

Department of Correction Response to the Board of Correction Report of Body Scanners and Separation Status in NYC Jails

February 7, 2020

Maintaining the safety and well-being of all individuals in custody and all staff who work in Department facilities is a critical responsibility of the Department of Correction (“the Department”). Separation Status housing is a tool the Department utilizes only in emergency situations when individuals are identified to be in possession of dangerous contraband following a positive body scan or a scan refusal. The ability to separate people in possession of dangerous contraband from other people in the Department’s care allows the Department to ensure everyone’s safety, including the safety of the person in possession of contraband.

The Department, in collaboration with the Board, has taken a number of steps in the past several months in order to ensure that the separation status unit is the least restrictive setting possible to ensure the safety of all people in Department facilities. Following the passage of the variance in November, the Department installed a tele-visit booth in the separation status unit and ensured community service providers, legal defense organizations, and the Courts were provided access and information surrounding its operation. The Department installed recreation equipment within the separation status unit in order to facilitate indoor recreation in compliance for people whose stay in separation status extended beyond forty-eight (48) hours, per the variance conditions. The Department additionally produces monthly public reports, created plans for removing individuals whose stays in separation status lasted beyond seventy-two (72) hours, and provided individuals in separation status legal materials and newspapers upon request.

We are committed to ensuring separation status housing takes the least restrictive form possible while still ensuring everyone’s safety. In addition to complying with the Board’s variance conditions, the Department also repainted the separation status unit (including inspirational messages on the walls) and improved lighting in order to create a more positive environment. We continue to provide individuals in separation status access to telephone calls in excess of the Minimum Standards, free of charge, and in a manner consistent with the general population. Calls to attorneys and oversight bodies are unlimited and confidential. The Department also created orientation forms with information on the unit’s services and restrictions, which are now provided to individuals upon entering the separation status unit. This form is provided in addition to the verbal orientation all individuals receive.

The Department takes the Board’s training findings extremely seriously and has zero tolerance for any use of scanners by improperly trained staff. Upon being alerted to the issue, the Department took a number of immediate actions to address the identified issue. Please refer to the Department’s responses to the Board’s recommendations below for additional detail on those actions and the Department’s continued efforts as they pertain to the safe and effective use of body scanners and the operation of separation status housing.

SAFE, FAIR, AND EFFECTIVE USE OF BODY SCANNERS AND SEPARATION STATUS

1. *Immediately develop and implement a corrective action plan to ensure safe, fair, and effective use of body scanners and Separation Status. At minimum, the Department's corrective action plan must include efforts and policy changes to:
 - a. *Ensure all staff (Correction Officers and Captains) operating or supervising scanners have completed radiation safety and body scanner operator training, including image evaluation, and that untrained staff never need to operate scanners due to staffing movement.**

DOC Response: Upon completion of radiation safety training and body scanner operator training, which includes image evaluation training components, staff receive an individual log-in credential. The body scanner machines are designed to require staff to enter their unique credential before operation. There are appropriate numbers of trained staff at each facility with a body scanner, ensuring that a trained officer is available in the area to conduct body scans at all times. The Department's Training & Development Division coordinates with facility management to ensure up-to-date information regarding newly assigned staff that require body scanner training.

Immediately upon notification of the issue regarding untrained staff operating body scanners using trained-staff's credentials on 1/3/2020, the Department launched an internal investigation in order to verify the scope of the issue and the particular staff responsible. The findings of this investigation have been referred to the Investigation Division for further investigation and staff discipline, as appropriate. That investigation is ongoing as video is reviewed and staff are interviewed, per investigation protocol. The Department also issued security memoranda at each facility with a body scanner reiterating the policy that only appropriately trained staff may operate the body scanners and such staff must use their own log-in credentials at all times. Those memoranda were read to staff at each facility with a scanner three times a day for a full week. The Department is further updating its training list in order to ensure, on an ongoing basis, that an adequate number of trained staff are assigned to areas with body scanners at all times.

In order to verify the impact of these immediate actions, the Department conducted an audit of all body scanner logbooks on a randomly-selected date (1/11/20). The audit findings demonstrated that 98.2% of the scans conducted on the date were conducted by properly trained staff, thereby indicating that the Department's immediate response was largely effective. The one instance of noncompliance uncovered through this audit was immediately referred to the Investigation Division for appropriate action.

