



**NEW YORK CITY DEPARTMENT OF CORRECTION**  
**Cynthia Brann, Commissioner**

Office of the Commissioner  
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January 7, 2020

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

Re: Request for a Six (6) Month Limited Variance Renewal to the Board of Correction Minimum Standards § 1-17(d)(2) Punitive Segregation

Dear Interim Chair Sherman,

Pursuant to §1-15(f) of the New York City Board of Correction's ("Board") Minimum Standards, the New York City Department of Correction ("Department") requests the renewal of the six (6) month limited variance to §1-17(d)(2) of the Board's Minimum Standards (Punitive Segregation) to allow the Department, in highly exceptional circumstances presenting safety and security concerns, to waive the requirement that people be immediately released from punitive segregation for seven (7) days after they have been held in punitive segregation for thirty (30) consecutive days. This variance was first granted by the Board on September 8, 2015 with the most recent six (6) month renewal granted at the July 9, 2019 public meeting. Per the Board's request, the Department sought an additional one (1) week renewal at the November 12, 2019 public meeting. The Department seeks this six (6) month variance renewal to take effect on January 16, 2020, the date upon which the current variance is set to expire.

Over the past several years, the Department has worked alongside the Board and other partnering organizations to reduce both the duration of time and number of people who serve time in punitive segregation. These efforts resulted in a number of policy changes. Perhaps most significantly, young adults (18-21), along with those who have a serious mental illness, are not eligible to serve time in punitive segregation. Further, individuals no longer serve outstanding punitive segregation time accrued during previous incarcerations. Individuals who commit nonviolent or less serious violent infractions are afforded a minimum of seven (7) hours out of cell daily. Adults do not serve more than sixty (60) days in punitive segregation within any six (6) month period unless, in exceptional circumstances, the Chief of the Department approves an override in writing due to specific safety or security concerns. In June 2019, the Department further reformed its punitive segregation policies by expanding daily afforded out-of-cell time to a minimum of four (4) hours for all those in the most restrictive level of punitive segregation (PSEG I), including three hours for engagement in outdoor recreation and congregate activities. Additional hours of out-of-cell time may be provided in PSEG I for mandated services, including family and attorney visits. These provisions differentiate the Department's punitive segregation units from those defined as solitary confinement under the United Nation's Mandela Rules.

In accordance with the Board's Minimum Standards, if an individual has been found guilty of multiple violent grade I offenses and adjudicated to more than thirty (30) days in Punitive Segregation during their current incarceration, that individual does not serve more than thirty (30) consecutive days in punitive

segregation without a seven (7) day break. The Department is able to uphold this mandate except in certain critical instances when an individual commits a serious violent act against another individual in custody or staff while they are in punitive segregation or during a seven (7) day break. In these exceptional circumstances, it is vital that the Department maintains the ability to respond to such egregious acts by returning an individual to punitive segregation or retaining them there in order to ensure safety for all persons in Department facilities.

The Department continues to utilize this exception to the Board's Minimum Standards in a conservative and thoughtful manner. Approval for seven (7) day overrides are granted by the Chief of the Department, who evaluates all override requests on a case-by-case basis and considers all alternative housing options in a careful decision process. Since the variance was first granted on September 8, 2015, there have been a total of thirty-nine (39) requests submitted to the Chief, of which, twenty-nine (29) overrides were approved. The majority of requests (37), were based on incidents that occurred within the seven (7) day period following an individual's release from punitive segregation. Since July 9, 2019, when the last six (6) month variance commenced, there have been no seven (7) day override requests. The last request for a seven (7) day override was granted in October 2018. While the seven (7) day override is seldom used, it remains an essential option in the exceptional cases where no other option exists to abate serious threats to staff and individuals in the Department's care.

While we continue to refine the Department's disciplinary process, with a focus on rehabilitative interventions for individuals who engage in the most serious acts of violence, certain tools such as the seven (7) day waiver must remain as a component of the Department's options for immediate response to extraordinary circumstances. The Chief of the Department applies immense scrutiny to all seven (7) day waiver requests and we, as a Department, understand the responsibility that accompanies such determinations. At this juncture, however, the Department cannot fully comply with the current provisions set forth in §1-17(d)(2) without jeopardizing the safety and security of staff and individuals in custody. The Department appreciates the Board's consideration of this six (6) month limited variance renewal and its inclusion in the Board's proposed restrictive housing rulemaking.

Thank you for your consideration and attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Cynthia Brann". The signature is fluid and cursive, with the first name being more prominent than the last.

Cynthia Brann

cc: Michelle Ovesey, Acting Executive Director & General Counsel