



NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Commissioner

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

RE: Limited Six (6) Month Variance Request to Board of Correction Minimum Standards
Regarding the Department's Use of Separation Status Housing

Dear Interim Chair Sherman,

Pursuant to § 1-15(c) of the New York City Board of Correction's ("Board") Minimum Standards, the New York City Department of Correction ("Department") requests a limited six (6) month variance from the BOC Minimum Standards outlined below for the purpose of maintaining the safety and security of Department facilities when individuals in custody are known or reasonably believed to have dangerous contraband secreted on or within their body. The Department seeks this variance to take effect on October 22nd, 2019, the date upon which the Board is scheduled to next convene.

Over the past several years, the Department has witnessed the existence of contraband in Department facilities and the associated harm that such contraband causes. In 2018, the Department recovered over 260 dangerous articles, including over 150 bladed weapons. Additionally, in 2018, the Department made over 200 drug contraband recoveries. While these efforts were pivotal to the prevention of violence, the prevalence of easily-concealable bladed weapons persists in Department facilities. All contraband items, including weapons, drugs, and other dangerous items compromise the safety and security of those in custody and staff. In 2018, there were 94 incidents of slashings or stabbings in Department facilities. There is no acceptable level or frequency of violence. The Department has taken a number of measures to prevent such violence across a number of operational fields, including custody management, staff training, and incident response. However, the existence of any weapons in DOC facilities creates an unsafe environment and places both staff and individuals in custody at risk of serious physical harm or death. The presence of drug contraband in Department facilities also contributes to an unsafe environment and places the lives of all individuals who live and work in Department facilities in danger through the creation of black market-type systems that contribute to extortion and associated violence. The existence of drug contraband further places individuals at risk for drug-related health risks, including drug overdose.

On October 2nd, 2018, Governor Cuomo signed legislation into law permitting the non-medical use of low dosage ionizing radiation on individuals in custody in local New York correctional facilities effective January 1st, 2019. On July 15th, 2019, following extensive discussions and planning with

various City and State stakeholders, including the Board, the Department began operating ionizing body scanners with the capability of detecting various forms of drug and weapon contraband secreted on or in individuals' body cavities. Following positive body scan findings, the Department has a responsibility to ensure individuals who are revealed to possess dangerous contraband are separated from the population in a manner that maintains their safety, the safety of staff, and the safety of the population in custody. The Department further has the responsibility to ensure that the individual's separation takes the least restrictive form possible in order to safely recover the contraband before it causes harm. From July 15th, 2019 to the date of this letter, the Department has recovered thirty sharpened or bladed contraband weapons through the operation of ionizing body scanners and separation status housing.

Once an individual is known or reasonably believed to possess contraband, there are substantial security concerns associated with the risk of use, distribution, disposal, or concealment of contraband. In order to limit such risk and prevent potential harm, the Department created a temporary housing that enables the separate housing of individuals in possession of dangerous contraband until said contraband is surrendered to the Department or the individual is verified to no longer possess said contraband. In the uncommon instances when an individual requires separation for the safety and security of individuals in custody and staff, the Department is unable to adhere to the following Minimum Standards:

1-03(c – d, j) Personal Hygiene

The provision of shaving items and access to haircuts for individuals in separation status housing presents a threat to the safety and security of the facility. Any such provision would present unnecessary risk of harm to any person who may come into direct contact with an individual in separation status housing in order to provide such services. Any unnecessary movement of an individual in separation status housing may provide risk of use, distribution, disposal, or concealment of contraband. Further, the provision of any brooms, mops, soap powder, disinfectant, and other materials sufficient to properly clean and maintain housing areas to individuals in separation status housing may provide similar risk of use, distribution, disposal, or concealment of contraband.

1-04(b)(2 - 3) Single Occupancy

Separation status housing cells cannot contain closeable storage or a table or desk space, as such provision would provide for risk of use, distribution, disposal, or concealment of contraband. Separation status housing cells, however, do contain a flush toilet and wash basin with mesh grates, as well as a single bed.

1-05(a - c) Lock-In

Individuals in separation status housing are known or reasonably believed to possess contraband and therefore must be separated to a defined space until the Department is confident that the contraband has been recovered or no longer presents a threat to the safety and security of other individuals in custody and staff (e.g. via a negative scan). Access to a dayroom area may provide risk of use, distribution, disposal, or concealment of contraband. Further, access to other individuals or staff in a dayroom area may provide risk of serious harm to those individuals.