While the Department was in the process of conducting a successive internal audit, the Board shared their second audit findings with the Department. The Board's audit found that while compliance had improved significantly, there continued to be identified instances where improperly trained staff were operating body scanners. Upon review of these findings, the Department issued a Department-wide teletype on

2/4/2020, which is being read at twenty-eight (28) consecutive roll calls. The teletype reiterates the requirement that all scanner operators use their own log-in credentials and are properly trained. The teletype also reiterates the requirement that tour commanders ensure an adequate number of properly trained staff are assigned to scanner areas at all times. The teletype additionally requires all uses of body scanners to be authorized by the on-duty tour commander prior to use, performed under the supervision of a captain, and notes that any identified failure to comply with the teletype orders and any unauthorized use of the scanners will result in staff discipline for all involved staff, including the on-duty tour commander, the scanner operator, and the individual whose log-in credentials were used by an improperly trained staff member.

In addition to immediately issuing the aforementioned teletype, the Department posted multiple signs on each body scanner machine with explicit direction to staff indicating that only properly trained staff may operate the machines. The Department also circulated body scanner talking points to be discussed with facility leadership at weekly internal meetings and further read to all staff during roll calls. The Department continues to assess the efficacy of these responses and will further conduct audits on a weekly basis in order to ensure compliance with Department policy and the immediate referral of any staff identified to act in a noncompliant manner for investigation and disciplinary action as appropriate.

- b. Require all staff involved in reviewing and approving Separation Status placements and removals (Tour Commanders and OSIU staff) to be trained to review scan images.*

DOC Response: The Department is currently in the process of ensuring all staff responsible for reviewing scanner images, including OSIU staff and tour commanders in facilities with body scanners, are trained in image evaluation. The current policy requires only scanner operators to receive training. However, the Department completed image evaluation training of all necessary OSIU staff in January 2020 and is currently in the process of ensuring tour commanders receive appropriate training. These additional required trainings will be included in the next iteration of revised policy.

- c. Establish regular audits of body scanner logbooks to confirm officers operating scanners have received all required training. These audits must involve review of the Department's training records and a comparison with data collected by scanner software to uncover any misuse of credentials.*

DOC Response: Please refer to response to 1(a). The Department will continue to conduct audits and will verify scanner log-in information if any discrepancies between trained staff and staff conducting scans are identified.

- d. Until the Department implements its corrective action plan and completes a comprehensive investigation into how staff who were not trained were allowed to*

use the scanners, the Department should provide the Board with a list of trained staff at each facility who will be permitted to operate scanners, supervise scans, and review images for placements and removals from Separation Status so the Department and the Board can closely monitor compliance. This list should also be available at each scanner location.

DOC Response: The Department maintains this list and provided this list to the Board in order to facilitate the Board's reviews. The Department will continue to provide updated lists upon request. The Department has additionally posted a list of trained facility staff in the area of each scanner. These lists will be updated as necessary moving forward.

- 2. Update the "Use of Body Scanner" directive and other relevant policies to address the findings and recommendations made in this report. Train all relevant staff on the updated policies.*

DOC Response: Per previous discussion with Board staff, the Department was in the process of revising the body scanner policy prior to the Board's report in order to appropriately enumerate updated procedures and requirements. Many of the Board's recommendations were incorporated into the directive draft prior to the Board's report (as noted in these responses), and additional information will be included in the directive, as appropriate. All relevant staff will be trained on the updated directive once it is finalized. Pending the Board's consideration of the Department's variance renewal, the Department plans to finalize its revised directive no later than April 1, 2020.

- 3. Continue to evaluate whether Separation Status conditions are the least restrictive necessary to separate people who are believed to have contraband. For example, the Department should consider whether movement in enhanced restraints may allow for in-person attorney visits and/or outdoor, secluded recreation.*

DOC Response: Since opening the Separation Status unit, the Department has made several efforts to increase available services in the unit. These efforts have resulted in the creation of a recreation area, installation of a tele-visiting booth, and the availability of legal materials and newspapers upon request, among other changes. Moving forward, the Department will continue to evaluate the current unit conditions to ensure they are the least restrictive means necessary to separate people who are believed to have dangerous contraband, while maintaining the Department's ability to keep all people in custody and staff safe.

PLANNING AND ROLLOUT

- 1. DOC and CHS should improve coordination with each other and the Board when planning and implementing new restrictive housing such as the Separation Status unit. Coordination will help ensure that appropriate safeguards are in place, that conditions are the least restrictive necessary to maintain safety, that patient health is protected, and that units comply with Minimum Standards. DOC and CHS planning processes should*

make certain adequate infrastructure, policies, documentation, and internal tracking and monitoring systems are set-up prior to initiating operations.

