



September 8, 2017

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

RE: Six (6) Month Limited Variance Request – Sexual Abuse and Sexual Harassment Minimum Standards §5-17(f), §5-17(g) and §5-18

Dear Mr. Cephas;

Pursuant to §1-15(b)(1)(i) of the New York City Board of Correction's ("Board") Minimum Standards, the New York City Department of Correction ("Department") requests a six (6) month limited variance from the following provisions of the BOC Minimum Standards §5-17(f), §5-17(g) & §5-18 "Screening for Risk of Victimization and Abusiveness" & "Use of Screening Information"¹, which requires the Department to reassess within thirty (30) days and as warranted, the inmate's risk of victimization and abusiveness, and instructs the Department to utilize the information when making housing, bed, work, education and program assignments for the inmate population. As set forth in detail below, the Department is seeking this limited variance to allow the time necessary to build a centralized, automated, and system solution that will optimize screening and risk assessment procedures. Currently, the

¹ NYC Board of Correction BOC Minimum Standards §5-17(f) "Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the Department will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the Department since the intake screening." §5-17(g) states "An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.

In addition, §5-18 provides that:

"(a) the Department shall use information from the risk screening required by 40 RCNY § 5-17 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.

(b) The Department shall make individualized determinations about how to ensure the safety of each inmate.

(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the Department shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

(d) The Department shall not assign a transgender or intersex inmate to a men's or women's facility based solely on the inmate's external genital anatomy.

(e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

(f) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

(g) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

(h) The Department shall notify the Board, in writing, of each placement of a transgender or intersex inmate, all information considered in making the determination and the reasons for the housing determination. The Department shall provide the Board with such information commencing on January 5, 2017 (with respect to the previous two-week period, i.e., December 19, 2016 - December 31, 2016) and within two (2) business days following the end of each two-week period thereafter.

(i) The Department shall implement this section by the effective date of this rule provided the Department has sufficient resources and necessary staffing."

Department is limited to a paper review that does not allow for full compliance. The Department requests that this variance take effect immediately.

Since January 2017, the effective date of the BOC Elimination of Sexual Abuse and Sexual Harassment in Correctional Facilities Minimum Standards, the Department has worked diligently to establish policies and procedures to meet the requirements of the new standards. Ensuring that all inmates in our custody are protected from sexual abuse and harassment is of the highest importance. To that end, the Department instituted a screening tool, in compliance with §§5-17 & 5-18 of the Minimum Standards, geared to identify individuals who may be vulnerable in a jail setting and to properly house these individuals. To effectively rollout the new screening tool, trainings were conducted in April 2017 for staff in intake, classification and movement. During the training, staff was instructed on how to complete the screening tool, and how to apply the information once obtained. Upon completion of targeted staff training, the tool was utilized throughout the facilities in a paper format. When the screening tool was initially operationalized, the information was manually collected at the facility level by designated staff.

We projected that the initial system would position the Department to be in full compliance with the above-mentioned Minimum Standards. After several months of operationalizing this process, and in light of the complexities associated with one of the largest jail systems in the country, we recognize the need to establish an electronic database to centralize the current process. The current paper-based system does not fully achieve the fundamental purpose of utilizing the information obtained to “inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.”²

As a result of the issues identified within the current screening and reassessment procedures, the Department is conducting an evaluation to determine how best to transition from the current structure to an electronic system that would improve both the completion of the tool as well as its utility in identifying and appropriately housing these special categories within the inmate population. Over the next several months, the Department will update the electronic database to incorporate the key screening indicators. Once integrated, the screening tool will be electronically completed by intake, classification and movement staff. This will allow staff to use the screening indicators to make housing decisions based on responses, including whether an inmate is designated as a potential sexual abuser, sexual victim or neither. Custody Management will then assign housing units according to the designation in the Department’s central database known as the Inmate Information System (IIS). IIS will restrict inmates from being improperly housed in areas with conflicting designations.

Despite our best efforts, without implementing the above-mentioned system, full compliance of the noted provisions cannot be achieved in an effective manner at this time. It is imperative that the Department has the necessary time to transition into an electronic system to ensure that the information gathered serves to house our vulnerable populations more efficiently. The electronic system is currently in production. The Department requires additional time to fully develop and enhance the program design and train staff on the operational uses of a new system. We estimate that the electronic system will be instituted with the necessary screening criteria by the end of October 2017. At that juncture, we will educate staff on the new system and roll out trainings in two (2) cycles. The first cycle will be administered to officers and supervisors that conduct the day-to-day operations as it pertains to intake, classification and movement of the inmate population. The second cycle will include staff at the

² See NYC Board of Correction §5-18(a) “Use of Screening Information”.

Assistant Deputy Warden level and above. It is anticipated that by early February 2018 we will introduce the new electronic database Department-wide. During the initial roll out the Department will monitor and make any necessary adjustments to ensure performance and consistency.

The Department is committed to maintaining a zero tolerance policy for any form of sexual abuse or sexual harassment and establishing policies and procedures for the prevention, detection, and response to sexual allegations. As we move forward with implementation, the Department will provide the Board with periodic updates.

The Department appreciates the Board's consideration of this six (6) month limited variance which would allow for the time needed to transition to the new electronic system. We look forward to continuing discussions with the Board towards the full implementation of the Sexual Abuse and Sexual Harassment Standards.

Sincerely,



Cynthia Brann

cc: Martha King, Executive Director