



**BODY SCANNERS AND SEPARATION STATUS IN
NEW YORK CITY JAILS**

New York City Board of Correction

January 2020

Acknowledgements

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Executive Summary

Beginning in 2014, a broad spectrum of local stakeholders – including the Department of Correction (DOC or the Department), the Board of Correction (the City’s independent oversight agency for the jails), City Council leadership, the Correction Officer’s union, and a number of criminal justice reform organizations – advocated for state legislation to allow the City use body scanners on people in custody for the detection of contraband. The scanners, like those in use at airports around the world, use low-dose ionizing radiation to detect objects such as drugs and items made from materials that are undetectable by magnetometers or stored in body cavities, and not found through other search methods such as strip searches and pat frisks. Stakeholders agreed that, used appropriately and in coordination with other anti-violence strategies including increased programming, training, and procedural justice, the body scanners could be a valuable violence-prevention tool. In October 2018, Governor Andrew Cuomo signed the legislation into law.

The Department began using the body scanners in July 2019. From July 15 through November 30, 2019, the Department reports it has performed 11,212 body scans in the New York City jails. When someone has a positive scan or refuses to be scan, the Department believes the person possesses contraband and places them in a highly restrictive housing area called Separation Status which includes the person’s confinement to an isolation cell for nearly 24 hours. DOC removes a person from the unit when they have a negative scan indicating the absence of contraband. From July 15 through November 30, the Department made 45 placements in Separation Status and the average length of stay in the unit was 30 hours.

This report reviews the Department’s early implementation of body scanners and Separation Status (July 15 - November 30, 2019). Urgent concerns require **the Board to recommend an immediate investigation into misuse of body scanners and implementation of a corrective action plan to ensure the safe, fair, and effective use of body scanners and Separation Status**. DOC staff who have not completed the required radiation safety and body scanner operation training are operating body scanners, creating a risk of radiation exposure to staff and people in custody and the potential for misinterpretation in scans. Misinterpretation (false negatives and false positives) undermines the Department’s ability to use scanners effectively as a tool to identify contraband and may lead to unnecessary placement in the Department’s most restrictive housing area.

The Department must update its body scanner policy, and train on that policy to address the findings and recommendations made in this report. The Department must also continue to evaluate whether Separation Status conditions are the least restrictive necessary to separate people who are believed to have contraband. The roll-out of the unit circumvented the Board’s Minimum Standards (local regulations governing the New York City jail system) in ways that did not give sufficient consideration as to the least restrictive means necessary in order to maintain safety in the jails and risked patient health. While the implementation of Separation Status was chaotic, the Department and Correctional Health Services (the independent health authority in the City’s jails) were responsive to Board and public concerns and have continued to work collaboratively with the Board on strengthening procedures over the past five months.

This report presents additional issues uncovered, both those resolved and ongoing, including:

- The highly restrictive nature of Separation Status creates risks to health and mental health that the Department and CHS have taken steps to mitigate. These steps include daily CHS medical rounds and one Correction Officer supervising each person in custody to identify emergencies, including acts of self-harm. However, additional efforts are needed to protect the health and mental health of people in

custody, particularly people with serious mental illness and people who require medication or clinical appointments while in the unit.

- The processes for placement and removal from Separation Status are regularly delayed and out of compliance with policy, leading to people in custody spending extended time in highly restrictive restraints and in transit to the unit.
- The Department is out of compliance with BOC Minimum Standards and federal Prison Rape Elimination Act (PREA) standards which prohibit, except in exigent circumstances, cross-gender reviews of body scan images and cross-gender observation of a person showering, performing bodily functions, and changing clothing (as occurs in Separation Status).
- Effective management of body scanners and the use of Separation Status requires additional investments in the systems necessary to collect and analyze data to: (i) monitor compliance with DOC policy and Minimum Standards and other local, state, and federal regulations and (ii) evaluate the efficacy of both body scanners and the use of Separation Status in reducing contraband in correctional facilities.

The lessons learned from these findings should inform future DOC violence reduction efforts and the Board's expected restrictive housing rules. Violence in the New York City jails is an ongoing and urgent issue and it is critical that the Department explore new tools and initiatives to support safe jails, especially as the Department begins to plan new jail facilities. Body scanners can be an effective violence prevention tool for use alongside the Department's other violence prevention initiatives, such as increased programming, PACE expansion, additional staff training, further reforms to restrictive housing, and a continued city-wide commitment to reducing the jail population. The Board urges the Department to move quickly to implement the recommendations in this report, and to use this technology in the safest, fairest, and most effective possible way.

Key Facts

- From July 15 through November 30, 2019, the Department conducted a total of 11,212 body scans across four (4) facilities.
- Separation Status is a 16-cell unit in GRVC, with a second air-conditioned unit in West Facility prepared for individuals who are heat-sensitive.
- From July 15 through November 30, 2019, the Department made 45 placements in the Separation Status unit, involving 41 individuals (two individuals were placed twice, and one individual was placed three times).
 - 62% (n=28) of placements were for positive scans and 38% (n=17) were for refusals to scan.
- Almost half of all placements into Separation Status spent less than one (1) day in Separation Status (49%, n=22). Three (3) placements lasted longer than three days (but less than 75 hours). The average length of stay in the unit was 30 hours and the median was 28 hours.
- From the 45 placements in Separation Status from July 15 through November 30, 2019, the Department recovered five (5) pieces of contraband from five (5) separate placements, all of which were weapons. Over the same period, the Department recovered an additional 37 pieces of contraband recoveries were made related the use of body scanners which did not result in placement in Separation Status, ten (10) immediately prior to scan and 27 recovered following a positive scan.

Key Findings and Recommendations

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

Key Findings

1. DOC staff with no Radiation Safety or Body Scanner Operator training are operating body scanners, creating a risk of radiation exposure to staff and people in custody and the potential for misinterpretation in scans. False negatives undermine the Department's ability to use scanners effectively as a tool to identify contraband while false positives lead to unnecessary placement in the Department's most restrictive housing area. The Department reports it has launched an investigation into the Board's findings and has taken immediate steps to ensure only trained staff are operating scanners.
 - a. A review of all body scanner logbook documentation in the GRVC facility from November 18 through November 30, 2019 (N=159¹) found that 30% (n=47) of body scans were conducted by staff who had not completed all the required training in both Radiation Safety and Body Scanner Operations (which includes training on image evaluation). Forty percent (40%, n=66) of body scans were supervised by a Captain² who had not completed training in both Radiation Safety and Body Scanner Operations.³
 - b. A review of all Separation Status placement and removal paperwork for the 45 placements in the Separation Status unit from July 15 through November 30, 2019 found that:
 - i. Forty-four percent (44%, n=20) of placements were initiated by staff⁴ who had not completed all the required training in both Radiation Safety and Body Scanner Operations (which includes training on image evaluation). Fifty-five percent (55%, n=11) of these 20 placements were positive scans and 45% (n=9) were refusals.
 - ii. Fifty-six percent (56%, n=25) of removals from Separation Status were scanned by DOC staff who had not completed all the required training in Radiation Safety and Body Scanner Operations (which includes training on image evaluation).
2. Board staff observed one instance in which a staff member who had not been trained utilized credentials of a trained staff member to operate a scanner.
3. Staff who are tasked with approving placements and removals from Separation Status have not been trained on how to review scan images. DOC's directive on Body Scanners does not specify training

¹ Four officer names were illegible in the logbook and therefore excluded from the analysis of officer trainings. As the Board has repeatedly noted in recent years, illegible and incomplete logbook entries make attempts at oversight, analysis, and corrective action challenging. See 5-04(k) Supervision and Monitoring, Unannounced Rounds Audit (April 2019) at p. 3, https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/April/2019.04.22%20Unannounced%20%20Rounds%20AUDIT_Final.pdf#page=3; Satellite Intake: The First 500 Placements (November 2018) at pp. 7-9, 12, <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2018.10.19%20-%20Satellite%20Intake%20Report.pdf>

² All Captain names and shield numbers were legible in the logbook so Captain training was reviewed for all 163 scans.

³ DOC's Body Scanner directive does not require Captains supervising scans to receive any training.

⁴ Staff initiate placements after scanning an individual and identifying a positive scan or receiving a refusal to scan.

requirements or exact review protocols for Tour Commanders or Operations Security Intelligence Unit (OSIU) staff.

- a. None of the Tour Commanders reviewing placements had completed Body Scanner Operator training (which includes training on image evaluation) and only one had received additional (non-mandatory) Image Evaluation training. None of the OSIU staff approving placements had completed Body Scanner Operator training (which includes training on image evaluation) or the supplemental Image Evaluation training.
 - b. Only 9% (n=4) of removals were reviewed by a staff member with any form of image evaluation training.
4. Conditions in the unit as initially implemented were more restrictive than necessary to meet the Department's goals of recovering contraband, circumventing Minimum Standards related to court appearances, visits, access to publications and legal materials, and recreation.
- a. Of the 45 placements, three (3, 7%) missed scheduled court dates (none of which were after September 2019).
 - b. On November 29, 2019 (as required by the Board), the Department created a space in the unit for confidential video conferencing for family and attorney visits as well as court appearances. The Department reports that the appropriate hardware was installed on the video unit as of November 29, 2019.
 - c. The Department did not allow people in Separation Status access to any publications or legal materials until required to do so by the Board.
 - d. The Department did not allow people in Separation Status access to any recreation until the Board's variance required one-hour daily recreation in a recreation cell on the unit after 48 hours of placement. As of early December, the Department created a recreation cell on the unit, including pull-up and dip bars.

Recommendations

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.
 - 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.
 - 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.
 - 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.

2. Update the “Use of Body Scanner” directive⁵ and other relevant policies to address the findings and recommendations made in this report. Train all relevant staff on the updated policies.⁶
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.

PLANNING AND ROLLOUT

Key Findings

1. Implementation of the Separation Status unit did not involve adequate advanced coordination with Correctional Health Services or the Board to ensure that appropriate safeguards were in place prior to implementation.
 - a. For example, while the Department now notifies CHS of every placement into Separation Status unit and CHS conducts daily medical rounds when the unit is occupied, DOC did not initially have a process for notifying CHS when patients entered the unit so CHS staff could complete rounds.
 - b. The Board now requires that medical intake be completed prior to a body scan, that notice of an individuals’ placement be made to CHS staff, that CHS staff complete daily medical rounds, and that DOC staff assigned to the unit conduct one-to-one observations of people in Separation Status to mitigate risks to medical and mental health, all policies recommended by CHS.
 - c. Infrastructure to accommodate heat sensitive individuals (an additional air-conditioned unit) was not set up until September, two months after the Department began operating body scanners on July 15.
2. Implementation of the Separation Status unit did not involve adequate advanced coordination with Correctional Health or the Board to ensure the least restrictive conditions necessary in the unit to meet safety goals.
 - a. Despite being on notice of its need to do so since March 2019, the Department failed to request a variance from Minimum Standards prior to implementation of the Separation Status unit and instead inappropriately declared emergency variances for the first 41 placements into the unit.
 - b. The Board’s variance conditions were necessary to minimize deviation from Minimum Standards and ensure policies that allow for access to the courts and legal services, opportunities for family and attorney visiting, and access to newspapers and indoor recreation, among other conditions which were not previously contemplated by the Department.
 - c. The Board’s variance conditions regarding reporting were also necessary to ensure adequate tracking and documentation practices were in place.

⁵ N.Y.C. DEPT. OF CORRECTION, DIRECTIVE NO. 4597R-A, USE OF BODY SCANNERS (effective January 3, 2020), superseding DIRECTIVE No. 4597.

⁶ The Department is currently in the process of updating its body scanner policy to reflect multiple practice improvements, including some previously recommended by the Board and some recommended in this report.

Recommendation

1. DOC and CHS should improve coordination with each other and the Board when planning and implementing new restrictive housing⁷ 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,⁸ 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.

HEALTH AND MENTAL HEALTH

Key Findings

1. While the Department reports it does not plan to install scanners at the Rose M. Singer Center (RMSC, the female facility on Rikers Island), DOC's Body Scanner directive does not exclude scanning women or anyone who could become pregnant. CHS recommends that women in the City's custody be explicitly excluded from being scanned, as there is no practical way to rule out pregnancy prior to scan.
2. From July through November 2019, DOC placed two (2) individuals with a serious mental illness in Separation Status. Thirty-nine percent (39%, n=16) of placements involved a person who was receiving ongoing mental health care while in custody (i.e., a Brad H or M-designation).
3. Six (6) individuals missed mental health appointments and one individual missed a specialty clinic appointment during their placement in Separation Status. One (1) individual missed four (4) doses of insulin while housed in the unit.
4. DOC directives on "Control and Search of Contraband,"⁹ and "Injury to Inmate Reports"¹⁰ both state that any person in custody suspected of or observed ingesting or secreting contraband in a body cavity shall be made the subject of an Injury to Inmate Report and escorted to the facility's medical clinic for an assessment and risk counseling. Despite these requirements, only one (1) out of 31 placements in Separation Status involving either a positive scan or an individual observed

⁷ The Board's proposed restrictive housing rules, Subchapter K: Implementation of Restrictive Housing §§ 6-38 and 6-39, require the Department and CHS share any new policies or updates to existing policies related to restrictive housing and require the Department to share a written, comprehensive implementation plan for any new restrictive housing areas at least two (2) months prior to implementation. Among other requirements, the proposed rules also explicitly prohibit the Department from implementing any new restrictive housing until the Board has had an opportunity to review the plan and discuss it with the Department, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2019.10.29%20-%20Rule%20and%20Certifications.pdf>.

