



NEW YORK CITY DEPARTMENT OF CORRECTION

Cynthia Brann, Commissioner

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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 within this letter 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 May 15, 2021, the date upon which the current variance is set to expire.

The Department is committed to eliminating illicit contraband items, including weapons, drugs, and other dangerous objects from our jails. The presence of these items significantly jeopardizes the safety of those living and working within the facilities as they are a strong antecedent to violence. In CY2020, there were 121 slashing and stabbing incidents in which an individual in custody was seriously injured by another individual in custody. The ability to find and remove dangerous weapons and contraband from Department facilities represents an integral component of the Department's violence reduction strategy. The use of body scanners and separation status housing offers great support to these efforts and has led to the recovery of nearly 500 contraband items, including 200 weapons. The removal of these items from circulation among the incarcerated population has likely prevented countless slashing and stabbing incidents. In addition, the recovery of drugs, as a result of the use of the body scanners and separation status serves to prevent the likelihood of drug overdoses, as well as drug related extortion and associated violence. Thus far, more than 200 drug contraband items have been recovered as a result of the use of body scanners and separation status housing.¹

The Department only utilizes separation status housing in the rare circumstances when all other contraband recovery efforts have been exhausted and the individual suspected to be in possession of contraband continues to refuse to relinquish the item or show a negative body scan finding despite all Department efforts to recover the item or avoid the individual's placement in separation status housing. Since the most recent variance was granted by the Board in January 2021, only one (1) person has been placed in separation status housing. The Department believes this reduction in placements is the result of a number of factors, including the robust efforts of Department staff to work with individuals in order to gain compliance, as well as a developed awareness among

¹ Updated as of April 14, 2021.

the population that a refusal to comply with search procedures results in separation status placement and no outlet to avoid the surrender of contraband. Although it is utilized sparingly, the continuation of separation status is vital to the Department's efforts to remove contraband from circulation in our facilities. Thus far, one hundred sixty-nine (169) contraband items have been recovered after individuals were asked to scan, but prior to them needing to go through the body scanner. Two hundred sixty-five (265) contraband items were recovered after the individual received a positive scan and without the need to facilitate their placement in separation status housing. Without the operation of a separation status housing area, however, likely none of these four hundred thirty-four (434) contraband items would have been surrendered or recovered. Separation status housing is vital not only for the individuals who refuse to surrender the contraband in their possession, but also for the individuals who choose to surrender the contraband in their possession in order to avoid placement in separation status housing.

For those individuals who refuse to surrender the contraband in their possession after a positive body scan finding, the Department works to ensure that they have the shortest and least restrictive stay possible in separation status housing. Thus far, the average stay in separation status is fewer than two days.² All those who are placed in the unit are provided exhaustive opportunities to leave the housing area by producing a negative image on the body scanner. Upon entry, all individuals receive an orientation that consists of the unit's rules and restrictions as well as contact information for the Board of Correction, Department of Investigation, and other resources. During their stay in separation status, individuals continue to have access to free telephone calls in excess of the Board's Minimum Standards, and may request legal material, newspapers, and magazines in a manner consistent with the general population. Individuals can also choose to participate in one (1) hour of daily indoor recreation within the housing unit. Individuals continue to have access to virtual court appearances, attorney visits, and law library services in the same manner as currently provided in general population housing through the use of a videoconference kiosk in the unit. Also, upon entry, individuals are informed of the health risks of ingesting and/or secreting contraband and that they may request individualized counseling on those health risks from clinical staff that make daily rounds in the unit and the law library service request system. Those placed in the unit are additionally supervised by an officer who monitors their wellbeing throughout their time in separation status.

The Department continues to promote transparency through its compliance with all BOC reporting requirements related to the use of separation status housing and body scanners. The Department shares the individualized plans that are generated for those who remain in separation status beyond seventy-two (72) hours, along with all separation status placement and removal paperwork within one business day of it being generated. Monthly public reports are also submitted, which include various data related to the use of separation status and body scanners, along with the underlying data which is used to compile the report. Copies of the Body Scanner Logbook are also submitted to the Board monthly.

The Department understands the importance of utilizing only properly trained staff to operate and supervise the body scanner machines. Following a temporary suspension of training as a result of the COVID-19 pandemic, staff body scanner training was among the first trainings resumed in July and August 2020. Since November 2020, one hundred and twenty-five (125) staff have been trained in Online Radiation Safety, one hundred and forty-seven (147) have been trained in Body Scanner Operation, and seventy-three (73) staff have been trained in Image Evaluation.³ The Department has worked diligently to ensure that body scanners are only being operated and supervised by properly trained staff members. The most recent body scanner staff training audit from March 2021 found that 100% of the six hundred seventy-five (675) scans reviewed were both operated and supervised by properly trained staff. The one positive scan leading to placement in separation status during the variance period

² Approximately thirty-three (33) hours and thirty-one (31) minutes as of April 19, 2021.

³ Current as of April 9, 2021.

was additionally reviewed by a supervisor specifically trained in body scanner image evaluation. All of these audit findings have been additionally submitted to the Board for their review.

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 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

Individuals in separation status housing are currently afforded access to video court appearances and attorney visits via a videoconference kiosk located in the unit. In the event that in-person court appearances are scheduled for individuals in separation status housing, individuals will be afforded the opportunity to clear the body scanner prior to their court date. Individuals who clear the body scanner will be produced for court and processed for removal from separation status housing. The Department will return to its practice of consulting with the Office of Court Administration on producing people in Separation Status for in-person court appearances 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

Transportation to visit areas where televisit kiosks are located 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.

Sincerely,



Cynthia Brann

cc: Margaret Egan, Executive Director