



**THE ASSEMBLY
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ALBANY**

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DANIEL O'DONNELL
Member of Assembly
69th Assembly District

September 9th, 2019

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

RE: DOC Request for Limited Six (6) Month Variance on Minimum Standards of Separation Status Housing

Dear Interim Chair Sherman,

I respectfully submit this letter in opposition to the request by NYC Department of Correction (DOC) for a variance on the Minimum Standards applicable to the use of Separation Status Housing. While I share the Commissioner's concern about contraband within correctional facilities, and the view that no level of violence is acceptable in our detention facilities, I have serious concerns about the necessity of the requested variance.

As Chair of the NY Assembly's Standing Committee on Correction between 2013 and 2017, I was intricately involved in the discussion regarding body scanners on Rikers Island, and the policy that would surround them. When the legislature finally passed the law allowing their use, it was done with assurance from DOC that the Department was completely prepared for their use, the training surrounding their use, and aware of the possible consequences of their use including risks to health and civil liberties. The request for this variance is an indication that the policies we were assured were in place, were not.

The Board's decision in 2015 to implement limits on the use of Enhanced Supervision Housing and Punitive Segregation for detainees and inmates under 21 years of age, or those with serious mental and physical disability, was an important step toward protecting the rights of the incarcerated, as well as reorienting our criminal justice system toward rehabilitation, rather than retribution. Those Minimum Standards were not deemed to compromise the safety and security of DOC facilities by the Department from their effective date of January 2016 until July 15th, 2019 when the scanners went into operation, and the implementation of scanners does not present a new safety risk that requires a variance that was not present when magnetometers were in use.

The term Separation Status Housing itself is a linguistic diversion from the fact that the rights that would be denied are substantively similar to those that are denied in Enhanced Supervision Housing or Punitive Segregation. Granting these exceptions to the Minimum Standards presents the possibility of abuse of Separation Status Housing as an work-around to imposing conditions of ESH or Punitive



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Segregation on those protected classes. Any alterations to policies pertaining to civil rights must be done with serious consideration for the fact that Separation Status Housing is assigned to those that are suspected, not proven to have violated any DOC rules.

Furthermore, false-positive body scans are a common occurrence with ionizing radiation body scanners utilizing Advanced Imaging Technology (AIT), specifically when they are first deployed. A 2014 study conducted by the United States Office of Government Accountability on machines utilized by the Transportation Safety Administration (TSA) identified AIT software has repeatedly been shown to give false positives at a disproportionate rate to African Americans, overweight persons, and transgender people. We must be careful to avoid letting technology exacerbate existing inequities in the system.

The Commissioner's letter to the Board fails to address the above issues, or make a compelling case for the necessity of a variance. For example, the recovery of six bladed weapons through the use of body ionizing scanners and segregated Separation Status is notable, but the Commissioner omitted the total number of those that were processed in Separation Status Housing. This total number is important for comparison to contraband recovered to establish a rate of recovery that would exhibit that a variance from Minimum Standards is absolutely necessary for safety and security in DOC facilities.

Finally, I am troubled by the Department's continued requests for variances on Minimum Standards established by the Board. This request, if fulfilled, would become the 16th active variance requested by DOC. While I respect the nuance that exists in detention facilities and support the Board's ability to give variances, the Department has a responsibility to clarify the steps it intends to take towards compliance when requesting a variance. Unfortunately, in more cases than one, DOC has substituted the crafting of thoughtful and compliant policy and procedure in exchange for variances in perpetuity. Some variances have been renewed nine times already with little movement toward compliance from the Department toward the Minimum Standards that were established by the Board.

I respectfully submit this letter of opposition to the Department of Correction's request for this variance, and appreciate your consideration and time.

Yours truly,

Daniel J. O'Donnell
Member of NYS Assembly
Assembly District 69