⁸ The Board's proposed Restrictive Housing rules require daily CHS medical and mental health rounds in all restrictive housing, notification to CHS of each placement of a person in custody into restrictive housing, and that DOC ensure all individuals in restrictive housing are brought to the facility clinic for their scheduled appointment. See proposed Subchapter G: Access to Medical and Mental Health Services §§ 6-25 – 6-28, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2019.10.29%20-%20Rule%20and%20Certifications.pdf>

⁹ N.Y.C. DEPT. OF CORRECTION, DIRECTIVE NO. 4508R-E CONTROL AND SEARCH OF CONTRABAND, Appendix 2 at p.2 (effective May 15, 2019).

¹⁰ N.Y.C. DEPT. OF CORRECTION, DIRECTIVE NO. 4516R-C INJURY TO INMATE REPORTS at p.2 (effective August 14, 2019).

swallowing or secreting contraband had a documented injury report and a clinical assessment related to contraband ingestion or secretion.

5. DOC's Body Scanner directive incorrectly states that CHS must authorize separation status placement of certain individuals. For practical and ethical reasons, CHS does not authorize placement. Instead, to monitor for acts of self-harm or other medical emergency, CHS recommended DOC provide 1:1 constant supervision (one Correction Officer assigned to each person in custody). This practice is also mandated by the Board.¹¹
6. Board staff have observed officers assigned to 1:1 security watch in Separation Status conducting other duties on the unit that preclude constant supervision, such as operating the main gate at the front of the housing area. DOC's Body Scanner directive does not clearly indicate how staff are to implement and document this supervision requirement. Cell windows are small and require the supervising officer to stand directly outside the cell to see inside.

Recommendations

1. Explicitly exclude women and people who could become pregnant from being scanned.
2. Conduct daily CHS mental health rounds as well as medical rounds in Separation Status units.
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.
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.
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.
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.
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).

PLACEMENT AND REMOVAL FROM SEPARATION STATUS

Key Findings

1. Sixty percent (60%, n=29) of placements into Separation Status were not within four (4) hours of positive scans or refusals to scan, currently required by the Board's variance conditions absent documented, extenuating circumstances. None of the four (4) placements since the Board's variance

¹¹ The Board's proposed Restrictive Housing rules require that DOC provide one-on-one constant supervision for anyone placed in restrictive housing units, for the first 24 hours of their placement into such units. See, e.g. proposed rules §§ 6-07(a)(1)(iv) (PSEG I) and 6-07(b)(1)(iv) (PSEG II), available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2017-Restrictive-Housing/2019.10.29%20-%20Rule%20and%20Certifications.pdf>.

went into effect were within four (4) hours of scan or refusal, and placement documentation provided to the Board did not report extenuating circumstances.¹²

2. Overall, the time from scan (or refusal to scan) to placement in the Separation Status unit averaged 5 hours and 30 minutes, ranging from 10 minutes to more than 18 hours.
3. Time to placement for individuals scanned at non-GRVC facilities was longer (averaging 7 hours and 16 minutes) compared to individuals scanned at GRVC (averaging 2 hours and 1 minute).
4. Individuals who have a positive scan or refuse a scan are immediately separated and placed in enhanced restraints for transfer to the Separation Status unit. Board staff observations and interviews with people placed in Separation Status found that people are spending extended time in enhanced restraints, without reprieves every two hours, as required by DOC policy.
5. For 80% of placements (4 out of 5 placements) lasting 48 hours or more, DOC had no documentation in the unit logbook of offers to scan on the full days on the unit between arrival and release.
6. From the 45 placements in Separation Status from July through November 2019, the Department recovered five (5) pieces of contraband from five (5) separate placements, all of which were weapons. Four placements resulting in contraband recovery were following positive scans, and one placement followed a scan refusal.
7. People placed in Separation Status were not informed of all restrictions imposed upon placement in the unit, and the requirement that staff inform individuals of all restrictions to Minimum Standards while in the unit is not formalized in policy.
8. The time from negative scan to release from Separation Status averaged 4 hours 4 minutes, ranging from immediate removal to 20 hours and 49 minutes.¹³ More than half (52%, n=23) of placements were released from the unit within four (4) hours of a negative scan. Seventy-eight percent (78%, n=18) of the 23 placements since September were released within four (4) hours of a negative scan, showing an improvement over time.

Recommendations

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.
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.
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).
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.¹⁴

¹² The Department's current directive requires individuals be restrained and separated immediately and transferred to the Separation Status unit as soon as OSIU approves placement. The Department reports that transfers may be delayed if an individual needs medical attention. The Department is in the process of updating its policy to reflect the Board's variance requirements.

¹³ Neither DOC policy nor Board variance conditions specify the required timeframe for removal from the unit.

¹⁴ N.Y.C. DEPT. OF CORRECTION, SECURITY MEMO No. 02/16, at p.1 (effective October 3, 2016).

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

PREA COMPLIANCE

Key Findings

1. DOC's body scanner policy does not include protocols to address compliance with Minimum Standards, federal PREA standards, and DOC policy limiting cross-gender viewing and searches.¹⁵ Guidance from the National PREA Resource Center concludes cross-gender use of body scanners which provide images with outlines of breasts, buttocks, or genitalia constitute cross-gender searches that must be documented and conducted only in exigent circumstances.¹⁶ Scans of males in custody are routinely shared with female DOC staff but have not been documented or reported to the Board as cross-gender searches.
2. The Board's Minimum Standards, federal PREA standards, and DOC policy also require that nonmedical staff not view the breasts, buttocks, or genitalia of people in custody of the opposite gender except in exigent circumstances or when such viewing is incidental to routine cell checks. Board staff have observed female officers assigned to 1:1 security watch in the Separation Status unit and DOC does not currently have a process for substituting same gender staff to observe periods of time when the person in custody is showering, performing bodily functions, or changing clothes (a process recommended by the National PREA Resource Center when conducting cross-gender suicide watch¹⁷).

Recommendations

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
 - b. that 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.

¹⁵ N.Y.C. BOARD OF CORRECTION, TITLE 40, CHAPTER 5, [§5-06 LIMITS TO CROSS-GENDER VIEWING AND SEARCHES \(effective January 2, 2017\)](#); 28 CFR § 115.15, [Limits to cross-gender viewing and searches](#); N.Y.C. DEPT. OF CORRECTION, DIRECTIVE NO. 5011R-A ELIMINATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT (effective May 31, 2019).

¹⁶ See National PREA Resource Center, Does the use of a virtual scanner by an opposite-gender staff person violate the prohibition against cross-gender viewing and/or cross-gender strip searches?, *available at*, <https://www.prearesourcecenter.org/node/3260>.

¹⁷ See National PREA Resource Center, How do the requirements of standard 115.15(d) apply to inmates who have been placed on suicide watch? Is there a distinction between suicide watches being conducted via video and those under in-person observation? *available at*, <https://www.prearesourcecenter.org/node/3833>

QUALITY ASSURANCE, MONITORING, AND REPORTING

Key Findings

1. New York City Department of Health and Mental Hygiene (DOHMH) regulations require the Department limit annual radiation exposure. The Department reports that scanners will not scan people who have reached their radiation exposure limit.¹⁸
2. The Department has shared aggregate data captured from the body scanner software with the Board. The Board has requested, but not yet received, a feed of individual-level scan data captured by each machine. The electronic data captured by scanner software is necessary for independent verification of how many scans have been conducted, how many individuals have received multiple scans, the specific reasons for scans that do not result in Separation Status placement, and to audit whether staff are misusing credentials.¹⁹
3. Data on the reasons for conducting scans are not tracked in paper scanner logbooks and Board staff observations found staff may not be entering reasons for scans. DOC has confirmed instances of staff entering the wrong reason for scans into the scanner machine software. The options for entering reasons for scan into the scanner machine software do not match the reasons an individual may be scanned according to DOC's body scanner policy.²⁰
4. The Department currently has no process or plan in place for assessing rates of false positives or false negative scan interpretations.
5. From the 45 Separation Status placements, the Department recovered five (5) pieces of contraband and reports that it is tracking contraband recovery from all scans and Separation Status placements. The Department has not shared a plan for analyzing this data to assess and evaluate the impact of scanners as a contraband recovery and violence reduction tool. The Board's current reporting requirements are limited to monthly, public reporting on contraband recovery from Separation Status placements.
6. Findings in this report are based largely on reviews of handwritten entries in paper logbooks, and handwritten forms, relying on multiple sources for single pieces of data.
7. The Department is not tracking time from scan to contraband recovery for individuals not placed in Separation Status. Board staff have encountered individuals who have spent many hours in intake in Enhanced Restraints prior to surrendering contraband.

Recommendations

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.
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.

¹⁸ Both CHS and the Board believe it is important to independently confirm this safeguard is functioning properly

¹⁹ Board staff have collected some images of scanner logbooks and analysis on scans not resulting in Separation Status. Findings in this report are based on a limited audit of scanner logbooks with handwritten data.

²⁰ Currently the Department's software tracks the following reasons for scans: "Upon Intake," "Upon suspicion of contraband," "After Visit," and "Other."

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.
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.
 - b. Add fields for times of arrival and release from Separation Status on placement and release paperwork, and electronically track this information.
 - c. Document electronically, in scanner logbooks, and Separation Status placement paperwork whether Medical Intake has been completed prior to each new admission scan.
 - 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.
 - 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.

Timeline of Events and Rollout

March 2012	DOC started using ionizing radiation body scanners in the city's jails.
February 2014	SCOC required DOC to stop using ionizing radiation Body Scanners in the City's jails due to conflict with state law requiring exposure to ionizing radiation for medical purposes only and only when conducted by Medical personnel.
March 2014	DOC stopped using ionizing radiation body scanners due to conflict with state law.
June 2015	The NY State Assembly first introduced legislation to allow jails and prisons to use ionizing radiation to detect contraband.
March 2017	The NY State Legislature introduced Assembly Bill 6838/Senate Bill 5337 to amend the public health law and allow jails and prisons to obtain and use body scanners on people in custody for the detection of contraband.
April 2017	On April 24, 2017, BOC Acting Chair Derrick D. Cephas and Executive Director Martha W. King sent letters to Senate and Assembly leaders to express support for Assembly Bill 6838/Senate Bill 5337 as a means to reduce contraband in coordination with other anti-violence strategies including increased programming, training, and procedural justice.
March 2018	On March 27, 2018, the Board of Correction sent letters to NYS Assembly leaders to express support for Assembly Bill 6838/Senate Bill 5337 that would allow for the targeted use of body scanners in the NYC jails.
October 2018	On October 2, 2018, Governor Cuomo signed Senate Bill 5337.
February 2019	On February 15, 2019, the Department of Health and Mental Hygiene Chapter 33 to Title 24 of the rules of the City of New York on the Operation of Body Scanners in Correctional Facilities became effective.
March 2019	DOC shared a draft Directive on the use of body scanners and Separation Status with BOC. BOC provided detailed feedback and questions regarding implementation and conditions of confinement, including which Minimum Standards would not be met, and informing the Department of the need to request a limited variance from the Board for Minimum Standards that would not be met.
April 2019	On April 3, 2019, the Department responded to the Board's feedback and questions on the draft Body Scanner Directive, however they did not identify which Minimum Standards would not be met.
July 2019	On July 15, 2019, DOC's Directive on Body Scanners and Separation Status went into effect and DOC resumed using body scanners in the jails. The Directive was set to expire on October 3rd, 2019.
	On July 19, 2019, the Department made its first placement of an individual into Separation Status and started declaring emergency variances from 12 distinct Chapter 1 Minimum Standards for each placement. The Board posted each emergency variance declaration on its website .
August 2019	On August 20, 2019, the Department submitted its first request for a six-month variance from 12 Minimum Standards to operate the Separation Status unit at GRVC. The Department also submitted draft language for the inclusion of Separation Status in the Board's restrictive housing rules.
September 2019	At the September 10, 2019 public Board meeting , the Department withdrew its variance request.
October 2019	On October 3, 2019 the Department extended the effective date of its Directive on Body Scanners and Separation Status to expire on January 3, 2020.
	On October 7, 2019, Interim Chair Jacqueline Sherman sent a letter to the Commissioner Brann with a list of questions regarding the Department's operation of the Separation Status unit. The letter indicated the need for the Department to submit a new limited variance request.
	On October 11, 2019, the Department submitted to the Board an updated variance request to deviate from 13 Minimum Standards and responded to Interim Chair Sherman's October 7 letter and Board questions.
	At the October 22, 2019 public Board meeting , the Board first considered but tabled the Department's variance request to consider the issues and concerns raised at the public meeting. The Board received extensive public comments at the meeting.
November 2019	On November 12, 2019 , the Board passed a three-month limited variance permitting deviation from 12 Minimum Standards, subject to 11 conditions .
January 2020	On January 3, 2020, the Department extended the effective date of its Directive on Body Scanners and Separation Status, to expire on April 3, 2020.

