



Mental Health Project

Board of Correction Meeting
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Public Comment on Variance Request Regarding Separation Status Housing

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It is deeply troubling that today the Board is considering allowing DOC to keep some people in 24-hour lockdown – expanding the use of solitary confinement in the jails – and not starting the CAPA process for restrictive housing rulemaking – to reduce the use of solitary confinement. The Board is well aware of the harm that isolation causes individuals – both while in solitary confinement and once released. You have been drafting rules to place more limits on its use, yet there is seemingly no urgency to act.

In stark contrast to that slow deliberative process that has been underway for years, the Department's request to deprive incarcerated individuals of their freedom is prioritized, while people harmed by existing isolation units continue to suffer. Every day that passes more people are subjected to lengths of isolation that constitute torture, and even in the face of Layleen Polanco's death in a restrictive housing unit, you delay taking action.

The broad exemptions from numerous minimum standards that the Department requests are unconscionable. Separation Housing Status is not designed to be the least restrictive method for accomplishing the goal of recovering dangerous contraband. Instead, the Department proposes isolating incarcerated individuals in conditions that fall far below what the Board has determined to be the minimum standards for incarceration. The Department seeks to deny all access to the courts and recreation and impose numerous other restrictions without crafting any alternative method for providing for these basic services, without the approval of the Chief of Department or other supervisory staff, and without any limits on the duration of placement in this status.

The Department's extreme restrictions are not limited to those suspected of having bladed weapons, but include individuals who are suspected of possessing drug contraband. Obviously, the Department wants to eliminate the flow of drugs in the facilities, but drugs do not represent the level of danger that weapons do. Possession of drugs is not penalized in the way that violent conduct is, and retrieving this contraband should not trump the

rights of incarcerated individuals to the basic minimum standards of humane treatment in jail.

Even for those suspected of having bladed weapons, the Department proposes of depriving them of access to the courts despite the fact that the purpose of their incarceration is to ensure attendance at court proceedings. The Department has a range of security measures, including physical restraints and escort by a Captain, for transporting individuals who have engaged in the most extreme behavior, yet the Department wants to deprive individuals of access to court entirely. The Department proposes denying them of access to recreation for as long as they are in Separation Status Housing. Even individuals in punitive segregation are mandated to receive recreation seven days a week, and those who are convicted of an infraction for engaging in misconduct related to recreation can be denied access to recreation for five days at most. The Department proposes denying access to counsel visits despite the fact that they have videoconferencing capabilities.

The Department wants to deny individuals in Separation Status Housing of access to materials to clean their cells but makes no other provision for ensuring the maintenance of these cells by DOC staff. The Department wants to limit all contact with the outside world even where they could tailor the restriction. For example, rather than eliminating outgoing correspondence, the Department could request permission to open and inspect letters before mailing them.

Furthermore, there are no due process protections:

- No provision for review of the scan results by an expert to ensure the accuracy of the findings;
- No provision for the Chief of Department to review and sign off on placement of individuals in this status;
- No requirement that subsequent scans be offered every two hours;
- No provision for exception for those who refuse screening based on legitimate medical concerns;
- No provision for how individuals housed in mental observation units will be handled given their vulnerability to extreme isolation;
- Similarly, no provision for the treatment of people with disabilities of all kinds, young adults, and pregnant women.

Finally, the lack of transparency in this process is of great concern. The Department has been allowed to use ionizing body scanners since January 1, 2019. They claim that there were extensive discussion and planning with stakeholders and the Board before they began using the scanners on July 15 – plenty of time for the Department to propose rulemaking and for the public to be heard. Instead, the policies and procedures for the ion scanning process and Separation Status Housing have not been made public. Moreover, they request this variance after they have been using Separation Status Housing for almost two months.

I urge you to reject this variance request and devote your resources to ending the torture of solitary confinement in the jails.