



NEW YORK CITY DEPARTMENT OF CORRECTION
Joseph Ponte, Commissioner

Office of the Commissioner
75-20 Astoria Blvd., Suite 305
East Elmhurst, NY 11370

718 • 546 • 0890
Fax 718 • 278 • 6022

November 4, 2016

Stanley Brezenoff, Chair
NYC Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

Re: Supplemental information related to variance request from Minimum Standard §1-07 (“Religion”) and §1-08 (“Access to Courts and Legal Services”)

Dear Mr. Brezenoff:

The Department would like to provide further clarification related to the inmates such as those currently housed in West Facility who are, for security purposes, limited in their access to congregate settings. Through its variance request from Minimum Standard §1-07 (“Religion”) and §1-08 (“Access to Courts and Legal Services”), requested on October 7th, 2016, the Department is seeking to establish a new security status – one that focuses on a small population of inmates in two categories: (i) those with particularly violent histories who must be mingled as little as possible for the safety of others; and (ii) those in protective custody who must be mingled as little as possible for their own safety.

Inmates warranting this security status will be housed in the West Facility at this time, and potentially units with the necessary security elements in other facilities, allowing for non-congregate or smaller, more selective congregate settings in which to provide services. No other facility has been identified at this time. Whole housing units will be dedicated to housing inmates in this status, so the Department can consistently apply the programs and services in the required manner.

This security status meets a consistent need of the Department, as illustrated by the inmates currently being accommodated in this manner. Inmates with this security status have long histories demonstrating that punitive segregation, ESH, protective custody, or enhanced restraint status are unable to protect or prevent them from further violence – whether as a victim or a perpetrator. This security status provides the necessary physical separation from other inmates during services that these other housing options cannot provide.

Adult inmates must meet at least one of the following criteria in order to be placed in the Individual Safety Status:

1. The inmate has been directly and persistently involved in perpetrating violence or has directly influenced the perpetration of violence amongst one or more other inmates in a congregate setting;

2. The Department is in possession of verified intelligence that the inmate cannot safely congregate with other inmates in a specific service(s) or services because that inmate may be the victim of an act of violence by one or more other inmates attending the service;
3. The Department is in possession of verified intelligence that the inmate cannot safely congregate with other inmates in a particular service or services because that inmate may perpetrate an act of violence on one or more individuals attending the service.

Three examples of inmates currently meeting this criteria include:

- One inmate is in enhanced restraint status; has been previously housed in GP, MO, PSEG, RHU, and ESH units; and has committed 97 reportable incidents, including 19 AOS, 44 UOF, and 3 criminal acts, leading to 11 rearrests. His behavior toward other inmates makes him persona non grata in any congregate setting.
- One inmate is in Red ID/enhanced restraint status; has been previously housed in 7 different GP units, PC, PSEG, and enhanced restraint housing; has committed 5 reportable incidents of which 3 are slashings; and has also been the victim of a slashing.
- One inmate is in Red ID/enhanced restraint status; has been previously housed in GP units in 5 different facilities, MO, and enhanced restraint housing; and has 11 reportable incidents, including 6 UOF and 1 stabbing, which was not sanctioned by his SRG and rendered him a likely target of violence.

The information required to determine whether inmates meet this criteria is gained through careful review of inmates' infraction histories, past housing and movement, and thorough intelligence gathering and review, including personal interviews and assessments. These criteria do not dramatically differ from criteria used to place adults into ESH, PSEG, protective custody, or enhanced restraint status, but the qualitative differences in the criteria require the additional levels of security provided by the Individual Safety Status. This status addresses the fact that these inmates have been housed in multiple housing units such as PSEG and ESH, but still present a security and safety concern to other inmates; or are of such a status that violence has or is likely to occur, specifically in congregate services where physical proximity to others presents a heightened risk.

The identified services will be provided in a modified setting appropriate to the security needs of the inmates, unlike ESH and protective custody housing units or enhanced restraint status, where the services are conducted in a congregate setting, or in punitive segregation, where those services are provided in-cell. Because of the small number of inmates to whom this status applies, the staff can schedule out-of-cell time in settings that limit the congregating of inmates. Inmates are offered all their mandated services, but in modified settings: they are offered recreation, access to the dayroom, and religious and legal services. The number of hours of recreation offered varies from two or more hours, and access to the dayroom is rotated to allow for individual or smaller gathering of inmates. Other services are offered based on scheduling availability, as occurs in any other facility or any other security status. All other minimum standards will be met in full, as they are not impacted by this security status.