Body Scanner History and Background

From March 2012 until March 2014, the Department of Correction (the Department; DOC) used ionizing radiation body scanners in the City's jails to detect contraband. The scanners used low-dose ionizing radiation to detect objects such as drugs and items made from plastic, ceramic, or titanium that are undetectable by magnetometers, or stored in body cavities and not found through other search methods such as strip searches and pat frisks.

In 2014, the New York State Commission of Correction required DOC to stop using body scanners in jails due to a state law that permitted exposure to radiation only when conducted by licensed medical personnel for medical purposes. DOC stopped utilizing body scanners in March 2014 and began advocating for a state law change that would allow renewed use of the body scanners to identify weapons and, ultimately led to reduce slashings and stabbings. The legislation stalled in the Legislature due to concerns raised by Assembly Member (and then Chair of Corrections Committee) Daniel O'Donnell regarding radiation exposure risk to health and potential for false positives.

In 2017, the State Legislature introduced Assembly Bill 6838/Senate Bill 5337,²¹ to amend the public health law and allow jails and prisons to obtain and use body scanners on people in custody for the detection of contraband. The Board of Correction sent letters to the New York State Senate and Assembly leaders in April 2017 and March 2018,²² supporting the legislation as a means to reduce contraband in coordination with other anti-violence strategies including increased programming, training, and procedural justice. Governor Andrew Cuomo signed the bill into law on October 2, 2018. As required by the legislation, NYC Department of Health and Mental Hygiene (DOHMH) proposed a new Chapter 33 to Title 24 of the Rules of the City of New York,²³ establishing rules for the use of body imaging scanning equipment to screen individuals in the custody of the DOC. The rules were adopted and became effective on February 15, 2019. The DOHMH rules seek "to promote maximum protection for both DOC personnel and detainees, from radiation exposure and reduce the risk associated with the operation of body scanners."²⁴

Rollout of Body Scanners and Separation Status

The Board supported the Department's use of body scanners as a means of increasing safety in the jails with the understanding that the subsequent separation of people in custody for contraband recovery should be the least restrictive necessary to do so and that deviation from the Minimum Standards would require a limited variance from the Board pending subsequent rulemaking.

In March 2019, the Department shared a draft directive on body scanners and Separation Status with the Board and the Board responded with questions about the planned implementation and conditions of confinement in the unit. In April 2019, the Department responded to the Board's feedback and the Board immediately followed up to clarify which specific Minimum Standards would not be met upon implementation of the policy and asked when the Department would submit a request for a limited variance from the Board.

Despite the Department's longstanding plans to install and utilize body scanners and its preparation of a unit for placing people into Separation Status, the Department failed to notify the Board of the date when it intended to implement its policy and failed to submit a limited variance request in advance of implementation.

²¹ [Assembly Bill 6838](#); [Senate Bill 5337](#)

²² [BOC letters to NY Senators April 2017](#); [BOC letters sent to NY Assembly Members March 2018](#)

²³ [Rules of the City of New York: Title 24: Chapter 33: Operation of Body Scanners in Correctional Facilities](#)

²⁴ [New York City DOHMH Notice of Adoption of Chapter 33 of Title 24 of the Rules of the City of New York City](#)

On July 15, 2019 the Department began utilizing body scanners in the jails to detect contraband secreted on or inside the bodies of people in custody and initiated its policy of placing someone into Separation Status after a positive scan or refusal to be scanned, allowing removal from the isolation unit only after obtaining a negative scan, indicating the absence of contraband.

Subsequent implementation of this practice was chaotic, and the issues encountered, both those resolved through Board oversight and public engagement and those that are ongoing, are presented throughout this report.

Board members and staff engaged with DOC and CHS before and throughout the rollout period, both publicly and privately. Many policy and practice improvements developed collaboratively during the rollout period have been successfully implemented, several prior to the Board passing its November variance. Improvements included offering and documenting daily showers to people in Separation Status, ensuring that individuals scanned on admission to DOC custody receive medical intake before a scan, placement notifications to Correctional Health by the end of each tour, daily CHS medical rounds, and the outfitting of a separate air-conditioned unit for heat-sensitive individuals, as well as improvements in documentation practices.

On October 3, 2019 and January 3, 2020, the Department re-issued its directive on the use of body scanners (and subsequent placements into Separation Status). These directives have not yet reflected the Board's feedback, already implemented improvements, or conditions required by the Board's variance. The Department reports that it is currently in the process of updating its policy to incorporate improvements it has already put in place as well as recommendations made by the Board previously and in this report.

Variance History

The Department knew ahead of time that implementation of the Separation Status unit would deviate from several of the Board's Minimum Standards, but instead of submitting a limited variance request prior to roll-out, DOC inappropriately declared Emergency Variances for the first 41 placements into Separation Status, from July 18 to November 12, 2019. Each Emergency Variance declaration stated that the Department was unable to comply with 12 Distinct Chapter One Minimum Standards (see sample declaration in Appendix A).

Emergency Variances are intended for use when emergency situations prevent continued compliance with a subdivision or section of the Board's Minimum Standards.²⁵ Knowable and regularly occurring situations such as positive or refused body scans do not meet these criteria.

On August 20, 2019, the Department submitted a six-month variance request to the Board regarding its use of Separation Status housing and proposed language for the inclusion of Separation Status in the Board's restrictive housing rules.²⁶ The Board considered the Department's variance request and proposed conditions to the variance, to ensure that Separation Status placement processes and conditions on the unit were the least restrictive necessary. The Department expressed concerns about the Board's proposed conditions and withdrew the request at the start of the September 10, 2019 Public Board Meeting. The Department continued to submit Emergency Variance Declarations for each placement.

²⁵ [N.Y.C. BOARD OF CORRECTION, TITLE 40, CHAPTER 1 §1-15 VARIANCES.](#)

²⁶ Due to the complexity of the issue, the Board has repeatedly made clear to the Department that it would not hold up finalization of the new proposed restrictive housing rules to consider rules regarding isolation following a positive body scan.

On October 7, 2019, Interim Chair Sherman wrote to Commissioner Brann urging the Department to submit a variance request due to the foreseeable nature of placements into Separation Status and the ongoing circumvention of the Board's Minimum Standards by declaring such situations as emergencies.

The Department submitted another variance request on October 11, 2019 which the Board initially considered at the October 22, 2019 public Board meeting but ultimately tabled to allow for further consideration of the issues and concerns raised at the meeting.

At the November 12, 2019 Public Board meeting, the Board passed the Department's variance, with conditions (Appendix B).

Between November 12 and November 30, 2019, the Department notified the Board of four (4) individuals placed into and removed from Separation Status.

Methodology

The findings in this report are based on Board staff analysis of data obtained and requested from the Department and Correctional Health Services to understand and describe current body scanner operations and Separation Status practices.

The findings of this report are based on an analysis of all placements from the first Separation Status placement on July 19 through November 30, 2019. On November 12, 2019, the Board passed a variance with conditions related to its operation of the Separation Status unit. Only four (4) placements included in this analysis were subject to those conditions.

The data sources used to produce the findings in this report include:

All available documented policies and procedures on Separation Status, body scanners, and contraband.

Board staff conducted an exhaustive review of the Department's available directives, teletypes, and command-level orders relating to body scanners and contraband recovery and procedures. The policy review identified processes, staff involved, security measures, conflicts and consistencies with other policies, and related documentation.

Conversations with DOC and CHS staff and leadership involved in implementing Separation Status and operating body scanners. Board staff engaged in communication with the Department and Correctional Health to verify processes and practices, raise issues of concern, and make recommendations for improving safety. Board staff also spoke with uniformed DOC staff operating scanners and posted to the Separation Status unit.

All available documentation provided by DOC on Separation Status placements. The 41 emergency variance declarations were accompanied by Separation Status placement forms and scan images (for positive scans); the four (4) notifications after the variance passed included Separation Status Placement forms, positive scan images (for positive scans), and time of CHS notification of placement. DOC made all Separation Status placement removal forms available to the Board on November 8, 2019. Board staff reviewed all documentation, extracting all data on Separation Status placements and removals.

Central Operation Desk notifications corresponding with Separation Status placements. Board staff used book and case numbers (a unique identifier associated with a person's incarceration) to search all Central Operation Desk notifications issued by the Department and documented and reviewed all notifications within one (1) day

of placement and scan dates for Separation Status. This analysis allowed Board staff to understand incidents that led to DOC requiring people to be scanned.

Separation Status Housing Area Logbooks. Board Staff reviewed all entries in Separation Status housing area logbooks,²⁷ extracting data on arrival and removal times on the unit, daily CHS rounding, and any anomalous events.

Scanner logbooks. Scanner logbooks contain name, book and case number, contraband recovered while awaiting a body scan or resulting from a positive image time of scan, positive image observed (Y/N), name and shield number of the Correction Officer conducting scan and the supervising Captain, contraband recovery after placement in Separation Status, date and time of contraband recovery, and other remarks. Board staff conducted a general review of a random sample of a total of 1,429 entries in scanner logbooks from AMKC, GRVC, OBCC, and RNDC between September 15 and December 3, 2019. The Board has requested but not yet received access to all electronic data collected through scanner software for each scan and was therefore unable to independently analyze how many scans were conducted over this period, the reasons for scans, or outcomes of scans (i.e. positive, negative, or refused). On January 9, 2020, the Department provided aggregate data on the total number of scans and reasons for scans by facility using data captured from scanning software on each machine.²⁸

DOC Training Records. Board staff audited the training completion of all staff conducting and supervising body scans at GRVC from November 18 through November 28, comparing names and shield numbers to those in the Department's training records. Board staff also reviewed the training status for all DOC staff involved in placements and removals from Separation Status.

Clinic transportation lists. Board staff reviewed all Clinic Transportation lists corresponding with placement dates in Separation Status, to identify any missed Specialty Clinic appointments. Missed Specialty Clinic appointments were included in analysis due to the complexity of rescheduling missed appointments within clinically appropriate timeframes. Additionally, Board staff anticipated that placement in Separation Status would create an additional barrier to Specialty Clinic appointment production.²⁹

Infraction records. Board staff reviewed infraction records of each person placed into Separation Status, identifying and documenting all infractions related to scanning, refusal to be scanned, placement and removal from Separation Status, and contraband possession.

Detailed field observations and monitoring of Separation Status unit and body scanner areas by Board staff. Board staff visited the unit regularly during daily facility tours, as well as each time the Board received notification that someone was placed there. During these visits, Board staff spoke with people in custody housed in the unit, Correction Officers, and area supervisors, reviewed and photographed the housing area

²⁷ DOC practice is to remove previous logbooks from the units when no longer in use, for example when the logbook is full; the housing area logbook was not available on the Separation Status unit when Board staff entered the unit to take photos of logbook entries on September 29 and 30, 2019.

²⁸ Data on reasons for scan were acknowledged by the Department to be subject to data entry inaccuracies by staff and not reflective of all reasons for scans therefore information on the reasons for all scans (regardless of placement in Separation Status) are not included in this report.

²⁹ CHS communicated with Board staff that it is their expectation that DOC works to produce all individuals to medical appointments.

logbook, and observed and photographed general conditions on the unit. Board staff visited scanners during daily facility tours, and observed scanner operations, photographed scanner logbooks, and signage, and spoke with operating and supervisory staff and people in custody.

Inmate Information System. Board staff looked up each person placed in Separation Status to ascertain demographic information and housing history, as well as demographic information from the entire population of people in custody for the same period.

Health data. The Board provided a list of all placements and requested aggregate data from Correctional Health on people placed in Separation Status who had a Serious Mental Illness (SMI), physical or developmental disability, were prescribed medication, receiving treatment for substance use issues, and missed scheduled Mental Health appointments.

Clinic Injury report logbooks and Injury to Inmate Report Forms. For all positive scans and refused scans where individuals were observed to swallow, ingest, or hide contraband in a body cavity, Board staff reviewed all Clinic Injury Report logbook entries corresponding with the scan or refusal date and the following two days. Where Injury Report forms were generated, Board staff reviewed the form's content for information relating to the ingestion or secretion of contraband in a body cavity.

Structured interviews with people released from Separation Status. In September 2019, Board staff conducted short, structured interviews with six (6) individuals who were released from Separation Status during that month. Interviews sought to gain insight into the experiences of people placed in Separation Status. The interviews included 17 questions focusing on the process of being placed and released from the Separation Status unit, as well as events and conditions while they were housed there.

Ongoing Monitoring of Scanners and Separation Status. While data findings in this report are based on the 45 placements from July through November 2019, additional observational findings from December 2019 are also included where relevant.

