



December 20, 2017

Derrick D. Cephas, Acting-Chair and Vice-Chair
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

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

Dear Mr. Cephas:

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 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 variance renewal is requested for six (6) months and would take effect on January 11, 2018, the date that the current renewal is set to expire.

As we enter a new year, the Department of 2018 is vastly different than that of 2014. The last four years of dynamic reforms have resulted in a custodial management approach that recognizes the varying needs of our diverse population, establishment of programming aimed at rehabilitation and idleness reduction, and a shift in the utilization of punitive segregation. While strides in correctional practice have been transformative and have expanded the range of disciplinary alternatives, punitive segregation remains an essential correctional tool in addressing violence and particularly violent inmates.

Since April 2015, the Department has collaborated with the Vera Institute's Safe Alternatives to Segregation program, with the goal of safely reducing the use of punitive segregation and developing alternative disciplinary options. Vera's focus has been fostering the Department's current efforts by providing insight into broadening options for incentives and sanctions. Vera has shared their policy and practice recommendations and we have begun exploring additional reforms.

Maintaining safety and security within the NYC jail system is paramount. Punitive segregation reforms highlight the significant shift in both the application and duration of sentences imposed. In 2014, there were approximately 300 adult inmates in punitive segregation. This number has been appreciably reduced, to 123 adult inmates placed in any type of punitive segregation housing in October 2017, a decrease of roughly sixty (60%) percent¹. Department-wide, the proportion of the population in any type of punitive segregation decreased from 6.7% to about 1.3%.² This is well below the national average of 2.7% for inmates in jails³.

¹ This data is a snapshot from April 2014 and October 2017 and is inclusive of the Restrictive Housing Unit (RHU).

² Id.

Under the current punitive segregation structure, most inmates sentenced to punitive segregation, complete their sentence, return to general population housing and remain there without incident. There are, however, a small number of inmates who continue to engage in violent incidents, endangering the safety of staff and inmates, following their release from punitive segregation. Where an inmate has committed a violent act within the seven (7) days of release or while confined in punitive segregation, the Department must continue to have the flexibility to keep the inmate in punitive segregation. Since the initial variance was requested and granted, the Department has narrowly applied this waiver to those inmates who commit violent or multiple infractions that would have qualified the inmates to pre-hearing detention had they not just served the maximum thirty (30) consecutive days in punitive segregation. Such infractions would be limited to those demonstrating that an inmate's removal from population is necessary to protect other people from physical harm, including but not limited to, stabbing or slashing, assault resulting in death or serious injury, sexual assault, and escape or attempted escape.

The Department's application of the waiver has been limited and necessitated by the immediacy of a critical safety concern. Since the variance was first granted in September 2015, there have been a total of thirty-six (36) requests submitted to the Chief, of which twenty-seven (27) were approved. The majority of requests, thirty-four (34), were based on incidents that occurred within the seven (7) day period following the inmate's release from punitive segregation. In compliance with the variance condition, all waivers are subject to the Chief of the Department's review and approval. The waiver's conservative use does not diminish its importance or necessity when a security issue arises.

The Department must have a range of tools to immediately and safely respond to violent acts. The seven (7) day release override option is an indispensable security measure and must remain permissible. In the limited circumstances described, the Department cannot achieve full compliance with the current provisions as set forth in §1-17(d)(2) at this time, as doing so would seriously compromise the safety and security of inmates and staff. The Department continues to make a good faith effort to comply with the noted provision of the minimum standards within the previously prescribed time frame but cannot do so without jeopardizing the safety and security of staff and inmates. Recognizing the critical importance of maintaining the seven (7) day release override option, on March 31, 2017, the Department submitted a letter to the Board regarding the advancement of restrictive housing rulemaking and proposed subject matter, inclusive of the override option for their consideration. The Department urges the Board to move forward in the advancement of restrictive housing rulemaking and the inclusion of this vital security tool.

The Department appreciates the Board's consideration of this six (6) month limited variance renewal, which would allow for the use of the seven (7) day release override option in the interim period pending the Board's advancement of rulemaking.

Thank you for your consideration and attention to this matter.

Sincerely,



Cynthia Brann

cc: Martha King, Executive Director

³ A Bureau of Jail Statistics 2015 report indicated that in 2011-2012 the national daily average of inmates in solitary was 4.4% for prisons and 2.7% for jails (Bureau of Jail Statistics).