

BODY SCANNERS AND SEPARATION STATUS IN NEW YORK CITY JAILS

January 2020

Recommendations

SAFE, FAIR, AND EFFECTIVE USE OF BODY SCANNERS AND SEPARATION STATUS

1. Immediately develop and implement a corrective action plan to ensure safe, fair, and effective use of body scanners and Separation Status. At minimum, the Department's corrective action plan must include efforts and policy changes to:
 - a. Ensure all staff (Correction Officers and Captains) operating or supervising scanners have completed radiation safety and body scanner operator training, including image evaluation, and that untrained staff never need to operate scanners due to staffing movement.
 - b. Require all staff involved in reviewing and approving Separation Status placements and removals (Tour Commanders and OSIU staff) to be trained to review scan images.
 - c. Establish regular audits of body scanner logbooks to confirm officers operating scanners have received all required training. These audits must involve review of the Department's training records and a comparison with data collected by scanner software to uncover any misuse of credentials.
 - d. Until the Department implements its corrective action plan and completes a comprehensive investigation into how staff who were not trained were allowed to use the scanners, the Department should provide the Board with a list of trained staff at each facility who will be permitted to operate scanners, supervise scans, and review images for placements and removals from Separation Status so the Department and the Board can closely monitor compliance. This list should also be available at each scanner location.
2. Update the "Use of Body Scanner" directive¹ and other relevant policies to address the findings and recommendations made in this report. Train all relevant staff on the updated policies.²
3. Continue to evaluate whether Separation Status conditions are the least restrictive necessary to separate people who are believed to have contraband. For example, the Department should consider whether movement in enhanced restraints may allow for in-person attorney visits and/or outdoor, secluded recreation.

¹ N.Y.C. DEPT. OF CORRECTION, DIRECTIVE NO. 4597R-A, USE OF BODY SCANNERS (effective January 3, 2020), superseding DIRECTIVE NO. 4597.

² The Department is currently in the process of updating its body scanner policy to reflect multiple practice improvements, including some previously recommended by the Board and some recommended in this report.

PLANNING AND ROLLOUT

1. DOC and CHS should improve coordination with each other and the Board when planning and implementing new restrictive housing such as the Separation Status unit. Coordination will help ensure that appropriate safeguards are in place, that conditions are the least restrictive necessary to maintain safety, that patient health is protected,³ and that units comply with Minimum Standards. DOC and CHS planning processes should make certain adequate infrastructure, policies, documentation, and internal tracking and monitoring systems are set-up prior to initiating operations.

HEALTH AND MENTAL HEALTH

1. Explicitly exclude women and people who could become pregnant from being scanned.

CHS Response: CHS agrees with this recommendation.

2. Conduct daily CHS mental health rounds as well as medical rounds in Separation Status units.

CHS Response: CHS will conduct only medical rounds in separation status units.

3. Ensure DOC and CHS coordination so that medications and medical and mental health appointments are not missed during Separation Status placement. Notifications of Separation Status placement to Correctional Health should include a process for notification to Mental Health and Pharmacy staff.

CHS Response: CHS, along with our partners at DOC, have worked closely to establish an email notification process that ensures appropriate CHS clinical staff are notified of placement into and removal from the separation status unit no later than 8 hours after movement.

4. Conduct counseling during CHS medical rounds on the potential health risks associated with the secretion or ingestion of contraband and conduct full assessments in a clinical setting as necessary.

CHS Response: Counseling is provided as appropriate in a clinical setting, not in the separation status unit. Clinical encounters cannot occur at the cell-side.

5. Reinforce to staff that 1:1 security watch of people housed in Separation Status requires the person in custody remain in their vision at all times.

³ The Board's proposed Restrictive Housing rules require daily CHS medical and mental health rounds in all restrictive housing, notification to CHS of each placement of a person in custody into restrictive housing, and that DOC ensure all individuals in restrictive housing are brought to the facility clinic for their scheduled appointment. See proposed Subchapter G: Access to Medical and Mental Health Services §§ 6-25 – 6-28, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2019.10.29%20-%20Rule%20and%20Certifications.pdf>

6. Ensure cells in Separation Status units are fitted with large windows such as those utilized for individuals on Suicide Watch. This will allow for officers to more easily conduct constant observation.
7. Establish written protocols and forms for memorializing 1:1 security watch, such as those similar to the documentation requirements for suicide watch observations (i.e. describing all activity that transpired in each 15-minute interval).

PLACEMENT AND REMOVAL FROM SEPARATION STATUS

1. Identify and mitigate barriers to moving people to the Separation Status unit within four (4) hours of positive or refused scans, as required by the Board. Barriers may include availability of escort officers or vehicles for transportation.
2. Notify the Board as well as OSIU staff when an individual has a positive scan or refuses a scan and is not placed within four (4) hours, documenting any extenuating circumstances related to delayed placement.
3. Electronically track and report when individuals with a positive or refused scan are held in intake in restraints for more than four (4) hours and not placed in Separation Status (due to ultimate recovery of contraband or other reason).
4. Provide people placed in restraints after a positive scan or refusal to scan a reprieve from enhanced restraints every two (2) hours as required by DOC policy.⁴
5. Upon placement, provide people in Separation Status with verbal and written information on all restrictions on services while in the unit and the right to a daily scan. This information should be readily available in the Separation Status unit in both English and Spanish, and any other language the Department deems necessary.
6. Offer individuals placed in Separation Status a daily opportunity to scan to facilitate removal from the unit.

PREA COMPLIANCE

1. To comply with Minimum Standard and federal PREA standards § 115.15 and DOC policy on limits to cross gender viewing and searches, develop written protocols to ensure:
 - a. any cross-gender reviews of body scan images are documented and conducted only in exigent circumstances, and
 - b. that people placed in the Separation Status unit may shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks.

⁴ N.Y.C. DEPT. OF CORRECTION, SECURITY MEMO No. 02/16, at p.1 (effective October 3, 2016).

QUALITY ASSURANCE, MONITORING, AND REPORTING

1. Provide the Board with all individual scan data captured by scanner machine software for all scans conducted, including those that do not lead to Separation Status placement, to facilitate independent oversight.
2. Contract an independent auditor to analyze rates of false positives and false negatives in scan interpretation. The audit should inform whether additional staff trainings and/or scanner recalibrations are needed.
3. Develop an evaluation plan and strategies to assess and monitor the efficacy of both body scanners and the use of Separation Status in reducing contraband in the jails.
4. Improve body scanner and Separation Status documentation and tracking to ensure compliance with DOC policies, the Board's variance conditions, and reporting required by state law and DOHMH rules.
 - a. Add a "reason for scan" field to Scanner logbooks and ensure all electronic records include an accurate, specific reason for each scan.
 - b. Add fields for times of arrival and release from Separation Status on placement and release paperwork, and electronically track this information.
 - c. Document electronically, in scanner logbooks, and Separation Status placement paperwork whether Medical Intake has been completed prior to each new admission scan.
 - d. Incorporate metrics on contraband recovery from body scanners and Separation Status into DOC's Monthly Security Reports, which are regularly shared with the Board.
 - e. Document and track the length of time in intake and whether contraband was recovered for all positive and refused scans which do not result in Separation Status placement.