DOC Response: The Department and CHS coordinate every day to resolve issues, plan for future policies, coordinate work-flows, and otherwise ensure efficient operations. With that said, the Department will continue to collaborate with CHS and will make every effort to ensure CHS is informed and provided sufficient advance notice of all Departmental operation changes that impact CHS operations and provision of services to individuals in custody.

HEALTH AND MENTAL HEALTH

1. *Explicitly exclude women and people who could become pregnant from being scanned.*

DOC Response: The Department will explicitly include the exclusion of women in its next iteration of policy, as indicated to the Board prior to the publication of their report. Further, the Department has not, and does not intend to scan women in custody, and has already incorporated such measures into its operations.

2. *Conduct daily CHS mental health rounds as well as medical rounds in Separation Status units.*

DOC Response: Please see CHS response to this recommendation.

3. *Ensure DOC and CHS coordination so that medications and medical and mental health appointments are not missed during Separation Status placement. Notifications of Separation Status placement to Correctional Health should include a process for notification to Mental Health and Pharmacy staff.*

DOC Response: The Department consistently notifies CHS of all individuals placed and removed from separation status housing and has done so prior to the Board's variance conditions and report. The Department makes such notifications via CHS' separation status distribution list for all separation status placements. Notification is made as soon as possible after placement and within the same staff tour.

4. *Conduct counseling during CHS medical rounds on the potential health risks associated with the secretion or ingestion of contraband and conduct full assessments in a clinical setting as necessary.*

DOC Response: Please see CHS response to this recommendation.

5. *Reinforce to staff that 1:1 security watch of people housed in Separation Status requires the person in custody remain in their vision at all times.*

DOC Response: Per previous discussion with CHS and the Board, the Department provides all individuals placed in separation status housing with one-to-one security

watch. Officers stationed on one-to-one security watch are assigned to a post which is generally positioned near the incarcerated individual's assigned cell (i.e. standing or sitting across from the cell). The officer is in a position to hear the incarcerated person if there are any issues and is generally expected to visually observe the inside of the cell at least every 15 minutes to respond to requests for services, communicate with the person in custody to mitigate the experience of short-term isolation, and notify CHS in the event of a health emergency. The officer is also expected to provide security and intervene if dangerous activity is observed or in order to receive contraband in the event that the individual in custody wishes to surrender the contraband. However, the Department does not believe that individuals placed in separation status housing necessarily require continual 24/7 visual observation. The need for continual 24/7 visual observation would be identified through a medical evaluation and subsequent finding that suicide watch is necessary.

6. *Ensure cells in Separation Status units are fitted with large windows such as those utilized for individuals on Suicide Watch. This will allow for officers to more easily conduct constant observation.*

DOC Response: Please see above response. The Department does not believe continual visual observation is necessary for individuals placed in separation status housing, absent a medical need for suicide watch or other form of observation. The current windows are sufficient for the purposes of one-to-one security watch.

7. *Establish written protocols and forms for memorializing 1:1 security watch, such as those similar to the documentation requirements for suicide watch observations (i.e. describing all activity that transpired in each 15-minute interval).*

DOC Response: As part of revisions made prior to the publication of the report, the Department included written protocols to memorialize one-to-one security watch in its current revision of the body scanner and separation status policy. Accordingly, the Department's written protocols will require staff assigned to one-to-one security watch to record the start and end times of their supervision in the logbook and will require logbook entries every fifteen minutes. Due to the different purpose of a security watch as compared to suicide watch, the Department does not believe detailed logbook entries every fifteen minutes are necessary. Consistent with current practice, the updated policy will also require that all emergency situations, significant events or observations, and affording of services be recorded in the logbook once appropriate action is taken, if applicable.

PLACEMENT AND REMOVAL FROM SEPARATION STATUS

1. *Identify and mitigate barriers to moving people to the Separation Status unit within four (4) hours of positive or refused scans, as required by the Board. Barriers may include availability of escort officers or vehicles for transportation.*

DOC Response: The Department acknowledges the Board's findings regarding the time of movement of individuals into separation status housing following a positive body scan or refusal to scan. As mentioned in the Board's report, Department staff utilize de-escalation and negotiation techniques with any individual found or believed to be in possession of contraband in order to successfully retrieve the contraband without conflict or the need to place the individual in separation status.

