



NEW YORK CITY DEPARTMENT OF CORRECTION

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February 3, 2020

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

RE: Limited Six (6) Month Variance Renewal 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 renewal 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 February 12, 2020, the date on which the current variance is set to expire.

Over the past several years, the Department has witnessed the harm contraband causes in Department facilities. All contraband items, including weapons, drugs, and other dangerous items compromise the safety and security of those in custody and staff and can lead to serious harm for all people in Department facilities. In FY 2019, there were 106 incidents of slashings or stabbings in Department facilities. While the Department responds to each incident of violence with utmost urgency and seriousness, there is no acceptable level or frequency of violence in New York City jails.

The Department has taken a number of measures to prevent violence across several operational fields, including custody management, staff training and development, and incident response. However, the existence of weapons in DOC facilities creates an unsafe environment and places both staff and individuals in custody at risk of serious physical harm or death and therefore cannot be tolerated. The presence of drug contraband in Department facilities also contributes to an unsafe environment through placing individuals at risk for serious drug-related health risks, including drug overdose. Its presence also places all individuals who live and work in Department facilities at risk of associated violence.

On October 2, 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 1, 2019. On July 15, 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 substantive conversation with Board Members, the Department received a three (3) month variance on November 12, 2019 in order to maintain its operation of separation status housing in situations where individuals refuse to surrender dangerous contraband that they are known or reasonably believed to have secreted on or within their body. Since the passage of the variance through January 31, 2020, there were twenty-three (23) placements of people in separation status housing. The average stay in separation status for those placements was fewer than thirty-six (36) hours, with the shortest stay in separation status lasting fewer than six (6) hours. Within this same period, following the passage of the Board's variance conditions, the Department has also seen the longest stay in separation status, which lasted approximately one hundred thirty-six (136) hours.¹ From July 15, 2019 to January 29, 2020, the Department recovered over one hundred dangerous contraband items, including scalpels and other bladed weapons, as a direct result of ionizing body scanners and separation status housing operations. Twenty-three (23) of these dangerous items were recovered from individuals *after* placement in separation status housing.

Throughout the operation of the unit, and in collaboration with Board staff and members, the Department made a number of operational improvements that ensure safety through the least restrictive means possible. Following the passage of the variance in November, the Department installed a tele-visit booth in the separation status unit prior to the required installation date and ensured community service providers, legal defense organizations, and the Courts were provided access and information surrounding its operation. The Department further installed recreation equipment within the separation status unit in order to facilitate indoor recreation in compliance with the Board's conditions. The Department recorded additional information on placement and removal paperwork, provided monthly public reports, created plans for removing individuals whose stays in separation status lasted beyond seventy-two (72) hours, and provided individuals in separation status legal materials and newspapers upon request.

The Department has the responsibility to ensure an individual's separation takes the least restrictive form possible in order to safely recover the contraband before it causes serious harm. In addition to complying with the Board's variance conditions, the Department additionally repainted the unit (including inspirational messages on the walls) in order to create a more positive environment, and we continue to provide individuals in separation status access to telephone calls in excess of the Minimum Standards, for free, and in a manner consistent with the general population. The Department also created orientation forms with information on the unit's services and restrictions, which are now being provided to individuals upon entering the separation status unit. This form is provided in addition to the verbal orientation all individuals receive.

The Department has taken further action following the publication of the Board's Separation Status Report. The Department addressed the identified issue regarding staff training and the operation of body scanners through a number of coordinated actions, including the immediate launch of an internal investigation, the issuing of security memoranda at each facility with body scanners reiterating the requirements for staff training in order to operate the body scanners, and the reading of said memoranda at staff roll calls three times a day for seven days. The Department conducted an internal audit of all body scans on a randomly selected date immediately following our corrective actions, which

¹ In compliance with Board variance conditions, a plan for removing this individual from separation status housing was created and submitted to the Board.

demonstrated that 98.2% of the scans were conducted by properly trained staff.² We will continue to conduct internal audits and take additional action until sustained compliance can be verified. In addition to the immediate response, the Department also incorporated many of the Board's report recommendations into our operational practice and policy,³ including improvements to data recording on paperwork, image evaluation training for staff who provide second and third reviews of scanned images prior to an individual's placement, and process flows to ensure timely transportation to and from the separation status facility following a positive scan or refusal.

While these improvements to the training for and operation of body scanners are meaningful and important to the Department's operation of separation status, there continue to be substantial security concerns associated with the risk of use, distribution, disposal, or concealment of contraband once a body scan establishes that an individual is known or reasonably believed to possess contraband. In such circumstances, the Department continues to require a means to ensure the safe and separate housing of individuals until the contraband is surrendered or it can be verified that the individual no longer possesses the contraband. The Department is committed to ensuring individuals in separation status spend the least amount of time in the unit as possible. However, when an individual requires separation for the safety and security of individuals in custody and staff, either following a positive scan or a refusal to scan, the Department is unable to adhere to the following Minimum Standards:

1-03(c – d, j) Personal Hygiene

The Department continues to provide individuals in separation status daily showers and essential personal hygiene products, like toothbrushes and toothpaste; however, 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,

² The Department conducted a Department-wide audit of all body scanner logbooks on 1/11/2020. Fifty-four (54) of the fifty-five (55) scans conducted on the audit date were conducted by properly trained staff. The one identified instance of an improperly trained officer was referred to ID for further investigation and appropriate action.

³ The Department's Separation Status policy is currently under revision in order to reflect various operational improvements.

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 an outdoor 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. After discussion with the Board, the Department established an on-unit indoor recreation area in separation status and requests variance from the Board Standard to allow for the continued provision of daily indoor recreation in a safe manner for individuals whose stays in separation status exceed forty-eight (48) hours.

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 are produced for court and processed for removal from separation status housing. The Department consults with the Office of Court Administration on producing people in Separation Status who fail to clear the body scanner or refuse to clear the body scanner to court and will produce any person the Court orders to be present. In circumstances where the court does not order a person to be present, the Department will, to the extent possible, provide access for the individual to participate through the tele-court video conference system.

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

In compliance with variance conditions, all individuals housed in separation status housing may make law library requests and the Department provides services accordingly. However, 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

In compliance with variance conditions, the Department provides all individuals in separation status housing legal mail and loose-leaf legal materials upon request. However, the Department is unable to provide access to typewriters, certain clerical supplies, or copier machines without a substantial risk of use, distribution, disposal, or concealment of contraband.

1-09(c - d, f) Visiting

In compliance with variance conditions, the Department provides all individuals housed in separation status housing access to tele-visits. However, transportation to visit areas and direct 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

In compliance with variance conditions, the Department provides all individuals housed in separation status housing access to newspapers. However, the Department is unable to provide unlimited access to other publications in accordance with the referenced Minimum Standards in a manner that does not constitute a substantial risk of use, distribution, disposal, or concealment of contraband.

1-14(a - b) Access to Media

Possession of certain 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 in-person 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. Individuals in separation status, however, have access to media representatives via unrestricted telephone access.

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: Margaret Egan, Executive Director