



Jennifer Jones Austin, Chair  
Stanley Richards, Vice-Chair  
Robert L. Cohen, M.D.  
Felipe Franco  
James Perrino  
Michael J. Regan  
Steven M. Safyer, M.D.  
Jacqueline Sherman

**BOARD OF CORRECTION**  
**CITY OF NEW YORK**  
1 CENTRE STREET, RM 2213  
NEW YORK, NY 10007  
212 669-7900 (OFFICE)  
212 669-7980 (FAX)

Margaret Egan  
*Executive Director*

Record of Variance Action for November 10, 2020 Public Meeting

This variance allows the Department to house people in Separation Status.

Type of Variance: Limited

Date on which variance will commence: November 14, 2020

Time period, if any: Two months, ending January 14, 2021

Minimum Standard for which Variance is Granted: 1-03(c-d, j) (Personal Hygiene); 1-04(b)(2-3) (Single Occupancy, including storage and desk space); 1-05(a-c) (Lock-In); 1-06 (Recreation); 1-07(c) (Religion) 1-08(f)(4) (Law Library Access); 1-08(g)(2-4) (Legal Documents and Supplies Access); 1-09 (c-d, f) (Visiting); 1-11(c-d) (Correspondence); 1-12(d) (Incoming Packages); 1-13(a-c) (Publications); and 1-14(a-b) (Access to Media)

Date on which Board of Correction first approved variance (for renewals only):  
November 12, 2019

Requirements imposed as conditions on variance:

1. All newly admitted people in custody shall receive a medical and mental health intake, per Minimum Standard § 3-04, prior to body scan.
2. The Department shall place a person in Separation Status only if the person: (i) has a positive body scan; or (ii) refuses a body scan.
3. The Department shall:
  - (a) House people in Separation Status within four (4) hours of a positive scan or refusal to scan, absent extenuating circumstances, which shall be documented and communicated to the Board in each instance;
  - (b) Notify CHS of each person placed into and/or released from Separation Status upon the conclusion of each tour. Each notification is to include a notification to Pharmacy and Mental Health and individual-specific information (i.e., Name and

- Book and Case number). For people released from Separation Status, DOC shall provide CHS with the person's new housing location;
- (c) CHS shall provide daily medical and mental health rounds to people housed in Separation Status and shall have the authority to determine if any person should be removed for clinical evaluation or treatment.
  - (d) Institute one (1) Correction Officer-to-one (1) person in custody observation of each person throughout placement in Separation Status and fully document such observation.
  - (e) Provide opportunities for regular visiting and attorney visiting by a secure video conferencing system.
  - (f) The Department shall consult with the Office of Court Administration on producing people in Separation Status to court and shall produce any person the Court orders to be present. If the Court requests that the person not be produced, the Department shall, to the extent possible, enable the person to participate in his court proceeding through a secure video-conferencing system.
4. When a person remains in Separation Status for 72 hours, the Chief of Department, the Bureau Chief of Security, and the GRVC Warden ("Committee") shall meet to develop an individualized plan for moving the person out of Separation Status. The Committee shall meet and develop a plan every 72 hours until the person is moved out of Separation Status. The Department shall provide each written plan to the Board within one business day of the Committee's meeting.
  5. Upon request, loose-leaf legal materials shall be provided to people in Separation Status. This shall include legal mail and Law Library requests. The Department may institute limits on the number of loose-leaf pages a person may have in the person's cell at any given time.
  6. The Department shall afford one hour per day of indoor recreation for people in Separation Status. Recreation will be provided on the housing unit in a closed space but outside of the person's assigned cell. Recreation space shall include appropriate recreation equipment.
  7. The Department shall not limit the number or duration of confidential calls to attorneys, the Board of Correction, the Department of Investigation, or any other monitoring body.
  8. Signs shall be posted at intake to advise individuals in custody that they can (i) make complaints about body scanners/body scanning to DOC's Office of Constituent and Grievance Service (OCGS) or 311; and (ii) upon release from DOC custody, request the total accumulated radiation exposure from all body scans of that person conducted during the incarceration.
  9. By the next business day of a person's placement in and release from Separation Status, the Department shall provide the Board access to all supporting documentation related to the person's placement and release. The Department shall provide the Board with a

monthly public report on the implementation of Separation Status. The requirements for the notification and report are outlined in Appendix A hereto.