Findings and Analysis

Policy and Procedures

Radiation Safety

Currently all scanners are at four male facilities. Correctional Health's position is that women should not be scanned due to the impossibility of ruling out pregnancy.³⁰ The Department's body scanner directive does not exclude women from being scanned, but there is currently no scanner in the Rose M. Singer Center (RMSC), the Department's female facility. On April 2, 2019, the Department told the Board that there were plans to install a scanner at RMSC,³¹ but, on January 9, 2020, DOC confirmed that there is no plan to install a scanner at RMSC.

When being scanned, individuals are identified to the scanner electronically with their NYSID³² to track radiation exposure across multiple incarcerations each year. DOC reports that body scanners automatically identify individuals who have reached (or are close to reaching) their radiation dose limit. DOHMH sets the annual dose limit to half the limit set by American National Standards Institute (ANSI)³³ or any successor to such standard.

The Department's directive and DOHMH Rules require the Department to convene a Radiation Safety Committee to oversee the use of all body-scanning equipment within facilities and meet at least annually to review the Radiation Safety Program outlined in the directive.³⁴ The Commanding Officer of the Facility Maintenance and Repair Division (FMRD) is responsible for ensuring annual radiation surveys and maintenance is conducted on all body scanners, and removing all non-compliant body scanners from operation.

DOHMH rules require the Department to post conspicuous radiation risk-mitigation signage in English, Spanish, and any other language DOC deems appropriate or necessary.³⁵ The Board's November 2019 variance condition (8) (Appendix B) requires signage at intake to advise individuals that they can make complaints about body scanners and request radiation exposure accumulation. Through monitoring across all facilities, Board staff

³⁰ Pregnant Pause: Jail Officials Seek Safe Path for Body Scanners, THE CITY (June 12, 2019) (quoting Patsy Yang, senior vice president for Correctional Health Services, "There is no way to rule out pregnancy, nor should we mandate pregnancy tests."), available at <https://thecity.nyc/2019/06/pregnant-pause-jail-officials-seek-safe-path-for-scanners.html>

³¹ DOC answers to BOC questions, April 3, 2019.

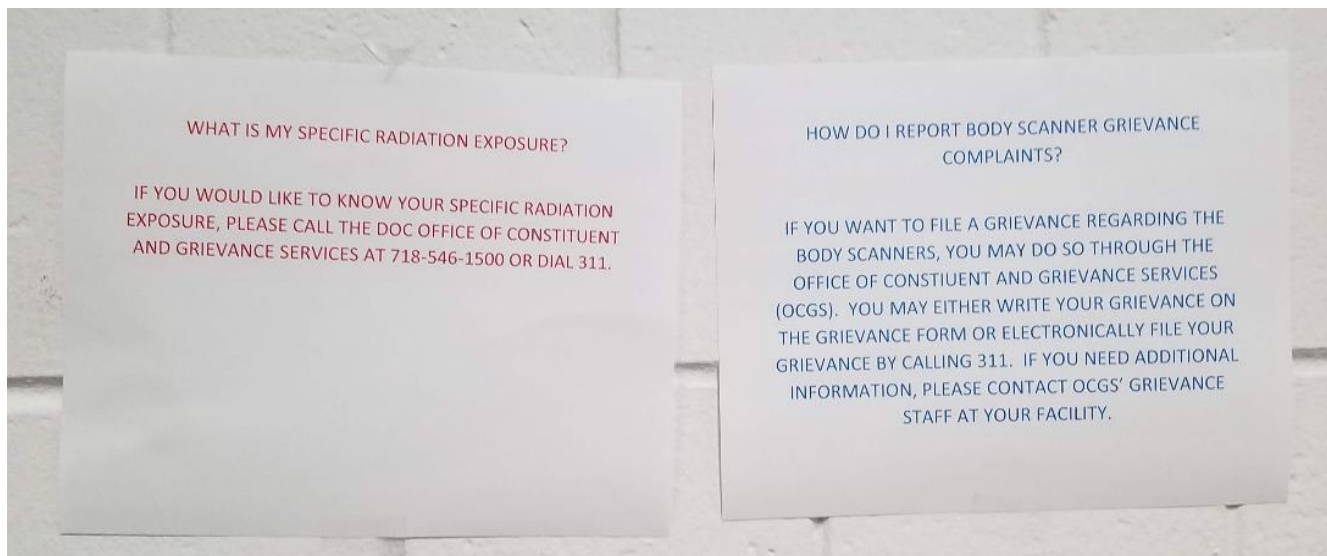
³² New York State ID Number; an identification number that follows an individual across multiple incarceration periods at all facilities within New York State.

³³ ANSI Standard N43.17-2009, "Radiation Safety for Personnel Security Screening Systems Using X-Rays or Gamma Radiation," August 2009.

³⁴ As per the Directive, the Radiation Safety Committee shall comprise the Deputy Commissioner for Quality Assurance and Integrity, Radiation Safety Officer (required by DOHMH rules to be a qualified physicist), Chief of Security (or designee), Assistant Commissioner for Environmental Health, Commanding Officer (or designee) of facilities where Body Scanners are utilized, Commanding Officer of Facilities Maintenance and Repair Division (FMRD), two trained Correction Officers assigned to operate the Body Scanners (identified by Chief of Security), Chief Executive of Operations Security Intelligence Unit (OSIU), designee from the Office of the Chief of Department, and designee from the Office of Intergovernmental Affairs Unit.

³⁵ Title 24, Chapter 33, § 33-08. Signage and information to be provided to screened individuals, https://rules.cityofnewyork.us/sites/default/files/proposed_rules_pdf/p-dohmh_11-8-18_a_ch_33.pdf#page=10

found that all operational scanners had signage meeting these requirements. Signs advising individuals that they can make complaints or request radiation exposure were only in English.³⁶



Body Scanner Signage at GRVC required by the Board's November variance

Body Scanner Operations

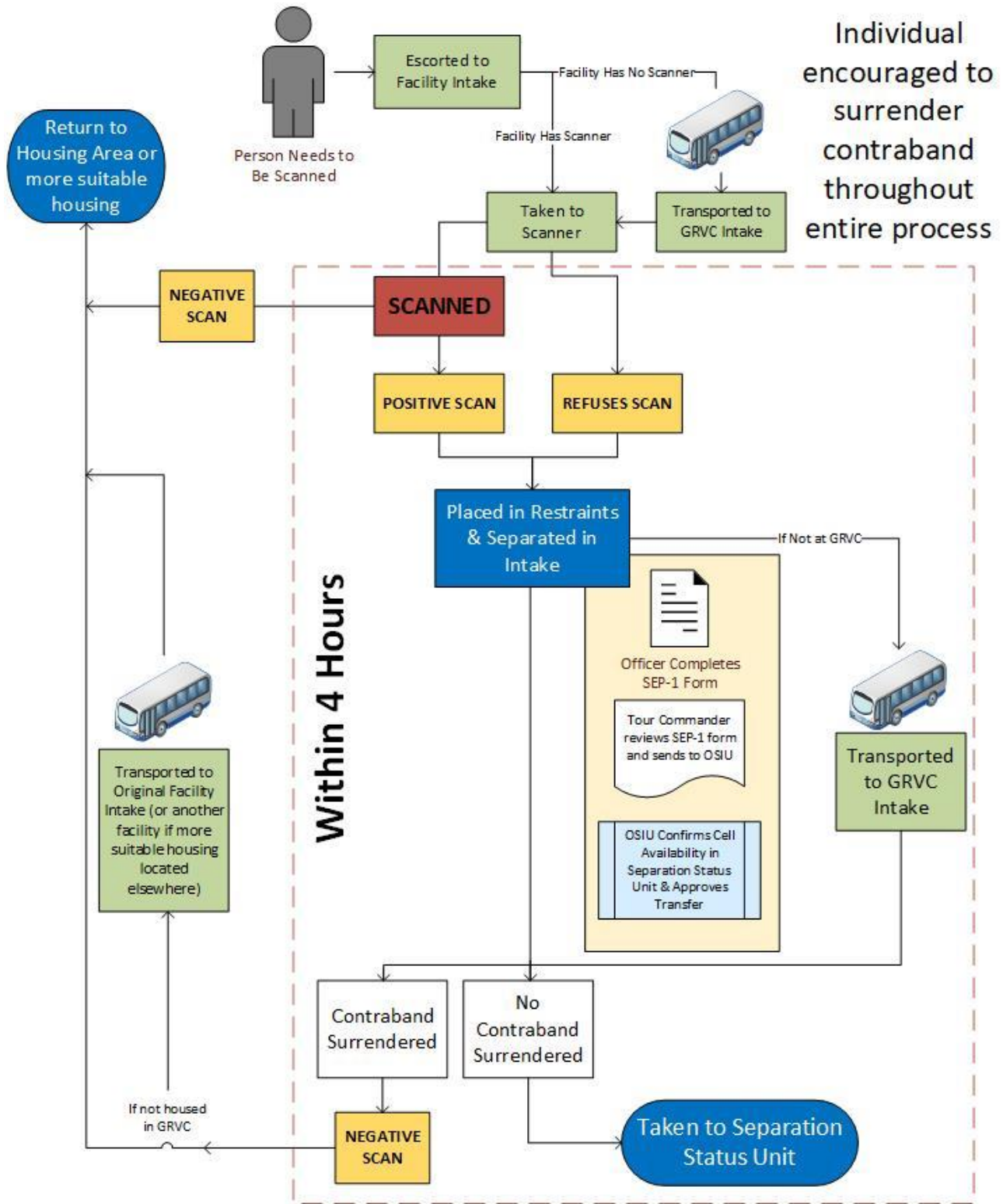
The Department began using body scanners on July 15, 2019. There are currently six (6) scanners in operation in the intake areas of AMKC (2), GRVC, OBCC (2), and RNDC. There are additional scanners at EMTC, which has never been in use, and at GMDC, used only for training purposes.³⁷ In March 2019 the Department shared with the Board plans to install scanners at MDC, VCBC, NIC, and RMSC. The Department clarified in January 2020 it no longer has plans to install scanners at RMSC.

Body scanner operations and Separation Status placement procedures are summarized in Figure 1 (page 23).

³⁶ The variance granted by the Board on November 12, 2019 does not require specific languages for signage on procedures and rights for filing complaints and requesting radiation exposure.

³⁷ There was an additional scanner at BKDC, which was never in operation. BKDC closed on December 16, 2019.

Figure 1: Separation Status Placement Process



DOC's directive on the Use of Body Scanners states that all males must be scanned on admission to custody, and that people in custody may be scanned in various other circumstances including upon receipt of evidence or intelligence that person may have ingested or be secreting contraband.

Once an individual has been identified to be scanned they are escorted to the nearest scanner.

Individuals who are scanned as part of the new admission process are required, by the Board's November variance (condition (1)), to complete medical intake prior to being scanned.³⁸

The Correction Officer operating the scanner identifies the person in custody to the scanner electronically and orders

them to enter the scanner. Once the scan is complete, the Correction Officer reviews the image. During field observations and BOC monitoring of body scanner operations, DOC staffed described and were observed utilizing the scanner software to identify foreign objects. Body scanner operations are required by the Department's directive to be supervised by a Captain. Board staff observed that the Captain supervising body scanner operations is usually the Captain supervising the intake area. The intake Captain is frequently required to leave the area, for example when there are alarms elsewhere in the facility.

If the Correction Officer operating the scanner identifies a foreign object in the image, the person is suspected of concealing contraband and placed immediately in enhanced restraints and separated from other people in custody, while under constant supervision. Individuals who refuse to enter the scanner are also placed in enhanced restraints and separated after refusal. There is currently no way to verify an individual's refusal to be scanned, as there are no refusal forms or requirement to videotape refusals to scan.³⁹

The Correction Officer documents in the scanner logbook the outcome of the scan (positive, negative, or refused), whether contraband was recovered prior to scan, after a positive image, or after placement into Separation Status, and other remarks. There is no designated field in the scanner logbook for the reason for scan. The scanner software has a field for "reason for scan," but based on September and October 2019 BOC field observations and discussions with DOC staff operating scanners in GRVC and



Body Scanner at GRVC

³⁸ Placing individuals entering DOC custody into a restrictive housing unit without medical assessment creates a risk that acute medical, mental health, or substance withdrawal issues may be missed, as well as a risk of exposure to airborne infectious diseases that otherwise could have been identified during medical intake.

³⁹ Genetec video footage may capture the time of refusal but lacks audio which would be required for verification of the refusal itself.

RNDC, not all officers are familiar with this field and are not consistently selecting a reason for the scan.⁴⁰

While the individual is separated from other people in custody in the intake area, officers encourage them to surrender contraband to avoid placement into Separation Status. Board staff have observed officers encouraging individuals to surrender contraband in intake after positive or refused scans, before processing for Separation Status.

Separation Status Placement Process

To initiate placement in Separation Status the officer operating the body scanner completes the “Initial Placement into Separation Status” form documenting the reason for and findings of the scan and forwards the form to the Tour Commander. The Tour Commander reviews the form and sends it to the Operations Security Intelligence Unit (OSIU) who confirms cell availability in the designated Separation Status unit and approves the individual’s transfer.

