



NEW YORK CITY DEPARTMENT OF CORRECTION  
Cynthia Brann, Commissioner

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March 02, 2020

Jacqueline Sherman, Interim Chair  
NYC Board of Correction  
1 Centre Street, Room 2213  
New York, NY 10007

Re: Request for a Six (6) Month Limited Variance Renewal to the Board of Correction Minimum Standards § 1-17(d)(2) Punitive Segregation

Dear Interim Chair Sherman,

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 people be immediately released from punitive segregation for seven (7) days after they have been held in punitive segregation for thirty (30) consecutive days. The Department seeks this six (6) month variance renewal to take effect on April 16, 2020, the date upon which the current variance is set to expire.

The Department is a national leader in punitive segregation reform. Most recently, in June 2019, the Department further reformed its punitive segregation policies by expanding daily afforded out-of-cell time to four (4) hours for all individuals in the most restrictive level of punitive segregation (PS I), which includes two (2) hours of out-of-cell engagement in outdoor recreation and an hour of engagement in congregate activities. Additional out-of-cell time may be provided in PS I for mandated services, including family and attorney visits. These provisions differentiate the Department's punitive segregation units from those defined as solitary confinement under the United Nation's Mandela Rules and from more restrictive punitive units found in other jurisdictions across the country.

In accordance with the Board's Minimum Standards, if an individual has been found guilty of multiple violent grade I offenses and adjudicated to more than thirty (30) days in Punitive Segregation during their current incarceration, that individual does not serve more than thirty (30) consecutive days in punitive segregation without a seven (7) day break. The Department is able to uphold this mandate except in certain critical instances, such as when an individual commits a serious violent act against another individual in custody or staff while they are in punitive segregation or during a seven (7) day break. These violent acts have historically resulted in lacerations and fractured bones, among other serious injuries. When an individual's violence persists at a level of frequency and egregiousness that would disrupt services and injure other people in custody and staff in less restrictive settings, it is vital that the Department maintains the ability to return an individual to punitive segregation or retain an individual there in order to ensure the security and safety for all persons in Department facilities.

Since 2015, when this variance was first granted, there have been twenty-nine (29) instances when the Department determined that a seven (7) day waiver was necessary. Final authorization for this determination is granted by the Chief of the Department, who evaluates all waiver requests on a case-by-case basis in order to carefully consider whether alternative housing areas are suitable for the individual's behavioral needs and the Department's security needs.

The majority of approved seven (7) day waivers were the result of an individual committing a slashing, with the second most common reason being an assault on staff. For example, in one incident that led to the approval of a seven (7) day waiver, the individual perpetrated a serious gang-related assault during the seven day period following his release from punitive segregation. As a result of the attack, the victim sustained a fractured nasal bone and a facial wound that required sutures. In another incident that led to a seven (7) day waiver approval, an individual committed a series of violent acts following their release from punitive segregation. First, the individual struck an officer in the throat, causing the officer to require medical attention for difficulty breathing and throat swelling. The following day, the individual refused to comply with routine directions from staff, therefore causing a cell extraction. The subsequent day, still during his seven (7) day break, the individual physically assaulted a physician's assistant, punching the assistant in the face, while the physician was attempting to administer medical care to the individual.

The Department utilizes the seven (7) day waiver with utmost discretion and only when necessary to ensure the safety of staff and people in custody. The last request for a seven (7) day waiver was granted in October 2018. While this indicates the Department's responsible and conservative utilization of this tool, like any other safety mechanism, the fact that the seven (7) day waiver has not been recently utilized has no bearing on its necessity in exceptional circumstances. The seven (7) day waiver remains an essential tool in the infrequent instances when less restrictive options are insufficient to abate serious threats to the safety of staff and individuals in the Department's care.

While we continue to refine the Department's disciplinary process, with a focus on rehabilitative interventions for individuals who engage in the most serious acts of violence, certain tools such as the seven (7) day waiver must remain an option for use as an immediate response to extraordinary circumstances. The Chief of the Department demonstrates immense scrutiny of all seven (7) day waiver requests and we, as a Department, understand the responsibility that accompanies such determinations. However, the Department cannot fully comply with the current provisions set forth in §1-17(d)(2) without jeopardizing the safety and security of staff and individuals in custody. The Department appreciates the Board's consideration of this six (6) month limited variance renewal and its inclusion in the Board's proposed restrictive housing rulemaking.

Thank you for your consideration and attention to this matter.

Sincerely,



Cynthia Brann

cc: Margaret Egan, Executive Director of the Board of Correction