10. The Department shall offer a daily opportunity to body scan to each person in Separation Status and document such offers.
11. The Department shall provide access to newspapers and magazines. The Department may limit the number of newspapers and magazines that a person may have in cell at any one time.
12. All staff operating or supervising scanners shall have completed radiation safety and body scanner operation trainings. All staff reviewing and approving Separation Status placements and removals (Tour Commanders and OSIU staff) shall have completed training on image evaluation (i.e., body scanner operator training, which includes training on image evaluation, or other image evaluation training).
13. Upon placement, all people in Separation Status shall be provided with verbal and written information on how to access services, all restrictions to services while in the unit, the right to a daily scan, the potential risks of ingesting or secreting contraband and the right to individualized counseling on those risks and an assessment by clinical staff in a clinical setting. This information shall be readily available in the Separation Status unit in both English and Spanish, and any other language the Department deems necessary.
14. The Department shall provide access to media via phone calls. Media interviews via phone shall be scheduled via requirements of Minimum Standard 1-14(b) and DOC's Media Access Policy.
15. If an untrained staff member uses a body scanner or reviews a body scan image in relation to admission to or discharge from Separation Status, the variance is withdrawn until the Department demonstrates it has cured this problem.

**APPENDIX A**  
**Reporting Requirements**

1. The Department shall notify the Board in writing of the specific location(s) of newly operational body scanners and any units designated for Separation Status, including opening and closing dates of each unit. Notification shall be sent within one business day.
2. The Department's notification to the Board regarding placement in Separation Status shall include:
  - (a) Date and time of positive scan or refusal to scan
  - (b) Facility of scan
  - (c) Reason for scan, including COD number, if applicable
  - (d) Date and time of arrival to Separation Status
  - (e) Reason for placement (positive scan or refusal)
  - (f) Date and time CHS notified of placement in Separation Status
  - (g) A high-quality printout of the scan image, if applicable
  - (h) Form SEP-1
3. The Department's notification to the Board regarding removal of an individual from Separation Status shall include:
  - (a) Date and Time of negative rescan
  - (b) Dates and Times of positive rescans (in Separation Status) and refusals to rescan, if applicable
  - (c) Date and Time of removal from Separation Status
  - (d) Reason for removal (e.g., cleared scanner, removed for clinical evaluation and/or treatment, discharged from custody, etc.)
  - (e) Description of contraband recovered (if any)
  - (f) Form SEP-2
4. The Department shall produce monthly public reports with the following metrics reported in total since body scanners were implemented and cumulatively by each reporting month:
  - (a) Number and percent of placements in Separation Status by reason for placement (positive scan, refusal to scan)
  - (b) Number of unique individuals placed in Separation Status
  - (c) Number of unique individuals with multiple placements in Separation Status disaggregated by number of placements
  - (d) Number and percent of placements with contraband recovered disaggregated by type of contraband recovered
  - (e) Number of people removed from Separation Status during the reporting period, in total and disaggregated by removal reason (cleared scanner, removed for clinical evaluation and/or treatment, discharged from custody, etc.)
  - (f) The Mean, Median, Min, Max length of stay in Separation Status (in hours)
  - (g) Number of people with placements lasting more than 72 hours
  - (h) Number of people currently in Separation Status as of the last day of the reporting period

- (i) The Mean, Median, Min, Max, time in Separation Status for those still in Separation Status as of last day of the reporting period
- (j) The number of people in Separation Status who missed a scheduled court appearance.
- (k) The number of scans by reason for scan
- (l) The number of positive scans
- (m) The number of contraband items recovered prior to scan and after a positive scan, by type of contraband recovered (e.g., weapon, drugs, other, etc.)