Once OSIU approves the transfer, the individual is moved, in enhanced restraints, to the Separation Status unit (currently in GRVC). If the person’s scan was conducted in a facility other than GRVC, they are transported in enhanced restraints in a vehicle to the GRVC Separation Status unit.

The Board’s variance condition (3.a) requires the Department house people in the Separation Status unit within four (4) hours of the scan or refusal to be scanned, regardless of facility (findings on page 40 show the lengths of time from scan to arrival in the unit for all Separation Status placements, and differences between facilities of scan).

The Board’s November variance condition (9) requires the Department to provide the Board with access to all supporting documentation related to the person’s placement and release from Separation Status by the business day following a person’s placement and release.⁴¹

Separation Status Removal Process

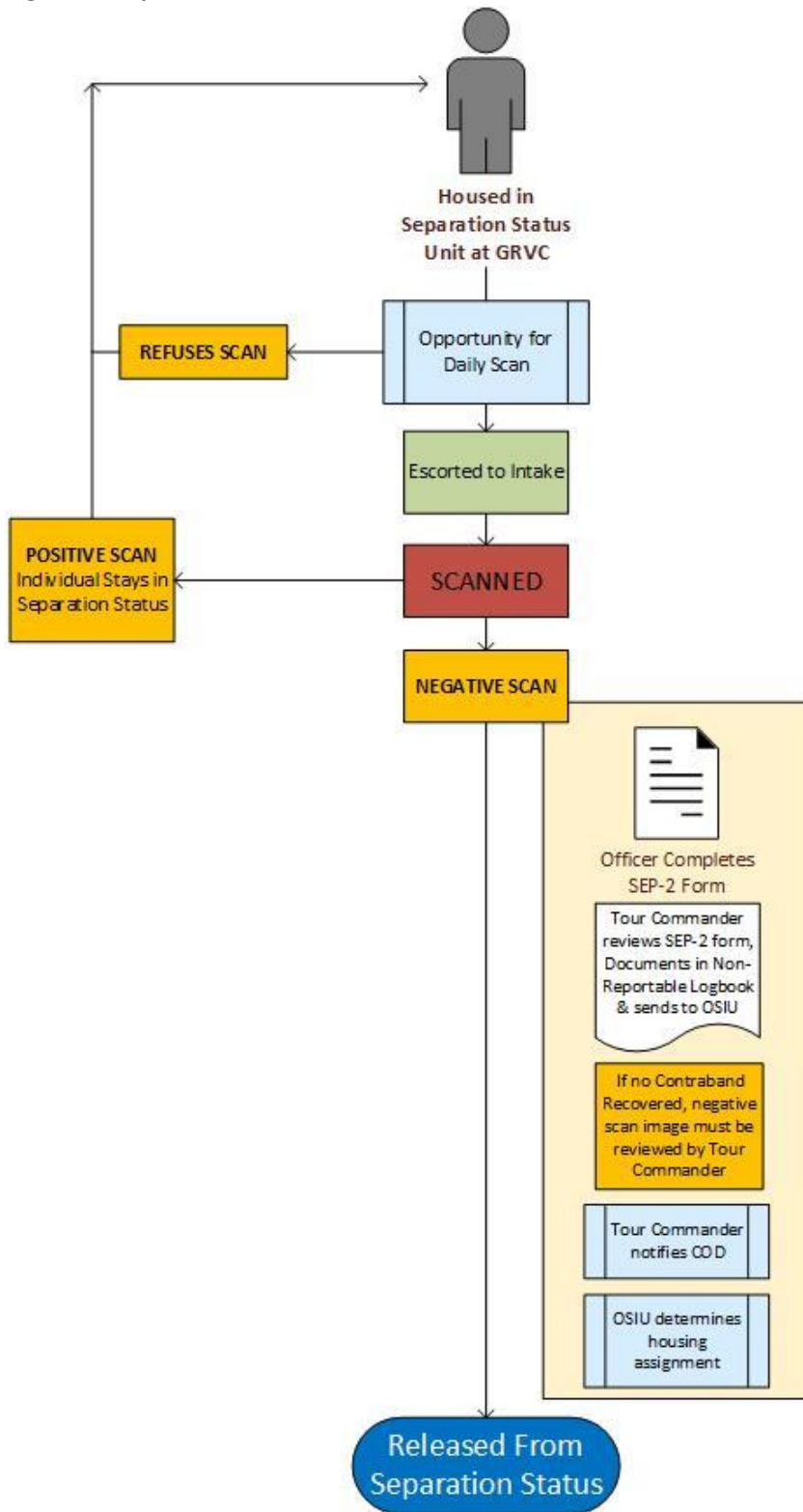
Figure 2 (page 26) summarizes the Separation Status removal process.

The Department’s directive on body scanners states that individuals in Separation Status are to be scanned on at least a weekly basis. The Board’s November variance (condition 10) requires that DOC give people in Separation Status an opportunity to scan every day.

⁴⁰ The Department is required by DOHMH rules to document reasons for all scans not conducted upon intake. Currently the Department’s software tracks the following reasons for scans: “Upon Intake,” “Upon suspicion of contraband,” “After Visit,” and “Other.” These reasons do not match the specific reasons for scan permitted in DOC’s body scanner directive. DOC has also confirmed instances where the reason for scan have been incorrectly entered in scanner software.

⁴¹ Prior to the variance, DOC provided supporting documentation as part of each Emergency Variance Declaration.

Figure 2: Separation Status Removal Process



When an individual surrenders contraband, asks to be scanned, or is offered the opportunity to be scanned, they are placed into enhanced restraints and escorted to a scanner. If their scan is negative (clear of contraband) they are to be released from Separation Status. The Department’s directive requires Tour Commanders to notify OSIU to approve removal and determine an appropriate housing placement, and to review negative images in cases where contraband was not recovered.

While 18 individuals (40%) were processed for release directly from intake, the Housing Area Logbook shows the other 26 individuals (60%) returning to the Separation Status unit awaiting a housing placement decision. As of mid-September 2019, logbook entries indicate a change in practice to release people from intake rather than returning to the unit. Lengths of time from negative scan to release from Separation Status are presented on page 43.

Note: Early placements were returned to Separation Status unit while awaiting housing decision

Body Scanner Operator Training

The Department provides three types of training related to body scanners. The Department's directive on body scanners and DOHMH rules require Radiation Safety and Body Scanner Operation training to be completed prior to operating a scanner, and at least annually.

Radiation Safety training (in online format) includes types of radiation, magnitude and exposure, measurement units, ALARA (as low as reasonably possible) principles, biological effects of radiation, and emergency procedures.

Body Scanner Operator Training (an in-person training) covers operational checks, operation of the scanner, subject positioning, interpretation of images, procedures for damaged or malfunctioning scanners, and practical operational experience. Successful completion of the course requires a personal skills statement and passing an end-of-course exam.

The Department also offers supplemental **Image Evaluation Training**, focused on further training operators in image evaluation and identification of concealed foreign objects or contraband. This training is not mandatory for the operation of body scanners (since Body Scanner Operation Training includes some image evaluation training) but is intended as additional training for staff who are operating scanners on a regular basis.

DOC's directive states that a Captain must supervise the use of all body scanner operations but does not specify whether supervising Captains must have completed Radiation Safety Training or Body Scanner Operation Training, nor whether they review scan images as part of their supervisory role. The Directive does not describe OSIU's exact review process, nor whether OSIU staff are required to complete training on scanner operation and image interpretation. The Directive requires Tour Commanders to review negative images for people to be removed from Separation Status if no contraband is recovered but does not specify image evaluation training requirements for Tour Commanders.

The Department's directive on body scanners requires the Department to maintain training records of all body scanner trainings, including outline of the training, dates, names, ranks, and shield numbers of attendees. DOHMH rules also require the Department to maintain training records including training materials, syllabus, and attendance lists. The Department provided the Board with full training records from January 10 to December 6, 2019, including dates of completion, names, ranks, and shield numbers.

Between January 10 and December 6, 2019, a total of 438 DOC staff completed Online Radiation Safety Training, 276 attended Body Scanner Operator Training, and 128 attended Image Evaluation Training. Table 1 shows the distribution of trainings among uniform and non-uniform staff.

Table 1: Completed Trainings of DOC Staff, January 10 – December 6, 2019

(Source: DOC training records)

Job Title/Rank	Mandatory for Body Scanner Operation		Supplemental
	Radiation Safety Training (online)	Body Scanner Operator Training	Image Evaluation Training
Warden	1	2	2
Deputy Warden	17	0	0
Assistant Dep. Warden	1	0	4
Captain	76	43	18
Correction Officer	341	226	99
SUBTOTAL: Uniform Staff	436	271	123
SUBTOTAL: non-uniform staff	2	5	5
TOTAL	438	276	128

Board staff reviewed all trainings to date against the names of staff involved in all Separation Status placements (Correction Officers operating scanners and identifying positive scan results, Tour Commanders reviewing placement paperwork, and OSIU staff approving placements) from July through November 2019.

Trainings of staff involved in Separation Status Placements

Forty-four percent (44%, n=20) of the 45 placements into Separation Status were initiated by DOC staff who had not completed all the required training in both Radiation Safety and Body Scanner Operations. Fifty-five percent (55%, n=11) of these 20 placements were positive scans and 45% (n=9) were refusals.

Correction Officers Operating Scanners and Initiating Separation Status Placement

Of the 45 placements into Separation Status, 44% (n=20) were initiated by DOC staff who had not completed Body Scanner Operator training (which includes some image evaluation training). Of these 19 placements, 55% (n=11) were initiated due to positive scans and 47% (n=9) were initiated due to refusals to scan.⁴²

Thirty-six percent (36%, n=16) of Separation Status placements were initiated by DOC staff who had not completed Radiation Safety training. Of these, 56% (n=9) were positive scans and 44% (n=7) were refusals to scan.

Eighty-nine percent (89%, n=40) of Separation Status placements were initiated by DOC staff who had not completed additional (non-mandatory) Image Evaluation training. Of these, 24 (60%) were positive scans and 16 (40%) were refusals to scan.

DOC’s directive on body scanners does not specify training requirements or exact review protocols for Tour Commanders or OSIU staff. However, since findings showed that a large number of placements were initiated by

⁴² The Department’s policy currently requires that Correction Officers operating the scanner complete the paperwork for initiating placement in Separation Status, regardless of whether the individual completes a scan or refuses a scan.

DOC staff who were not qualified to operate scanners or evaluate images, Board staff also reviewed training records for Tour Commanders and OSIU staff involved in placements, to ascertain whether anyone involved in the review and approval of placements was qualified to assess the presence of contraband in scan images.

Tour Commanders and OSIU Staff Reviewing Placement Paperwork

None of the Tour Commanders reviewing placements had completed Body Scanner Operator training (which includes training on image evaluation) and only one had received additional (non-mandatory) Image Evaluation training. None of the OSIU staff approving placements had completed Body Scanner Operator training (which includes training on image evaluation) or the supplemental Image Evaluation training.

Trainings of staff involved in Separation Status Removals

Fifty-six percent (56%, n=25) of the 45 removals from Separation Status were scanned by DOC staff who had not completed all the required training in Radiation Safety and Body Scanner Operations (which includes training on image evaluation).

Officers Operating Scanners and Initiating Separation Status Removal

Fifty-six percent (56%, n=25) of the 45 removals from Separation Status were scanned by DOC staff who had not completed Body Scanner Operator training (which includes some image interpretation). Fifty-one percent (51%, n=23) were scanned by DOC staff who had not completed Radiation Safety training. Ninety-eight percent (98%, n=44) of the removals from Separation Status were scanned by DOC staff who had not completed additional (non-mandatory) Image Evaluation training.

While DOC's directive on body scanners does not specify training requirements or exact review protocols for Tour Commanders or OSIU staff, it does require Tour Commanders to review images when no contraband is recovered. Seventy-one percent (71%, n=32) of the Separation Status Removal forms stated that the Tour Commander had, "reviewed the scan image and made a determination that [the person in custody] was no longer in possession of contraband." Board staff reviewed the training records for Tour Commanders and OSIU staff involved in Separation Status removals.

Tour Commanders and OSIU staff Reviewing Removal Paperwork

Only 9% (n=4) of Separation Status removals were reviewed by a staff member with any form of image evaluation training.

There was no indication of improvement over time.

Trainings of Staff Conducting Body Scans Not Resulting in Separation Status

During routine monitoring in December 2019, Board staff encountered a DOC staff member operating a body scanner who reported that he had not completed the required Body Scanner Operation Training and that he was accessing and operating the scanner using another staff member's login credentials. Board staff reviewed the Department's training documentation and confirmed that this Correction Officer had not completed Radiation Safety or Body Scanner Operator training.

To assess whether scans that did not result in Separation Status placements were conducted by appropriately trained staff, Board staff audited 163 scans recorded in the GRVC scanner logbook from November 18 to November 31, 2019. This audit represents 1% of all 11,212 scans completed by the Department in this period, and include findings from only one (1) of the four(4) facilities where scanners are in use; further monitoring and ongoing analysis of all facilities is required.