The Department notes that this engagement between staff and the person in custody may be prolonged at the request of the person in custody in order to provide sufficient time for the passing and surrendering of contraband without separation status placement. Similarly, placement may be delayed so that the individual in custody may receive medical evaluation and treatment if the scan was precipitated by an incident. In all cases, the Department is committed to utilizing separation status housing as a last resort, only when other efforts to retrieve dangerous contraband are unsuccessful. The Department will provide additional information on placement forms in instances where placement does not occur within four (4) hours of a positive scan to more explicitly document the relevant extenuating circumstances.

In such instances, where an individual's placement in separation status housing is the only remaining option, the Department evaluates each placement on a case-by-case basis in order to ensure safety and expediency. Moving forward, the Department will ensure transportation is prepared immediately following a positive scan or refusal to scan, in order to ensure timely transportation from the scanning facility to the separation status housing facility in the event that separation status housing placement is necessary.

2. *Notify the Board as well as OSIU staff when an individual has a positive scan or refuses a scan and is not placed within four (4) hours, documenting any extenuating circumstances related to delayed placement.*

DOC Response: The Department provides this information through providing the time of initial scan or scan refusal, as well as the time of placement in separation status housing on all separation status placement forms, which are submitted to the Board within one business day of each placement. The Department further provides a brief narrative of the placement, including any extenuating circumstances that delayed placement on each form, and will continue to expand the information captured on these forms to provide sufficient and explicit detail. However, given that OSIU staff are in direct communication with facility staff during contraband recovery efforts, movement, and placement of any individual in separation status housing (if applicable), the Department believes that an additional intra-agency notification would be duplicative at this time.

3. *Electronically track and report when individuals with a positive or refused scan are held in intake in restraints for more than four (4) hours and not placed in Separation Status (due to ultimate recovery of contraband or other reason).*

DOC Response: Please see above response. The Department provides the Board relevant time stamps in order to determine time spent in an intake area or in transportation

between facilities and the Department further monitors each situation directly on a case-by-case basis in order to ensure safety, security, and expediency. The Department simultaneously ensures that individuals receive medical evaluation and treatment prior to separation status placement, when necessary, and are only placed in separation status housing when absolutely necessary to maintain the safety and security of Department facilities.

4. *Provide people placed in restraints after a positive scan or refusal to scan a reprieve from enhanced restraints every two (2) hours as required by DOC policy.*

DOC Response: The Department makes every effort to retrieve identified contraband prior to placement in separation status housing. In cases where individuals refuse to surrender identified contraband, the Department places individuals in separation status housing as expeditiously as possible once the placement is determined to be necessary. While the Department's restraints policy is intended to direct regular operations, an emergency situation where an individual is identified to be in active possession of dangerous contraband may require further consideration in respect to the safety and wellbeing of all individuals involved and the security of the facility. The Department will continue to place individuals in separation status as expeditiously as possible in order to avoid instances where individuals may be in restraints in excess of two hours and is further considering including this emergency exception in relevant Department policy to ensure it is appropriately documented and communicated to staff.

5. *Upon placement, provide people in Separation Status with verbal and written information on all restrictions on services while in the unit and the right to a daily scan. This information should be readily available in the Separation Status unit in both English and Spanish, and any other language the Department deems necessary.*

DOC Response: The Department provides a verbal orientation to all individuals placed in the unit with information on the available services in the unit. The Department also began providing this orientation in writing. The orientation form currently includes information in English, but will additionally include information in Spanish once the translation is complete.

6. *Offer individuals placed in Separation Status a daily opportunity to scan to facilitate removal from the unit.*

DOC Response: The Department affords all individuals placed in separation status housing the daily opportunity to scan. The Department further provides all individuals in separation status housing the opportunity to scan prior to scheduled court appearances and immediately upon the surrendering of contraband.

PREA COMPLIANCE

1. *To comply with Minimum Standard and federal PREA standards § 115.15 and DOC policy on limits to cross gender viewing and searches, develop written protocols to ensure:*

- a. *Any cross-gender reviews of body scan images are documented and conducted only in exigent circumstances, and that*

DOC Response: Prior to the Board's report, the Department drafted revision to its body scanner policy in order to ensure that only correction officers of the same gender as an individual being scanned may view scanned images produced by the scanner in an operational capacity, pending exigent circumstances which would be documented in scanner logbooks. The Department is evaluating further action on this consideration while the separation status housing policy is under revision. With respect to searches, the protocol established by and memorialized in the Department policy *Elimination of Sexual Assault and Sexual Harassment* prevents unnecessary cross-gender searches. The body scanner policy does not supersede this policy, and therefore unnecessary cross-gender searches are prohibited in separation status housing. Specific reference to the aforementioned policy will further be made in the revised body scanner policy in order to ensure staff are explicitly aware that the *Elimination of Sexual Assault and Sexual Harassment* policy applies to the operation of separation status housing as it applies elsewhere in Department facilities.

