



July 2nd, 2019

Jacqueline Sherman, Interim Chair
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

Re: Request for a Six (6) Month Limited Variance Renewal and One (1) Day Emergency Variance to Board of Correction Minimum Standards § 1-17(d)(2) Punitive Segregation

Dear Interim Chair Sherman,

Pursuant to §1-15(f) of the New York City Board of Correction's ("Board") Minimum Standards, the New York City Department of Correction ("Department") requests the renewal of the six (6) month limited variance to §1-17(d)(2) of the Board's Minimum Standards (Punitive Segregation) to allow the Department, in highly exceptional circumstances presenting safety and security concerns, to waive the requirement that people be immediately released from punitive segregation for seven days after they have been held in punitive segregation for thirty consecutive days. This variance was first granted by the Board in September 2015¹ and last renewed at the January 8, 2019 public meeting. The Department seeks this variance renewal to be effective on July 9, 2019, the date of the Board's Public Meeting.

Over the past several years, the Department has worked alongside the Board and other partnering organizations to transform the utilization of punitive segregation. As a result of these efforts, young adults (aged 18-21) and individuals with serious mental illness are now ineligible for placement in punitive segregation. Further, an adult may only receive placement in punitive segregation upon a guilty adjudication finding for a serious act of violence. Individuals no longer serve outstanding punitive segregation time from previous incarcerations and individuals who commit less serious or non-violent infractions are placed in a less restrictive level of punitive segregation where they receive seven (7) hours of daily out-of-cell time. The Department has recently expanded upon these reforms in order to afford all individuals in disciplinary housing, including punitive segregation, a minimum of four (4) hours of daily out-of-cell time.

While the Department continues to reform and refine its use of punitive segregation housing, there remains a critical need for a seven-day release waiver option in instances where an individual commits a serious violent act while in punitive segregation housing or within the first seven days of release from punitive segregation. Waivers are approved only when necessary to prevent further violence and ensure the safety of individuals in custody and staff from harmful acts such as stabbings, slashings, sexual assaults, and assaults resulting in death or serious injury.

¹ The limited variance granted by the Board on September 8, 2015 was for a period of ninety (90) days.

The Chief of the Department reviews all seven-day waiver requests with careful consideration of all alternative management options. Since the variance was first granted in September 2015, there have been a total of thirty-nine (39) requests submitted to the Chief, of which twenty-nine (29) were approved. The majority of requests (37), were based on incidents that occurred within the seven (7) day period following an individual's release from punitive segregation. Since January 8th, 2019, when the last variance commenced, there have been zero (0) seven-day waiver requests. However, the waiver's conservative use does not diminish its importance or necessity when a serious security issue arises.

While individuals continue to engage in persistently violent behavior during or immediately upon release from punitive segregation, the Department cannot fully comply with the current provisions set forth in §1-17(d)(2) without jeopardizing the safety of staff and individuals in custody. Since March 31, 2017, the Department has advocated for the Board to proceed with rulemaking regarding restrictive housing and the inclusion of the seven (7) day release waiver therein.

The ability to safely, swiftly, and appropriately respond to serious violent acts is essential for the Department in its duty to ensure the safety of those in custody and the dedicated staff who engage with the incarcerated population. Maintaining the option to use the seven-day release waiver ensures that the Department continues to have an indispensable security measure when all other housing options are rendered unsuitable by an individual's persistently violent behavior. The Department appreciates the Board's consideration of this six (6) month limited variance renewal, which would allow for the continued use of the seven (7) day release waiver option.

Sincerely,



Cynthia Brann

cc: Martha King, Executive Director