



NEW YORK CITY DEPARTMENT OF CORRECTION

Cynthia Brann, Commissioner

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Jennifer Jones Austin, 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 Chair Jones Austin,

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 August 12, 2020, the date on which the current variance is set to expire.

The presence of illicit contraband items, including weapons, drugs, and other dangerous objects, jeopardize the well-being, safety, and security of those working and living in Department facilities. In FY 2020, there were 123 slashing and stabbing incidents. No level or frequency of violence is acceptable in our jail system and each incident is handled with the utmost seriousness and urgency, as the wellbeing of people in custody and staff remains the Department's greatest priority. The Department's use of body scanners and separation status housing has led to the recovery of over two hundred contraband items and has likely prevented countless slashing and stabbing incidents.

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. Since February 13, 2020, when the current variance commenced, there have been twenty-eight (28) placements of people in separation status housing.¹ The average stay in separation status for those placements is fewer than two days, or approximately forty-seven (47) hours. The shortest stay in

¹ Updated as of June 23, 2020.

separation status lasted fewer than five (5) hours, indicating the Department's commitment to ensuring individuals are released from the unit as soon as it is safe to do so. Within this same period, the Department has also seen the longest stay in separation status, which lasted approximately 11 days.² From July 15, 2019 to June 22, 2020, the Department recovered over 200 dangerous contraband items, including scalpels and other bladed weapons, as a direct result of ionizing body scanners and separation status housing operations. Importantly, the vast majority of these dangerous items were recovered from individuals without any need for their placement in separation status housing. Fifty (50) of these dangerous items were recovered from individuals after placement in separation status housing.³

Since the Board's initial November 2019 approval of the variance, the Department has made several operational improvements in order to ensure the least restrictive conditions possible in separation status housing. The Department installed recreation equipment and repainted the walls to include motivational quotes for a more positive environment. Upon request, individuals in separation status are provided legal material, newspapers, and magazines. In addition, individuals in separation status are able to participate in one hour of indoor recreation each day. All individuals placed in separation status are informed of the rules and restrictions within the unit as well as the materials and services available to them. They are further provided contact information for the Board of Correction, Department of Investigation, and additional resources. Upon placement into the unit, individuals are also informed of the health risks associated with the ingestion and/or secretion of contraband, and that they can request individualized counseling on those risks from clinical staff who make daily rounds in the unit. The Department continues to include additional information on placement and removal paperwork and share with the Board the monthly public reports on various statistics related to the use of body scanners as well as the individualized plans for removing individuals that remain in separation status beyond seventy-two (72) hours.

The Department continues to evaluate separation status housing in order to ensure the least restrictive means possible, while maintaining the unit's operational integrity and effectiveness as a management tool in emergency situations brought about by an individual in custody's possession of a suspected weapon or contraband that they refuse to surrender. Each weapon recovered through the use of body scanners or an individual's placement in separation status housing is one fewer weapon that can be freely used, distributed, or concealed in Department facilities. The Department needs separation status housing in order to ensure the safe recovery of identified contraband and to curtail preventable violence in instances where an individual is known or reasonably believed to be in possession of a contraband weapon. When an individual requires temporary separation from other individuals in custody and staff for the safety and security of all individuals in custody and staff, either following a positive body scan or a refusal to scan, the Department is unable to adhere to the following Minimum Standards until the

² In compliance with Board variance conditions, individualized plans for removing this individual from separation status housing were created and submitted to the Board.

³ These dangerous items were recovered from 27 people after placement in separation status and included 26 scalpels, razors or blades and 8 pieces of sharpened metal.

individual chooses to comply with staff direction and surrender the observed contraband or otherwise demonstrate compliance through a negative body scan:

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. The Department ensures cells utilized for separation status housing are sanitized between use in a manner consistent with current CDC guidelines for sanitation.

1-04(b)(2 - 3) Single Occupancy

Separation status housing cells cannot contain closeable storage 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 flushable 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 body scan). Access to a dayroom area may additionally provide risk of use, 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. However, 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 installed in the separation status housing area.

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

In compliance with variance conditions, all individuals housed in separation status housing may request law library services, which are fulfilled 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 an identified 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 telephone in a manner consistent with the Board's Minimum Standards.

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 swift and safe recovery of dangerous contraband in the least restrictive manner possible. We additionally look forward to continuing our work in partnership with the Board in order to ensure the consideration of separation status housing in the Board's restrictive housing rulemaking.

Sincerely,



Cynthia Brann

cc: Margaret Egan, Executive Director