The Department will not place adolescents in this security status. Young adults between the ages of 18-21 will only be placed in an individual safety status under rare circumstances, as demonstrated by the two young adults currently housed there. The criteria will mirror those used to place adults into this security category, but due to the wider range of options for this population, the Department will

have exhausted most, if not all, of the other options prior to placement of young adults in this security status. The information will be similarly acquired by careful review of the young adults' infraction histories, past housing and movement, and any intelligence that has been gathered on their or others' intent to commit violence in congregate settings.

Similarly to adults, young adults with this security status have long histories demonstrating that the variety of other housing options, at varying levels of security and congregation, are inadequate in protecting or preventing them from further violence; this security status provides the necessary physical separation from other inmates during services. Young adults, ages 19 to 21 years old, may be commingled with adults while in this security status, as they may be in any other housing unit.

As a matter of policy, the Department will not place individuals known to have SMIs into the Individual Safety Status; however, due to the lack of information on the mental health status of inmates beyond an "M" designation, an inmate may be placed in this security status without the Department's knowledge of his/her status as an individual with SMI. If this occurs, the Department will work closely with NYC Health + Hospitals (H+H) to find the safest placement for the individual's treatment, whether that placement is in CAPS, PACE, or some similarly secure unit that allows the inmate to receive the necessary treatment while maintaining safety and security objectives for staff and inmates.

The Individual Safety Status is not intended to apply to inmates with SMIs, so the criteria is not based on mental health status, whereas placement in PACE or CAPS – housing units rather than a security status– is based on mental health status, as well as institutional behavior. Similarly, Mental Observation units are intended to treat those whose mental health needs at the time exceed those of general population, and placement in such units is based primarily on those needs rather than an inmate's security needs. Since this security status applies only to congregate services, all health and mental health minimum standards will be met as they are in any other setting. The non-congregate conditions are not considered harmful to the health or mental health of the qualifying inmates, and regular periodic reviews of the inmate's behavior and conditions, including mental health and medical rounds by H+H staff, will ensure that those conditions do not contribute negatively to an inmate's overall well-being. The Department has discussed the types of inmates warranting this security status and their associated issues with H+H, and we will continue that dialogue.

Inmates placed in the Individual Safety Status will be provided with written notification of their placement. The notice will include the determination in writing of his/her status, the specific facts and reasons underlying the limitation, and a hearing to determine whether the status is appropriate. Furthermore, the inmate will have an opportunity to appeal his or her placement in the Individual Safety Status. Sixty days were requested to implement due process for this security status, as the Department had to develop forms that would be served to the inmate and implement the appropriate due process for this particular status. The Department expects to implement the full due process well in advance of the sixty days. By the end of this week, all inmates will be afforded due process on the basis of the criteria outlined above, including all necessary documentation. A new policy for the Individual Safety Status has been developed and will be distributed immediately.

In terms of services, law library kiosks are currently being installed in the West Facility to accommodate the minimum standard of providing access to effective legal research. The Department anticipates having all kiosks operational by early November. If we choose to house inmates in this status in other housing units, we will ensure those housing units will have access to law library kiosks.

Due to the driving factor of maintaining the safety and security of staff and inmates in developing this security status, the Department will use its standard metrics focused on tracking violence, such as slashings/stabbings, inmate assaults, and assaults on staff. Despite their long histories of violence, the Department anticipates a reduction in the number of UOF involving these inmates as well, as a result of the more secure setting. We will provide reporting every six months on these factors for the housing units that are used to house inmates with this status.

The Department appreciates the Board's consideration of these variance requests. We look forward to discussing this issue further, and as appropriate, will seek longer-term rule-making to incorporate these management tools into the minimum standards.

Sincerely,

A handwritten signature in cursive script that reads "Joseph Ponte".

Joseph Ponte

cc: Martha King, Executive Director