



NEW YORK CITY DEPARTMENT OF CORRECTION  
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June 12, 2015

Stanley Brezenoff, Chair  
NYC Board of Correction  
51 Chambers Street, Room 923  
New York, NY 10007

Re: Request for Emergency Variance to BOC Minimum Standards § 1-17(d)(2) Punitive Segregation

Dear Mr. Brezenoff:

Pursuant to §1-15(b)(3) of the New York City Board of Correction's ("Board") minimum standards, the New York City Department of Correction ("Department") requests an emergency variance to §1-17(d)(2) and the second sentence of §1-17(d)(1)<sup>1</sup> 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 inmates be immediately released from punitive segregation for seven (7) days after they have been held in punitive segregation for thirty (30) consecutive days. This emergency variance is requested for thirty (30) days, pending the Board's consideration of the Department's petition for rule changes to the minimum standards.

This variance request is vital to addressing specific incidents of violence occurring during the required minimum 7-day period of release following thirty (30) consecutive days in punitive segregation. Under the limited circumstances described, the Department cannot practically comply with the current provisions as set forth in §1-17(d)(2) without compromising the safety and security of the facility.

The Department is committed to overall punitive segregation reform that serves the best interests of both inmates and staff. Over the past few months, the Department has undertaken extensive efforts to ensure compliance with new time limitations on punitive segregation while maintaining overall facility safety. However, while most inmates released from punitive segregation have been returned to general population housing and remain there without incident, a small number of inmates have been involved in violent incidents that have endangered the safety of inmates and staff immediately following their release from punitive segregation. This experience has demonstrated that if an inmate commits a violent act within the seven (7) days that they are released, it is critical that the Department have reasonable flexibility to remove that individual from a general population setting - to do otherwise jeopardizes everyone's safety.

Of all of the inmates who were released from punitive segregation in March and April, roughly 572, only 8.0% had a subsequent infraction within seven days of release, and only 3.8% had a violent infraction within seven days. This 3.8%, consisting of approximately twenty-two (22) inmates who committed violent infractions within a week of release, represent the pool of candidates whom the

<sup>1</sup> The second sentence of §1-17(d)(1) states "In no event may an inmate be held in punitive segregation longer than thirty (30) consecutive days."

Chief might consider for return to punitive segregation within seven (7) days of discharge in accordance with the requested variance. The violent nature of the infraction, any past violent infraction history, and considerations about the immediate ability of the Department to safely house the inmate would then influence what subset of that 3.8% would warrant a waiving of the requirement. To date, several inmates might have been approved to return to punitive segregation, including:

- One inmate who was released from punitive segregation on May 29. Five (5) days later, he slashed an inmate, but could not be returned to punitive segregation at that time. On the following day, he assaulted and injured an officer – a potentially avoidable injury, had the inmate been appropriately housed following the violent assault on the previous day. The inability to appropriately respond to the inmate’s action endangered staff and inmates alike.
- One inmate who was released from punitive segregation on May 8. While being taken to the main intake, he assaulted a captain. Despite this assault, the inmate could not be returned to punitive segregation and instead was transferred to a housing area where he could mingle with other inmates and staff.

When an inmate is released from punitive segregation for the seven (7) day period and commits a serious or violent infraction such as slashing an inmate or a serious assault on staff, in addition to the need that immediate punitive action be taken to address the dangerous behavior, it may be necessary to immediately move the inmate into a secure housing area, such as punitive segregation, to maintain safety for other inmates and officers. Often, other housing units such as administrative segregation may provide a safe solution when these issues arise. However, in a small number of cases, these alternative housing options, with additional security measures and restrictions, may not appropriately address the threat of violence and protect the safety of inmates and staff. For example, administrative segregation is a general population unit and allows inmates to freely mingle with other inmates and staff. By contrast, punitive segregation is the only type of unit that provides for complete separation. In these limited circumstances, an inmate may need to be separated from other inmates for safety purposes, in which case punitive segregation may be the only viable solution.

Enhanced Supervision Housing (ESH) also may not be an appropriate solution in these situations. ESH is a non-punitive unit designed to house inmates who, after deliberative review and a due process hearing, are deemed to pose a credible threat to the safety and security of the facility. ESH is a rehabilitative unit geared towards addressing the root causes of violence and minimizing idleness. ESH is not intended as a reactionary unit for the short-term placement of an inmate who has recently engaged in violent behavior, and it is deliberately not a substitute for punitive segregation. This distinction is further evidenced by requirements set forth in the provisions granting the option to override the 60-day within 6 months punitive segregation maximum.<sup>2</sup> Those provisions specifically state that an inmate should not be removed from punitive segregation and placed in ESH when doing so would endanger inmates or staff. This illustrates the understanding that a certain small category of inmates would be appropriate for continued placement in punitive segregation but would not be suitable for consideration in ESH. Further, ESH, unlike punitive segregation, allows for inmates to freely move outside their cells among and in close proximity to other inmates and officers for 7 hours.

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<sup>2</sup> NYC Board of Correction Minimum Standards §1-17(d)(3) “An inmate may not be held in punitive segregation for more than a total of sixty (60) days within any six (6) month period, unless, upon completion of the sixty (60) days, the inmate continues to engage in persistent acts of violence, other than self-harm, **such that placement in enhanced supervision housing, provided for in section 1-16 of this chapter, would endanger inmates or staff.** In such instances, the Chief of the Department must approve extension of the inmate’s punitive segregation placement...”

In keeping with the logic that currently permits an override of the 60-day maximum within six (6) months extending an inmate's punitive segregation stay due to the immediate threat posed by the inmate, the Department asks that an override option be implemented to allow inmates to remain in punitive segregation beyond thirty (30) consecutive days based on similar safety concerns. Prior to adoption of the punitive segregation reforms, during the deliberation process, it may have been an oversight that the same issues that had been contemplated with the drafting of the sixty (60) day maximum within six (6) months were not also considered for the seven 7-day period as both raise the same potential safety concerns. The Department acknowledges that punitive segregation is not the appropriate answer to every infraction, and not only does the Department remain committed to seeking appropriate alternatives, but it has now put in place mechanisms to prevent any systematic overuse of punitive segregation. The request for an override of the seven (7)-day required time between punitive segregation stays does not seek to overcome those mechanisms.

The Department recognizes the important purposes motivating the provisions of the minimum standards that establish time limitations on punitive segregation, particularly the goal of safeguarding the mental health of inmates. For that reason, the Department intends to implement alternative mental health protections where strict compliance with the 7-day break is not possible. For example, the Department of Health and Mental Hygiene will provide daily mental health rounds to all punitive segregation inmates who are affected by this variance. Further, over the coming month, the Department plans to achieve full compliance with the minimum standards by working with the Board to develop permanent solutions to this important challenge, including permanent rulemaking where necessary.

It is imperative that the Department be equipped with the various tools necessary to immediately respond to violent acts and prevent foreseeable additional incidents. We therefore ask that the Board take up for immediate consideration the requested emergency variance.

Thank you for your consideration and attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph Ponte".

Joseph Ponte