1-06 Recreation

Transportation to and from a recreation area constitutes a substantial risk of use, distribution, disposal, or concealment of contraband. Further, access to other individuals or staff in a recreation area may provide risk of serious harm to those individuals.

1-07(c) Congregate Religious Services

Transportation to and from a congregate religious services area would constitute a substantial risk of use, distribution, disposal, or concealment of contraband. Further, access to other individuals or staff during such services may provide risk of serious harm to those individuals. Individuals in separation status currently have daily access to religious advisors and further access upon request.

1-08(b - d) Access to Courts and Legal Services

Prior to scheduled court appearances, individuals in separation status housing are afforded the opportunity to clear the body scanner. Individuals who clear the body scanner will be produced for court and processed for removal from separation status housing. However, transportation to and from court constitutes a substantial risk of use, distribution, disposal, or concealment of contraband for individuals who do not clear the body scanner or refuse to go through the body scanner. In such circumstances, access to other individuals or staff in a court setting may provide risk of serious harm to those individuals.

1-08(f)(4) Law Library Access

Transportation to and from the Law Library would constitute a substantial risk of use, distribution, disposal, or concealment of contraband. Further, access to other individuals or staff in a law library may provide risk of serious harm to those individuals.

1-08(g)(2 - 4) Legal Documents and Supplies Access

Possession of any legal documents or supplies while an individual is housed in separation status housing constitutes a substantial risk of use, distribution, disposal, or concealment of contraband. Such materials may be used to dispose of or hide contraband and may interfere with the Department's ability to retrieve the contraband item.

1-09(c - d, f) Visiting

Transportation to visit areas and access to visitors constitutes a substantial risk of use, distribution, disposal, or concealment of contraband. Further, access to other individuals in custody, staff, and visitors in a visit area may provide risk of serious harm to those individuals.

1-11(c - d) Correspondence

Mailing outgoing correspondence constitutes a substantial risk of use, distribution, disposal, or concealment of contraband.

1-12(d) Incoming Packages

The receipt and possession of packages by an individual in separation status housing constitutes a substantial risk of use, distribution, disposal, or concealment of contraband.

1-13(a - c) Publications

Possession of any publication materials while an individual is housed in separation status housing constitutes a substantial risk of use, distribution, disposal, or concealment of contraband.

1-14(a - b) Access to Media

Possession of any media materials while an individual is housed in separation status housing constitutes a substantial risk of use, distribution, disposal, or concealment of contraband. Such materials may be used to dispose of or hide contraband and may interfere with the Department's ability to retrieve the contraband item. Further, transportation of an individual housed in separation status housing to an area that allows access to media representatives would constitute a substantial risk of disposal, distribution, use or concealment of contraband. Further, access to other individuals or staff in such an area may provide risk of serious harm to those individuals.

The Department's approach, since we began using the ionizing body scanners in mid-July, has been to notify the Board each time that circumstances necessitated placement of the individual into temporary separation housing. This action is precipitated by the Department's responsibility to ensure the safety of those in custody and staff following a positive body scan demonstrating contraband secreted on an individual or within an individual's body cavity. By issuing an Emergency Declaration to the Board we made clear that in light of the facts and circumstances, pending recovery of the contraband, there was an inability to fully comply with the applicable provisions of the Minimum Standards. When the need for separation housing ceased, we promptly removed the individual from separation housing and notified the Board of the same.

In lieu of continuing to proceed with Emergency Declarations as needed, the Board asked the Department to seek a variance for the instances where a positive body scan detecting possession of concealed contraband establishes the inability to fully comply with applicable provisions of the Minimum Standards. The Department appreciates the Board's consideration of this six (6) month limited variance request, which, if granted, will allow the Department to maintain the safety and security of its facilities and the individuals who live and work therein through the provision of a housing structure designed to ensure the safe recovery of dangerous contraband in the least restrictive manner possible. We look forward to continuing to work in partnership with the Board in order to ensure the consideration of separation status housing for inclusion in the Board's restrictive housing rulemaking.

Sincerely,



Cynthia Brann

cc: Michelle Ovesey, Acting Executive Director & General Counsel