - **The Facility was not providing active supervision** [REDACTED] (OPEN)
7. The Commission in previous reports has told the facility that in many of the housing units at the correctional facility only one staff member per shift, per housing unit is needed pursuant to the staffing analysis. The facility administration has told Commission staff that Sheriff Howard feels this is a safety issue and two staff is assigned to each housing unit during the day and afternoon. While touring the facility Commission staff found that correction officers do not leave their post unless relieved. However, Deputies consistently leave the housing post without a proper relief, leaving one officer on the unit. It is obvious by this practice that the deputies do not feel that having one officer on the housing unit is a safety issue. **OPEN**
8. **Commission staff found that staff** [REDACTED] **in order to provide active supervision were leaving their posts, and violating the requirements of active supervision outside the housing unit. OPEN**
9. **Commission staff found that so far this year 100 grievances have been submitted for consideration. Many of the grievances were accepted however no corrective action was taken. Additionally Commission staff found an incident where an inmate was retaliated against for filing a grievance.**
10. **Commission staff found that inmates in deputy housing areas were being locked in for unjustified extended periods of time.**
11. **Commission staff was inundated with inmate complaints from housing areas supervised by deputies ie. Unable to obtain grievance forms, being locked in for excessive time periods, lack of cleaning supplies.**

Update on Capital Construction Project:

Yankee Building: The Yankee Compound project is complete.

Any Special Conditions which should be added to the Variance:

Commission should consider requiring that the JMD provide the necessary resources to develop and implement a unified classification system. (This requirement was not in the last approval letter sent to the facility)

Status: Draft developed, not implemented by JMD administration.

Justification for Why Variance should or should Not be Extended:

Justification for why the variance **should** be approved:

- The JMD requires every possible variance beds in each facility to house the inmate population because the county refuses to board out inmates.
- Erie County Has hired a significant number of deputies and deputy sergeants.
- The county won the recent court case and can currently commingle unsentenced and sentenced inmates.

Justification for why the variance **should not** be approved:

- Commission staff is concerned at the continued failure of the Erie County Sheriff Deputy supervisors and line staff to observe the fundamental requirements of proper security and inmate service delivery while assigned to housing areas controlled by deputies. Numerous violations pertaining to inmates supervised by deputies. Such deficiencies clearly continue to point to a lack of effective supervisory and administrative oversight and accountability of housing areas supervised by deputies. Deputy staff behaviors observed during the follow up visits continues to demonstrate the administration's failure to manage those areas of the Correctional Facility supervised by deputies.
 - No unified classification system
 - Continued Overcrowding since 1997.
 - **Two separate and distinct unions.**
 - **Basic Minimum standard violations for inmates supervised by deputies at the CF**
 - **County refuses to board out inmates when necessary.**
 - **Violations of active supervision [REDACTED]**
 - **Facility is not maintaining the required double ceiling documentation, onsite technical assistance provided.**
 - **The highest ranking official at the CF on off shifts and weekends for the deputies is a Sergeant.**
 - **The facility is not maintaining the required double ceiling documentation.**
 - **Violations of active supervision of inmates outside the housing units.**
 - **Violations of active supervision in [REDACTED]**
 - **Documentation violations in deputy housing unit logs including Juliet.**
 - **Numerous inmate complaints from inmates in housing units supervised by deputies, numerous medical complaints and grievances that appears to be valid.**

- Most of the valid grievances that were accepted by the grievance coordinator have not changed the facility's unaccepted practices.

COMMISSION STAFF RECOMMENDATIONS:



Reviewed by Regional Supervisor: _____

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Date: _____

11/12/09