Board staff compared training records with the names of staff involved (the Correction Officer conducting the scan and reviewing the image, and the supervising Captain) of all scans in the GRVC scanner logbook from November 18 to November 31, 2019.⁴³ Four (4) scans' logbook entries were illegible so the Board was only able to analyze 159 of the 163 scans.

Thirty percent (30%, n=47) of scans were conducted by Correction Officers who had not completed all of the required training in both Radiation Safety and Body Scanner Operations (which includes training on image evaluation).

Body Scanner Operators

Thirty percent (30%, n=47) of body scans were conducted by DOC staff who had not completed Body Scanner Operator training and 30% (n=47) were conducted by DOC staff who had not completed Radiation Safety training.

Supervising Captains

Forty percent (40%, n=66) of body scans were supervised by a Captain⁴⁴ who had not completed training in both Radiation Safety and Body Scanner Operations. Forty percent (40%, n=66) of body scans were supervised by a Captain who had not completed Body Scanner Operator training. Thirty-three percent (33%, n=54) of body scans were supervised by a Captain who had not completed Radiation Safety training. Body scanner login credentials are provided to staff upon completion of the Body Scanner Operator training. To conduct scans without completing the training, it seems that DOC staff use the login credentials of staff who have completed the training. This also undermines the Department's own electronic data-collection practices and renders the body scanners' records of staff conducting scans inaccurate.

⁴³ The Department has not yet provided the Board with access to the scanners' electronic records for each scan. Board staff could therefore not determine under whose credentials the audited scans were conducted (only trained staff receive login credentials).

⁴⁴ All Captain names and shield numbers were legible in the logbook, so Captain training was reviewed for all 163 scans.

These findings raise serious safety and security concerns:

- 1) The operation of body scanners by DOC staff with no Radiation Safety or Body Scanner Operator training creates a serious risk of radiation exposure to people in custody and staff;
- 2) The placement of people into Separation Status by staff who have not been trained to evaluate images means that scans are being identified “positive” by staff who have no training to assess the presence of contraband on a body scan image;
- 3) The review of body scans, including at new admission or for the removal of people from Separation Status, by DOC staff who have not been trained to evaluate images means that scans are being deemed “negative” by staff who have not been trained to evaluate the presence of contraband on a body scan image.

The Department’s operation of body scanners by untrained staff undermines the Department’s ability to operate scanners safely, and to use scanners for the detection of contraband. As soon as the Department was alerted of the Board’s findings, the Department initiated an internal investigation and issued security memos which notified staff that anyone who conducts a scan who has not received authorization and required training may be the subject of discipline. The memos also reminded staff of the need for Correction Officers operating the scanners to accurately enter the reasons for each scan.

Separation Status Rollout and Conditions of Confinement

Separation Status is a unit for housing people who, based on a positive body scan or refusal to be scanned, are believed to be secreting contraband. Individuals in Separation status are placed in 24-hour lock-in cells and allowed out of the cell for a daily shower, tele-visiting in another cell on the unit, access to a recreation cell for one hour daily (after being in the unit for 48 hours), and court (if ordered to appear after consultation with the court, with secure video conferencing as an option if the court requests that the Department not produce the individual due to security concerns).

Initial placements were subject to Emergency Variance declarations (see Appendix A). The Board’s November variance allows the Department to deviate from several Minimum Standards for people housed in Separation Status. Table 2 (page 33) presents the Minimum Standards from which the Board granted a variance, and the Department’s stated security rationale for each variance.

The current primary housing area designated for Separation Status is a 16-cell unit in GRVC, with a second air-conditioned unit in West Facility prepared for individuals who are heat-sensitive⁴⁵ (to date this unit has not been used for Separation Status).

⁴⁵ Individuals with conditions or who are taking medications that make them particularly vulnerable to warm conditions are designated “heat sensitive” by Correctional Health Services and are to be housed in air-conditioned housing areas to prevent heat-related complications.

Correctional Health Services recommended 1:1 security watch to ensure any medical emergency is quickly noticed by DOC staff and to mitigate the risk of self-harm that may be associated with isolation.

Individuals are under 24-hour lock-in with a dedicated Correction Officer providing 1:1 security watch for each person in Separation Status, as per variance condition (3.d). A dedicated Correction Officer is to be stationed directly in front of the cell window to consistently monitor to prevent the person from secreting contraband in the unit and to ensure their safety while in isolation.

During routine monitoring on the unit, Board staff observed officers who were assigned to 1:1 security watch posts also performing other duties such as attending the unit gate, and thus unable to directly observe the person in custody at all times.

The Department's directive on body scanners does not include guidelines on the frequency or documentation of such 1:1 security watch observations. On December 16, 2019, DOC reported to the Board that Correction Officers are instructed to document 1:1 security watch notes every 15 minutes in the housing area logbook. There is no additional specific documentation on the unit for officers to log 1:1 observations, nor any Department policy outlining what information regarding the observations should be documented. Early entries in the housing area logbook did not contain entries every 15 minutes, but this documentation has improved over time, and logbook entries from mid-October show entries at 15-minute intervals documenting constant supervision of the area and individual. The content of 15-minute observational entries in the logbook varies between Correction Officers, sometimes documenting the appearance of the individuals (for example that they appear to be awake), and sometimes documenting that there is nothing to report, or that all appears secure.

Separation Status cells have toilets and sinks with metal mesh grates over drains to prevent contraband from going down the drain (there is also a grate over the drain in the unit's shower). When an individual's assigned cell needs to be cleaned (for example after a bowel movement), they are placed in enhanced restraints and moved to another cell while the cleaning is completed by DOC staff.

Telephone access is afforded through a cuffing port in the cell doors, and people in Separation Status are afforded at least twenty-one minutes of free phone access every three hours, plus unlimited calls to attorneys and oversight bodies, consistent with people housed in general population. While on the unit, Board staff have observed that the Department provides phone access to people in Separation Status, and the logbook contains frequent documentation of phone calls being afforded on request.

Table 2: DOC Rational for Variance Conditions

Minimum Standard	DOC's Rationale for Variance
1-03 (c, d, j): Access to haircuts, shaving, and cleaning products and equipment to clean housing areas	Such personal hygiene equipment presents an opportunity to hide contraband and any movement out of cell (e.g. to a barber) creates opportunity to use, hide, or dispose of contraband (source: Interagency meeting, September 9, 2019).
1-04 (b)(2-3): Closable storage units and desk or table spaces in cells	All furniture in cells provides a potential place to hide contraband (source: Interagency meeting, September 9, 2019).
1-05 (a-c): Lock-out time (except for being afforded a daily shower)	Any time spent out of the person's assigned cell creates opportunity to use, hide, or dispose of contraband (source: Interagency meeting, September 9, 2019).
1-06: Recreation (after being in Separation Status for 48 hours, individuals are afforded one hour of indoor recreation per day, outside of their assigned cell, in a closed space on the Separation Status unit);	Movement to and from, and time spent in recreation areas creates opportunities to use, hide, or dispose of contraband or encounter other individuals to whom contraband might be passed (source: DOC comment at November 12, 2019 Public Board Meeting).
1-07 (c): Congregate religious activities (religious services are conducted through cell doors on the unit)	Movement to and from, and time spent in congregate religious areas creates opportunities to use, hide, or dispose of contraband or encounter other individuals to whom contraband might be passed (source: DOC comment at November 12, 2019 Public Board Meeting).
1-08 (f)(4): Access to Law Library (people in Separation Status can request loose-leaf legal materials, the number of which can be limited by the Department)	Movement to and from, and time spent in Law Library creates opportunities to use, hide, or dispose of contraband or encounter other individuals to whom contraband might be passed. Books may be used to hide contraband in (source: DOC comment at November 12, 2019 Public Board Meeting); Paper may be used to cover cell windows (source: Interagency meeting, September 9, 2019).
1-08 (g)(2-4): Access to typewriters, word processors, photocopiers, and clerical legal supplies;	Such equipment presents an opportunity to hide contraband (source: Interagency meeting, September 9, 2019).
1-09 (c, d, f): Visits (videoconferencing visits/televisits are afforded via equipment installed in a cell within the unit)	Interfacing with visitors, as well as transportation to and from visit areas, may provide opportunity to use, hide, or dispose of contraband or pass contraband to other individuals (source: DOC comment at November 12, 2019 Public Board Meeting).
1-11 (c, d): Outgoing and incoming correspondence (except for loose-leaf legal mail)	Contraband can be hidden in correspondence (source: DOC comment at November 12, 2019 Public Board Meeting).
1-12 (d): Incoming packages	Contraband can be hidden in correspondence (source: DOC comment at November 12, 2019 Public Board Meeting).
1-13 (a-c): Publications (people in Separation Status can receive newspapers, the number of which can be limited by the Department)	Books and other publications may be used to hide contraband in (source: DOC comment at November 12, 2019 Public Board Meeting).
1-14 (a, b): Media interviews	In-person interviews, and transport to and from interviews, may provide opportunity to use, hide, or dispose of contraband or pass contraband to other individuals (source: DOC comment at November 12, 2019 Public Board Meeting).

As a result of negotiations with the Board, as of November 29, 2019 the Department equipped the unit with video visiting equipment in a confidential area to facilitate attorney visits, family visits, or court appearances (per variance condition 3.f). The Department also installed exercise equipment in a designated recreation cell for use after 48 hours in Separation Status (per variance condition 6).

Variance condition (3.g) requires the Department to consult with the Office of Court Administration on producing people in Separation Status to scheduled court dates and produce individuals as expected by the Court. If the Court requests that the Department not produce a person in Separation Status for court, the Department is to facilitate video-conferencing where possible. Prior to the variance, DOC did not make provisions to enable individuals in Separation Status to attend scheduled court dates, and the Department's current directive renewed on January 3, 2020 still states that individuals in Separation Status will not be produced to court and the facility will be responsible for completing undelivered defendant paperwork.

PREA Compliance

Federal PREA Standards,⁴⁶ the Board's Minimum Standards⁴⁷ and DOC policy all prohibit cross-gender searches except in exigent circumstances. The National PREA Resource Center's guidance on the standard⁴⁸ specifies that cross-gender use of technologies that provide outlines of breasts, buttocks, or genitalia by non-medical staff are considered cross-gender searches. In April 2019, the Department assured the Board that scan images do not contain images of physical body features. In reviewing placement documentation and scan images, Board staff found that scan images depict clear outlines of the person's body, including genitalia. While there is no scanner in the Department's female facility RMSC, the Department continues to train female staff on Scanner Operations and Image Evaluation, and female staff review images. Cross-gender reviews of scans are not being documented.

PREA Standards also state that people in custody 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. Individuals placed into Separation Status are observed by officers assigned to 1:1 security watch, and BOC staff have encountered female officers on these posts in the unit. It is not clear what protocols are in place to ensure that PREA standards on cross-gender viewing are being met, while also providing 1:1 security watch.

⁴⁶ [28 CFR § 115.15, Limits to cross-gender viewing and searches](#)

⁴⁷ N.Y.C. BOARD OF CORRECTION, TITLE 40, CHAPTER 5, [§5-06 LIMITS TO CROSS-GENDER VIEWING AND SEARCHES \(effective January 2, 2017\)](#)

⁴⁸ See National PREA Resource Center, Does the use of a virtual scanner by an opposite-gender staff person violate the prohibition against cross-gender viewing and/or cross-gender strip searches?, *available at*, <https://www.prearesourcecenter.org/node/3260>.

Findings and Analysis of Separation Status Placements

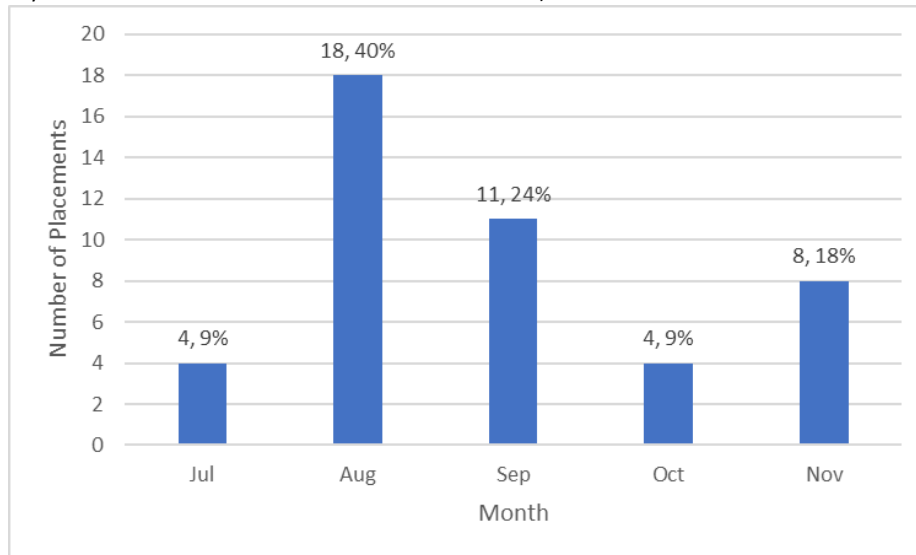
Number of Placements

From July 19, 2019 (the first placement) through November 30, 2019, the Department conducted 11,212 scans, of which 45 resulted in Separation Status placement. Forty-one (41) unique individuals were placed (two individuals were placed twice, and one individual was placed three times).