- b. *People placed in the Separation Status unit may shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks.*

DOC Response: Per the previous response regarding one-to-one security watch, the Department does not believe its operation of separation status housing violates Minimum Standard and federal PREA standards §115.15.

QUALITY ASSURANCE, MONITORING, AND REPORTING

1. *Provide the Board with all individual scan data captured by scanner machine software for all scans conducted, including those that do not lead to Separation Status placement, to facilitate independent oversight.*

DOC Response: Individual scan data captured by the scanner machine software requires a manual data pull from each individual scanner machine. For this reason, the Department is unable to provide the requested ongoing data access at this time. However, the Department will continue to provide this information upon request, as was done prior to the publication of the Board's report, or at a requested bi-monthly or quarterly cadence.

2. *Contract an independent auditor to analyze rates of false positives and false negatives in scan interpretation. The audit should inform whether additional staff trainings and/or scanner recalibrations are needed.*

DOC Response: Staff who receive the required body scanner trainings are sufficiently trained to interpret scans for the existence of contraband. In addition to body scanner operators, tour commanders in facilities with body scanners who serve as the second review of all positive scan images are being scheduled to receive image evaluation training. Likewise, the OSIU staff who provide a third level of review for all positive scanner images received image evaluation training in January 2020.

3. *Develop an evaluation plan and strategies to assess and monitor the efficacy of both body scanners and the use of Separation Status in reducing contraband in the jails.*

DOC Response: The Department is committed to using available data to evaluate and ensure the efficacy of scanners in its facilities. Beginning with the first use of the scanners, the Bureau Chief of Security maintains contraband data directly related to the use of body scanners and separation status housing. This information has been and will continue to be utilized to analyze the efficacy of the scanners and separation status housing at the facility level. In addition, this information is also utilized regularly in operational meetings with facility leadership and executive leadership in order to determine areas of scanner and separation status housing operations that may be improved.

4. *Improve body scanner and Separation Status documentation and tracking to ensure compliance with DOC policies, the Board's variance conditions, and reporting required by state law and DOHMH rules.*
 - a. *Add a "reason for scan" field to Scanner logbooks and ensure all electronic records include an accurate, specific reason for each scan.*

DOC Response: The Department is in full compliance with the Board's variance conditions, as the documentation for each placement in separation status housing includes a reason for the scan. The Department is further working with the body scanner vendor in order to pursue updated scanner software that requires a selection for "reason for scan" prior to the operator's ability to conduct a scan. While those negotiations occur, however, the Department issued security memoranda at each facility with a scanner reiterating the requirement that staff operating the scanners select a reason for scan prior to conducting a scan.

- b. *Add fields for times of arrival and release from Separation Status on placement and release paperwork, and electronically track this information.*

DOC Response: This information is and has been included in all separation status placement and removal paperwork, which is transmitted to the Board per the variance conditions for each placement and removal. This information is also tracked electronically. The Department's revised policy will also include revised forms that include specific fields for this information, as requested.

- c. *Document electronically, in scanner logbooks, and Separation Status placement paperwork whether Medical Intake has been completed prior to each new admission scan.*

DOC Response: Per the Board's variance conditions, the Department ensures all individuals are presented to medical staff for evaluation prior to each new admission scan. Neither the Department nor the Board have identified any instance in which an individual was not presented for medical intake prior to receiving a new admission scan since the variance conditions were passed by the Board. The Department does not believe additional processes, which may delay timely and effective operations and therefore compromise safety and security, are warranted in this instance.

- d. *Incorporate metrics on contraband recovery from body scanners and Separation Status into DOC's Monthly Security Reports, which are regularly shared with the Board.*

DOC Response: The Department includes scanner contraband recovery information in the monthly public reports required by the Board's variance conditions and will continue to respond to any information requests from Board staff.

- e. *Document and track the length of time in intake and whether contraband was recovered for all positive and refused scans which do not result in Separation Status placement.*

DOC Response: The Department documents and tracks length of stays in intake and whether contraband was recovered in real time for all positive and refused scans that do not result in separation status placement. Per previous responses, OSIU is notified immediately following a positive scan or refusal to scan. In each such instance, OSIU monitors and tracks all preceding operations, including length of time in intake areas, whether contraband is recovered, and whether placement in separation status housing is necessary.