



June 3, 2016

Stanley Brezenoff, 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. Brezenoff:

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) and the second sentence of §1-17(d)(1)¹ 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, which was granted by the Board at the December 16, 2015 public meeting. This variance renewal is requested for the maximum permissible period of six (6) months. In the Department's November 10, 2015 limited variance letter to the Board, we indicated it would take approximately two years to effectively establish appropriate secure housing alternatives for this population. In the interim, the Department will continue to seek renewals of this limited variance.

This variance request remains critical in addressing specific incidents of violence occurring during the required minimum 7-day period of release following thirty (30) consecutive days in punitive segregation. In the limited circumstances described, the Department cannot achieve full compliance with the current provisions as set forth in §1-17(d)(2) and the second sentence of §1-17(d)(1) at this time, as doing so would seriously compromise the safety and security of inmates and staff.

Over the last two years the Department has fundamentally transformed our use of punitive segregation. Inmates no longer serve any time that was accrued during a previous incarceration. A tiered system has been established resulting in only serious, violent infractions subject to full punitive segregation time, with those who commit less serious or non-violent infractions receiving seven (7) hours of out-of-cell time each day. Most minor infractions no longer earn any punitive segregation time and, with few exceptions, we have capped the maximum sentence to thirty (30) days. The overall use of punitive segregation has decreased by 75% and will decrease even further due to the addition of the young adults to the populations that are no longer placed in punitive segregation. These historic changes reflect the Department's shift in our methodology and utilization of punitive segregation as a limited and more meaningful tool.

¹ 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."

Generally, of those inmates who are sentenced to punitive segregation, most return to general population housing and remain there without incident. A small number of inmates continue to engage in violent incidents, endangering the safety of inmates and staff, immediately 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.

As previously stated, the requested waiver of the seven (7) day release period would continue to be narrowly applied to those inmates who commit violent or multiple infractions that would have qualified the inmates for 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 stabbing or slashing, assault resulting in death or serious injury, sexual assault, and escape or attempted escape.

In the ten (10) months since the Board approved the variance to permit the seven (7) day release override option in September 2015, there have been twenty-one (21) requests submitted, sixteen (16) of which have been approved. All waivers are subject to the Chief of the Department's review and written approval with immediate notification provided to the Board and the relevant healthcare provider. The Department has utilized a conservative methodology in evaluating each override request. The override option remains a vital safety tool in these limited circumstances.

Since the variance was granted, the Department has continued our collaboration with the VERA Institute's Safe Alternatives to Segregation program to assess and develop alternatives to segregation that address the specific needs of this population. We are currently awaiting Vera's report which is anticipated to be released in July. The report will provide VERA's assessment of our facilities and recommendations for segregation alternatives. The Department continues to make a good faith effort to comply with the minimum standards, but additional time is needed to develop alternative options to ensure the safety and security of the facilities. In the interim, it is imperative that the Department be equipped with the various tools necessary to immediately and safely respond to violent acts. We therefore ask that the Board take up for immediate consideration the requested limited variance renewal for six (6) months.

Thank you for your consideration and attention to this matter.

Sincerely,

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

Joseph Ponte