August saw the highest number of placements (40%, n=18), followed by September (24%, n=11), November (18%, n=8), and July and October (each 9%, n=4) (see Figure 3).

Figure 3: Number of Separation Status Placements by Month, July 18-November 30, 2019, N=45

(Source: DOC Emergency Variance Declarations and Placement Notifications)



One individual was found to be in the Separation Status unit (according to the Housing Area Logbook), but the Board did not receive notification of placement. DOC confirmed that this individual was placed on the unit as part of a temporary emergency lock-in and that he was not placed due to a positive or refused scan. The Department subsequently issued a memorandum instructing staff not to place individuals on the unit for any reason other than Separation Status placement.

Board staff also found COD notifications for four (4) placements into Separation Status in November for which the Board received no corresponding notification or placement paperwork. The Department stated that these notifications were issued prematurely for individuals who had positive scans but subsequently cleared the body scanner, avoiding Separation Status placement.

These incidences are indicative of a lack of clarity among DOC staff about process and protocols for Separation Status placement.

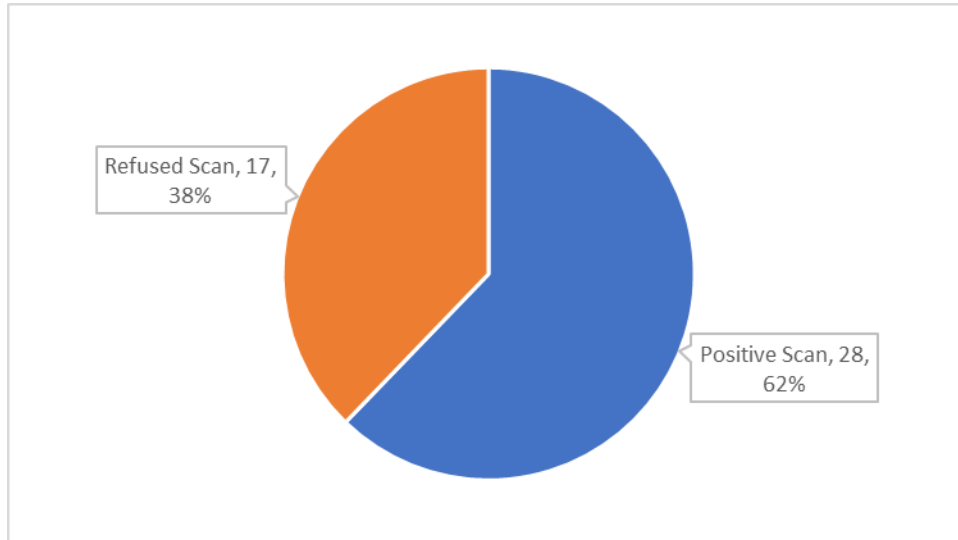
Without access to the total number of scans conducted by the Department in each month, the Board cannot analyze whether the variation in placements per month is due to more scans being conducted, more incidents requiring scans, or other factors. Board staff also cannot confirm whether all refusals or positive scans were in fact processed for Separation Status as required by DOC policy.

Reason for Placement⁴⁹

Of the 45 placements from July 19 through November 30, 2019, 62% (n=28) were following positive scans and 38% (n=17) were following scan refusals (see Figure 4).

Figure 4: Reasons for Placements into Separation Status, July-November 2019, N=45

(Source: Separation Status Placement Forms)



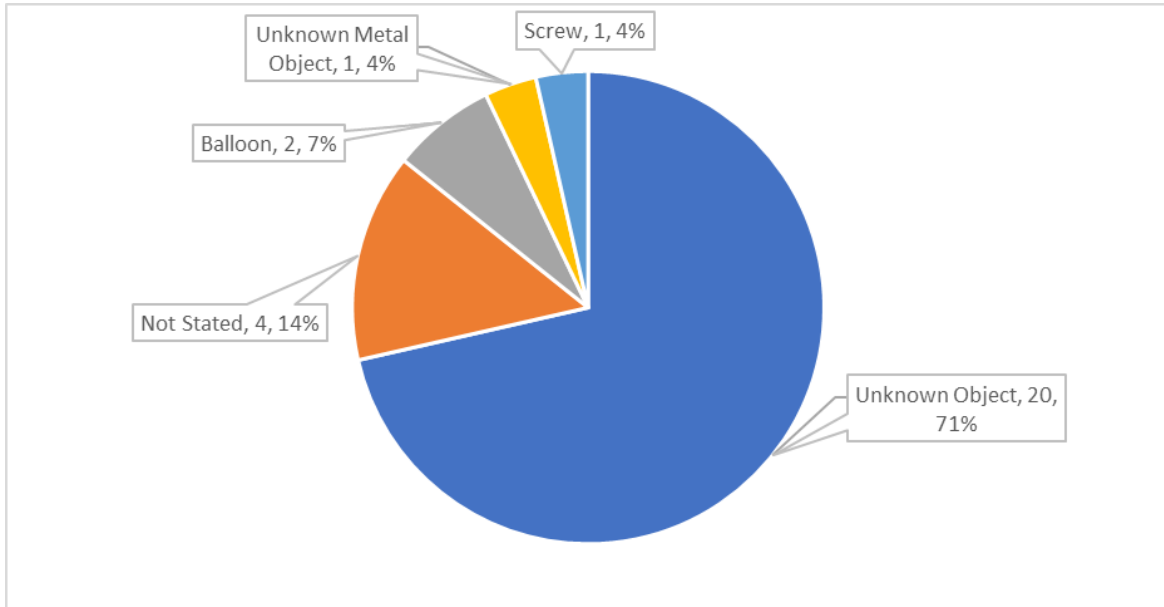
Separation Status placement forms include a field to “Describe facts and circumstances of the inmate’s refusal/positive scan.” In 86% (n=24) of the 28 positive scans, DOC staff described the nature of the object identified on the scan image. In 71% (n=20), DOC staff described the object as an unknown object. In 7% (n=2), DOC staff described a balloon; in 4% (n=1), an unknown metal object; and in 4% (n=1), a screw. In 14% (n=4) of scans, there was no description of the object (see Figure 5).⁵⁰

⁴⁹ The Board’s November variance condition (2) requires that people are only placed into Separation Status following a positive scan or refusal to be scanned.

⁵⁰ The Department’s current policy does not require that documentation include written descriptions of objects identified in scans. The quality of scan image copies shared with the Board does not permit independent review of scans, nor have Board staff been trained to review such images.

Figure 5: Description of Contraband in Positive Scans Preceding Separation Status Placements, N=28

(Source: Separation Status Placement Forms)

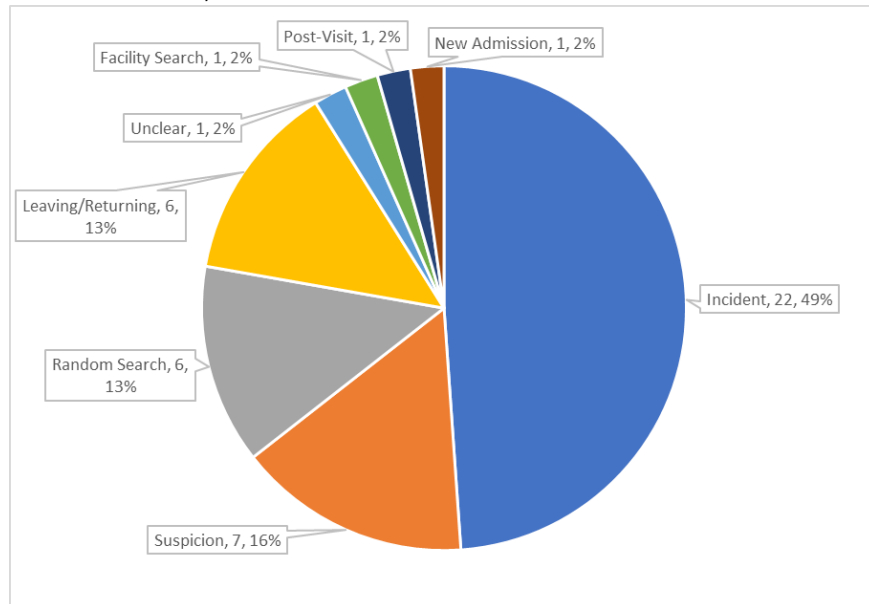


Reasons for Scans

Forty-nine percent (49%, n=22) of scans (or refused scans) preceding placements into Separation Status were described in placement documentation as being post serious incident, 16% (n=7) were on suspicion of having contraband, 13% (n=6) were as part of random searches, 13% (n=6) were upon leaving, returning to, or entering a facility (not as a new admission), 2% (n=1) were part of facility searches, 2% (n=1) were post-visit, and 2% (n=1) were on admission to DOC custody. Two percent (2%, n=1) had no clear reason for scan documented however, this placement was before the November variance was passed (see Figure 6).

Figure 6: Reasons for Scans Preceding Separation Status Placements, July-November 2019, N=45

(Source: Separation Status Placement Forms)



Three (3) individuals whom documentation recorded as scanned post-serious incident were not involved in the incident cited.

DOC's body scanner directive does not provide specific information on the process for identifying who should be scanned post incident, and whether it should be based on intelligence or evidence that individuals are likely to have contraband.

Of the 22 post-incident scans preceding Separation Status placement, 18% (n=4) had no corresponding COD notification, and 18% (n=4) had a corresponding incident notification that was not documented on the placement paperwork.

Of the 45 placements, 20% (n=9) were observed by DOC staff to have contraband, six of whom had positive scans and three refused to be scanned.

Documentation of Reason for Scan

Five placements had no "Reason for Scan" checkbox checked on placement documentation. In those cases, Board staff coded the reason for scan based on details given in open text fields.

Seven placements had inconsistent reasons for placement on placement documentation (for example, checking the "other" box but detailing an incident or checking the post-incident box but detailing suspicion with no incident). In cases of inconsistencies Board staff coded reasons based on the details given in open text fields, rather than checkboxes, as these offered more clarity on the true reasons for scans.

While DOC's directive sanctions scanning based on intelligence and other evidence leading staff to believe someone is in possession of contraband, DOC's current documentation does not have a checkbox for scanning someone based on suspicion, intelligence, or evidence (such as individuals being observed to have contraband).

Security Profiles of Placements

DOC officers are required to exercise discretion in identifying individuals who should be scanned (i.e. evaluate the individual's risk profile based on past activities as well as current behavior). Each person in custody has a documented risk profile, consisting of (but not limited to) known or suspected gang affiliation (Security Risk Group, or SRG status), Red ID status (for individuals who have used or been in possession of weapons or other dangerous instruments while in DOC custody), and Enhanced Restraint status (used for individuals who have exhibited violent behavior during their current incarceration or any incarcerations within the last five years). Board staff compared security statuses at the time of each placement into Separation Status with the average daily population⁵¹ over this period.

Individuals with security designations made up a higher portion of placements in Separation Status compared to the average daily DOC population; placements in Separation Status were 3.6 times more likely to have an SRG status, five (5) times more likely to have a Red ID designation, and six (6) times more likely to have an Enhanced Restraint status compared to the average daily population.

⁵¹ Source: DOC data feed on cross-sectional demographic information of all individuals in custody, received by BOC twice-weekly.

Of the 45 placements,⁵² 62% (n=28) were classified as security risk group (SRG)⁵³ status at the time of placement, compared to an average of 18% (n=1261) of the daily population in DOC custody during the same period. Thirty-one percent (31%, n=14) were Red ID at the time of placements, compared to an average of 6% (n=393) of the daily population in DOC custody. Forty-two percent (42%, n=19) were Enhanced Restraint status at the time of placement, compared to an average of 7% (n=530) of the daily population in DOC custody during the same period (see Table 3).

Table 3: Security Classifications at time of placement into Separation Status compared to average daily population in DOC Custody July 19-November 30, 2019

(Source: DOC population data)

	All Separation Status Placements (n=45)		Separation Status Placements after Positive Scans (n=28)		Separation Status Placements after Refused Scans (n=17)		Mean Average Daily Population (n=7226)	
	N	%	N	%	N	%	N	%
SRG	28	62.20%	17	60.70%	11	64.70%	1267	17.50%
Red ID	14	31.10%	11	39.30%	3	17.60%	393	5.80%
Enhanced Restraint	19	42.20%	12	42.90%	7	41.20%	530	5.80%

Demographics of Placements

People placed in Separation Status were more likely to be Young adults and Black than the average daily population in DOC custody.

Of the 41 unique individuals⁵⁴ placed into Separation Status, 34% (n=14) were young adults aged 18-21 years, compared to 9% (n=651) of the average daily population of people in DOC custody (including those in other restrictive housing units) for the same period (see Table 4).

