



July 3, 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, which was first granted by the Board in September 2015¹ and last renewed at the January 10, 2017 public meeting. This variance renewal is requested for six (6) months and would take effect on July 11, 2017, the date of the Board's next public meeting.

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) at this time, as doing so would seriously compromise the safety and security of inmates and staff.

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 about 1/3 of that total placed in any type of punitive segregation housing: 107 adult inmates² in June 2017. Department-wide across all age groups, the proportion of the population in any type of punitive segregation decreased from 6.7% to about 1%.³ This is well below the national average of 4.4%.

¹ The limited variance granted by the Board on September 8, 2015 was for a period of ninety (90) days.

² This data is a snapshot from April 2014 and June 2017.

³ Id.

The fundamental changes that have been advanced over the last several years have led to a transformation in the use of punitive segregation. We have recognized the importance of swift and certain consequences in the imposition of sentences, resulting in a more measured and meaningful application. It is equally important to acknowledge that punitive segregation remains an essential correctional tool in addressing violence and particularly violent inmates.

Within the current punitive segregation construct, 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. As we have repeatedly stated and reflected in the data provided herein, this waiver would be narrowly applied 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 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. To date, there have been a total of thirty-one (31) requests submitted to the Chief, of which twenty-three (23) were approved. In compliance with the variance condition, all waivers are subject to the Chief of the Department's review and written approval. The waiver's conservative use does not minimize its continued vital importance.

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. During the last two years, the Department collaborated with the Vera Institute's Safe Alternatives to Segregation program to assess and develop alternatives to segregation that address the specific needs of the population. 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 the Department is conducting an internal review of their findings. On June 27, 2017, the Department submitted a public report to the Board outlining our punitive segregation reforms and related issues as set forth in the variance conditions.⁴

It remains essential that the Department 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. Recognizing the critical importance of maintaining the seven (7) day release override option, the Department began pursuing rulemaking. 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. There has been continued discussions with the Board towards the establishment of new Minimum Standards that will serve to provide for comprehensive changes. The Department urges the Board to move forward in the advancement of restrictive housing rulemaking and the inclusion of this vital security tool.

⁴ On June 27, 2017, the NYC Department of Correction submitted to the NYC Board of Correction a report titled "Efforts to Reform Punitive Segregation and Create Therapeutic Alternatives to Address Persistent Violence by Individuals in NYC Department of Correction Custody."

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.

Thank you for your consideration and attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Cynthia Brann". The signature is written in a cursive style with a large initial "C".

Cynthia Brann

cc: Martha King, Executive Director