



NEW YORK CITY DEPARTMENT OF CORRECTION

Cynthia Brann, Commissioner

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November 5, 2020

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 below 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 November 14, 2020, the date upon which the current variance is set to expire.

Ensuring the safety of all individuals in Department facilities is vitally important. The serious harm and violence perpetrated by the presence and subsequent use of contraband endangers the well-being of all those living and working in Department facilities. There have been 88 slashing and stabbing incidents in Department facilities this year.¹ No level or frequency of violence in our facilities is acceptable. Body scanners and separation status housing are essential mechanisms for the prevention and mitigation of violence perpetrated with easily concealable weapons. Since the use of body scanners and separation status housing first began in July 2019, the Department recovered 235 contraband items, including 168 weapons.² Every piece of contraband removed by the Department means the prevention of potentially multiple acts of violence. Unrecovered weapons can remain in circulation among the population indefinitely, causing ongoing harm if not intercepted. In addition, the existence of contraband drugs places individuals in danger of drug-related health risks, including drug overdose. Further, the existence of contraband drugs within facilities can promote a system of extortion among those in custody and foster related violence. It is critical that the Department does everything in its power to prevent these incidents from happening and the body scanners and use of separation status are vital to this imperative pursuit.

On October 2, 2018, Governor Cuomo signed legislation into law permitting the non-medical use of low dosage ionizing radiation on individuals in custody in local New York correctional facilities effective January 1, 2019. On July 15, 2019, following extensive discussions and planning with various

¹ Updated as of October 15, 2020.

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

City and State stakeholders, including the Board, the Department began operating ionizing body scanners with the capability of detecting various forms of drug and weapon contraband secreted on or in individuals' body cavities. Since August 14, 2020, when the current variance commenced, there have been four (4) placements of people in separation status housing.³ The average stay in separation status for those placements is fewer than two days, at approximately forty-three (43) hours. The shortest stay in separation status, since August 14, 2020, lasted just over sixteen (16) hours. The Department continues to ensure that separations take the least restrictive form possible and that individuals are offered ample opportunity daily to relinquish the contraband they possess or otherwise produce a negative scan. Importantly, most dangerous items recovered using the body scanners were recovered from individuals without any need for their placement in separation status housing. Out of the 235 contraband items recovered as a result of the use of body scanners and separation status housing, only fifty-four (54) of these recoveries involved placement in separation status housing.⁴ To be clear, these contraband recoveries would not have occurred without the understanding of these individuals that failure to surrender the item would result in placement in separation status housing. The impact of separation status housing extends far beyond its practical use for housing individuals who refuse to comply with scanning procedures, or who are otherwise found to have contraband through a positive scan and refuse to surrender the item or items.

When placement in separation status housing is necessary, the Department ensures that all individuals are fully aware of how they can leave the housing area and their rights while they remain in the unit. All individuals are informed of the unit's rules and restrictions upon entry and are provided with the contact information for the Board of Correction, Department of Investigation, and other resources. Individuals in separation status housing continue to have access to free telephone calls in excess of the Board's Minimum Standards, and in a manner consistent with the general population. On a daily basis, individuals can choose to participate in one (1) hour of indoor recreation and are provided legal material, newspapers, and magazines upon request. Upon placement in the unit, individuals are informed of the health risks of ingestion and/or secretion of contraband. Individuals are further apprised that they may request individualized counseling on those risks from clinical staff that make daily rounds in the unit. The Department continues to provide the Board monthly public reports containing various statistics related to the use of body scanners and separation status housing, as well as all supporting data and documentation. For any individual who remains in separation status beyond seventy-two (72) hours, the Department creates individualized plans for removal that are also shared with the Board.

Every effort must be taken to address the threat of an individual who is known or reasonably believed to possess contraband. Separation status housing and body scanners are indispensable tools utilized by the Department in our continuous and unabating efforts to prevent potential harm and limit the risk of use, distribution, disposal, or concealment of contraband in the facilities. Temporary housing by way of separation status is essential to ensure the safe recovery of identified contraband. The Department remains committed to ensuring individuals spend the least amount of time in the housing unit as possible and that the unit continues to be the least restrictive possible while still maintaining the unit's purpose and integrity of operation. 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

³ Updated as of October 22, 2020.

⁴ These dangerous items were recovered from 31 people after placement in separation status and included 27 scalpels, razors, or blades and 9 pieces of sharpened metal as reported in the September 2020 Separation Status Monthly Report.

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 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. We additionally look forward to continuing our work in partnership with the Board in order to ensure the consideration of separation status housing in the Board's restrictive housing rulemaking.

Sincerely,

A handwritten signature in blue ink that reads "Cynthia Brann". The signature is fluid and cursive, with the first name "Cynthia" and last name "Brann" clearly legible.

Cynthia Brann

cc: Margaret Egan, Executive Director