



NEW YORK CITY DEPARTMENT OF CORRECTION

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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 Several 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 within this letter 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 January 14, 2021, the date upon which the current variance is set to expire.

The presence of illicit contraband items, including weapons, drugs, and other dangerous objects, jeopardizes the well-being, safety, and security of those working and living in Department facilities. 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. However, the presence of illicit weapons and the threat of violence caused by the presence of illicit drug represents a particularly serious concern. In 2020, there were 116 slashing and stabbing incidents in which an individual in custody was seriously injured by another individual in custody.¹ These incidents are often planned and coordinated by the perpetrators. The ability to find and remove dangerous weapons and contraband from Department facilities represents an integral component of the Department's violence reduction strategy. To this end, the Department's use of body scanners and separation status housing has led to the recovery of 250 contraband items, including 174 weapons and has likely prevented countless slashing and stabbing incidents.²

Separation status housing is a temporary housing placement utilized as the least restrictive response, and as a last resort, only for those who the Department reasonably believes to have contraband on or in their person and who refuse to surrender the contraband to the Department or receive a body scan to verify the absence of contraband. Since the Department began utilizing body scan machines on July 15, 2019, there have been a total of one hundred and ten (110) placements in separation status housing. Since November 14, 2020, when the current variance commenced, there have been zero (0) placements of people in separation status housing.³ Separation Status is a necessary response to those who are unwilling to surrender the dangerous contraband in their possession. The

¹Updated as of December 15, 2020.

² As reported in the November 2020 Separation Status Monthly Report.

³ Updated as of December 23, 2020.

Department is unable to allow such individuals who the Department knows or reasonably believes to be in possession of dangerous contraband to continue to circulate among the general population.

In order to effectively operate the body scanner machines, the Department requires some type of secure alternative housing in order to safely house individuals who do not willfully surrender the contraband in their possession. Without separation status housing, the body scan machines would be made irrelevant, as there will be no enforcement as to the recovery of dangerous items and individuals will have no reason to surrender them. Given the significant importance of the housing area, the Department, in coordination with the Board, has invested considerable care and consideration into developing the housing area to ensure that individuals who require placement in the unit have the shortest and least restrictive stays possible. Thus far, the average stay in separation status have been approximately thirty-four (34) hours.⁴

The use of body scanners and separation status housing has proven to be an effective tool for contraband recovery within Department facilities. Thus far, twenty-nine (29) items have been recovered after individuals were asked to scan, but prior to them needing to go through the scanner. One hundred and sixty-six (166) contraband items were recovered after the individual received a positive scan, but prior to the individual being transferred to separation status housing. Out of the two hundred and fifty (250) contraband items recovered as a result of the use of body scanners and separation status housing, only fifty-five (55) of these recoveries required placement in separation status housing.⁵ This data serves to further demonstrate that continuation of separation status is vital to the recovery of contraband items, as individuals clearly understand that the failure to surrender the item will result in separation status placement.

Individuals who require placement in separation status housing are provided exhaustive opportunities to be removed from the housing area by producing a negative image on the body scanner. Upon placement in separation status housing, individuals receive an orientation informing them of how they can leave the housing area and the services they are entitled to while in the unit. In addition, contact information for the Board of Correction, Department of Investigation, and other resources are provided to all individuals upon entry. 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. Further, individuals in separation status continue to have access to free telephone calls in excess of the Board's Minimum Standards and may request legal material, newspapers, and magazines in a manner consistent with the general population. Individuals can also choose to participate in one (1) hour of daily indoor recreation that occurs within the housing unit.

The Department continues to comply with all reporting requirements related to the operation of separation status housing. All placement and removal paperwork is shared with the Board within one business day of it being generated. Monthly public reports are submitted, which include various data related to the use of separation status and body scanners, along with the correlating data which is used to compile the report. Copies of the Body Scanner Logbook are also submitted to the Board monthly. For persons that remain in separation status housing beyond seventy-two (72) hours, Department leadership meets to discuss the situation and issues individualized plans to encourage the surrender of the contraband items, which is also shared with the Board.

The Department understands the importance of utilizing only properly trained staff to operate body scanner machines. The insufficiently trained staff discussed by the Board at November's public meeting have since

⁴ Updated as of December 23, 2020

⁵ These items were recovered from 32 people after placement in separation status and included 28 scalpels, razors, or blades and 9 pieces of sharpened metal as reported in the November 2020 Separation Status Monthly Report.

received all required training in accordance with their respective roles as they relate to the use of body scanners. In addition, following the November Public Meeting, uniform leadership convened meetings with all the Department's Wardens to reinforce and express the utmost importance of ensuring only properly trained staff are operating and supervising the body scanners.

Following a temporary suspension of training as a result of the COVID-19 pandemic, staff body scanner training was among the first trainings resumed in July and August 2020. Since classes have resumed one hundred and four (134) members of staff have received online radiation training, ninety-nine (99) members of staff have received body scanner operator training, and forty-three (43) members of staff have received image evaluation training.⁶ Uniform leadership continues to look closely at staff assignments to ensure that only sufficiently trained staff are assigned to operate and supervise the operation of body scanners.

When an individual requires temporary separation from other 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 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 public health 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 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

⁶ Updated as of 12/16/2020

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 indoor recreation in a safe manner for individuals in separation status on a daily basis.

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 televisits. 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 and magazines one at a time. However, the Department is unable to provide

unlimited access to 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.

Sincerely,



Cynthia Brann

cc: Margaret Egan, Executive Director