Table 4: Unique Individuals who were Young Adults at time of placement compared to average daily population in DOC Custody July 19-November 30, 2019

(Source: DOC population data)

Age Group	Unique Individuals Placed into Separation Status		Unique Individuals Placed after Positive Scans		Unique Individuals Placed after Refused Scans		Mean Average Daily Population*	
	N	%	N	%	N	%	N	%
Young Adults 18-21	14	34%	10	40%	4	25%	651	9%
Adults 22+	27	66%	15	60%	12	75%	6584	91%
TOTAL	41	100%	25	100%	16	100%	7235	100

⁵² Number of placements was used for this analysis as security designations change over time, and individuals placed more than once had different security designations for separate placements.

⁵³ SRG Status is the classification given to people in custody who are known or suspected to be affiliated with gang activity.

⁵⁴ Number of unique individuals was used for this analysis because, although age changes over time, the young adult status of individuals placed more than once did not change between placements.

Of the 41 unique individuals⁵⁵ placed into Separation Status, 68% (n=28) were Black, not Hispanic (compared to 53% (n=3873) in the average daily population in DOC custody), 27% (n=11) were Hispanic not Black (compared to 27% (n=1983) of the average daily population in DOC custody), and 5% (n=2) were Black Hispanic (compared to 2% (n=164) of the average daily population in DOC custody) (see Table 5).

Table 5: Racial and Ethnic Identity of Unique Individuals at time of placement compared to average daily population in DOC Custody July 18-November 30, 2019

(Source: DOC population data)

Race (Ethnicity)	Unique Individuals Placed into Separation Status		Unique Individuals Placed after Positive Scans		Unique Individuals Placed after Refused Scans		Mean Average Daily Population*	
	N	%	N	%	N	%	N	%
Black (not Hispanic)	28	68%	16	64%	12	75%	3873	54%
Black (Hispanic)	2	5%	2	8%	0	0%	164	2%
Other (Hispanic)	11	27%	7	28%	4	25%	1983	27%
Other (Not Hispanic)	0	0%	0	0%	0	0%	1215	17%
TOTAL	41	100%	25	100%	16	100%	7235	100%

Timing of Placements

Time from Scan to Arrival on Unit

Variance condition (3.a) requires people to be housed in Separation Status within four (4) hours of a positive scan or refusal to scan, absent extenuating circumstances, which shall be documented and shared with the Board in each instance. The Department’s current directive states that individuals shall “immediately” be placed in enhanced restraints following a positive or refused scan but does not specify a length of time within which the person must arrive in the Separation Status unit.⁵⁶

Board staff were able to analyze time from initial scan⁵⁷ (or refusal) to placement in Separation Status for 40 of the 45 placements.⁵⁸

40% (n=16) of placements were within four (4) hours, none of which were since the variance was passed on November 12, and only one (1) of which was in November (see Figure 7).

The Department did not provide the Board with documentation of extenuating circumstances for the placements after the variance passed taking longer than four (4) hours but reports that such circumstances may have included needing to be taken to a clinic for medical evaluation.

⁵⁵ Number of unique individuals was used for this analysis because race and ethnicity are static characteristics.

⁵⁶ The Department reports it is incorporating requirements of the Board’s variance conditions into its next updated directive.

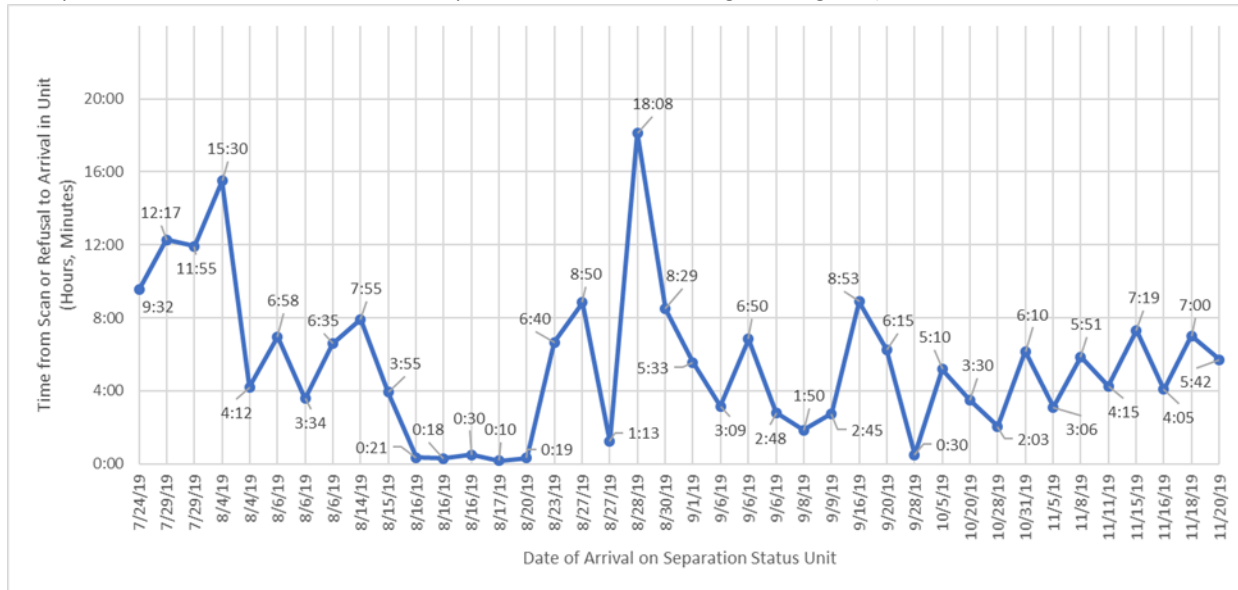
⁵⁷ The Department’s placement documentation records an individual’s first scan and does not specify when an individual may have been scanned multiple times. Board staff analysis is based on the time reported in DOC’s documentation.

⁵⁸ Scan times were not documented for two (2) placements (both prior to variance), Board staff were unable to determine arrival times in the housing area logbook for two (2) placements (the logbook was not present on the unit when Board staff went to obtain photos of entries on September 29 and 30), and for one (1) placement the documented arrival time on the unit was before the documented scan time.

The mean time from scan (or refusal) to placement was 5 hours and 30 minutes (median=5 hours 21 minutes, min.=10 minutes, max.=18 hours 8 minutes).

Figure 7: Time in Hours from Positive or Refused Scan to Arrival in Separation Status Unit, N=40

(Source: Separation Status Placement Forms and Separation Status Unit Housing Area Logbook)



Board staff were able to analyze length of time from initial positive or refused scan by facility for 39 of the 45 placements, to assess whether being transported from other facilities to GRVC impacts the time it takes to be housed in the Separation Status unit.⁵⁹ Individuals who were scanned at GRVC arrived in the Separation Status unit within a shorter timeframe (mean=2 hours, 1 minute) than those scanned in other facilities (mean=6 hours, 35 minutes) (see Table 6).

Table 6: Time in Hours from Initial Positive or Refused Scan to Arrival in Separation Status Unit, by Facility, N=39

(Source: Separation Status Placement Forms and Separation Status Unit Housing Area Logbook)

Facility	N	%	Mean	Median	Min,	Max.
GRVC	10	25.6%	2h 01m	0h 30m	0h 10m	5h 51m
All facilities outside of GRVC	29	74.4%	7h 16m	6h 35m	1h 13m	18h 08m
AMKC	10	25.6%	6h 22m	6h 38m	3h 09m	9h 32m
OBCC	13	33.3%	5h 52m	4h 51m	1h 13m	18h 08m
RNDC	6	15.4%	9h 36m	9h 55m	3h 55m	15h 30m

Length of Time in Enhanced Restraints

The Department does not currently have a protocol or systematic way of documenting how long individuals spend in restraints. DOC policy⁶⁰ states that no person in custody shall be kept in restraints more than four (4)

⁵⁹ Of the 40 placements that had scan and arrival times documented, one form cited MDC as the facility of scan. As there is no operational scanner at MDC, this placement was excluded from the analysis.

⁶⁰ N.Y.C. DEPT. OF CORRECTION, DIRECTIVE NO. 4522R-B, RESTRAINTS, at p. 5 (effective October 11, 2017).

continuous hours without approval of a Deputy Warden. DOC and CHS policy⁶¹ both state that individuals in enhanced restraints should be given a break from restraints for ten minutes every two (2) hours.

On December 5, 2019 Board staff encountered an individual in GRVC intake who had a positive scan but was still in enhanced restraints six (6) hours later, communicating that he was ready to surrender contraband.

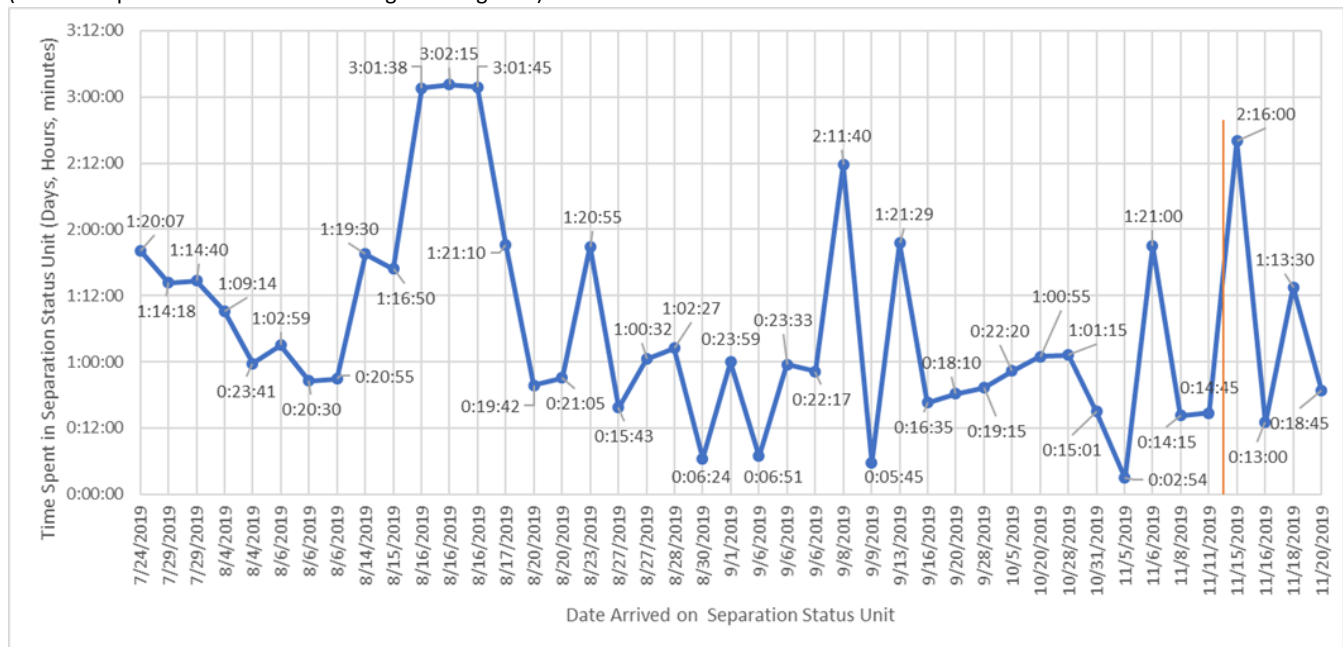
Of the six individuals who were released from Separation Status in September and interviewed by Board staff, all said they were kept in enhanced restraints for the duration of the time from their scan (or refusal) to arrival in the Separation Status unit.

Total Time Spent in Separation Status Unit

Board staff were able to calculate length of time in Separation Status for 43 of the 45 placements.⁶² The mean length of stay was 30 hours (median=23 hours, min= 2 hours 54 min, max= 74 hours 15 minutes). Fifty-one percent of placements (51%, n=22) lasted less than 24 hours, 37% (n=16) lasted 24-47 hours, 5% (n=2) were 48-72 hours, and 7% (n=3) were longer than 72 hours, but less than 75 hours⁶³ (see Figure 8).

Figure 8: Total Length of Separation Status Placements, July-November 2019, N=43

(Source: Separation Status Unit Housing Area Logbook)



⁶¹ N.Y.C. DEPT. OF CORRECTION, SECURITY MEMO No. 02/16, at p.1 (effective October 3, 2016); N.Y.C. HEALTH AND HOSPITALS CORRECTIONAL HEALTH SERVICES POLICY MED 33 "MEDICAL REVIEW OF RED ID AND ENHANCED RESTRAINT STATUS GUIDELINES FOR ASSESSING RED ID/ENHANCED RESTRAINT STATUS INMATES (effective April 1, 2008).

⁶² The arrival time of the first placement into Separation Status was not documented in the housing area logbook; the logbook was not present on the unit when Board staff went to obtain photos of entries on September 29 and 30, when two people were released from the unit.

⁶³ The November variance (condition 4) requires that a committee be convened when a person has been in Separation Status for 72 hours, to develop a plan for removing them from the unit. Since the variance was passed nobody has been in Separation Status for 72 hours.

Time from Negative Scan to Release from Separation Status Unit

There are currently no Board or DOC requirements on the length of time from negative scan to release from the unit.

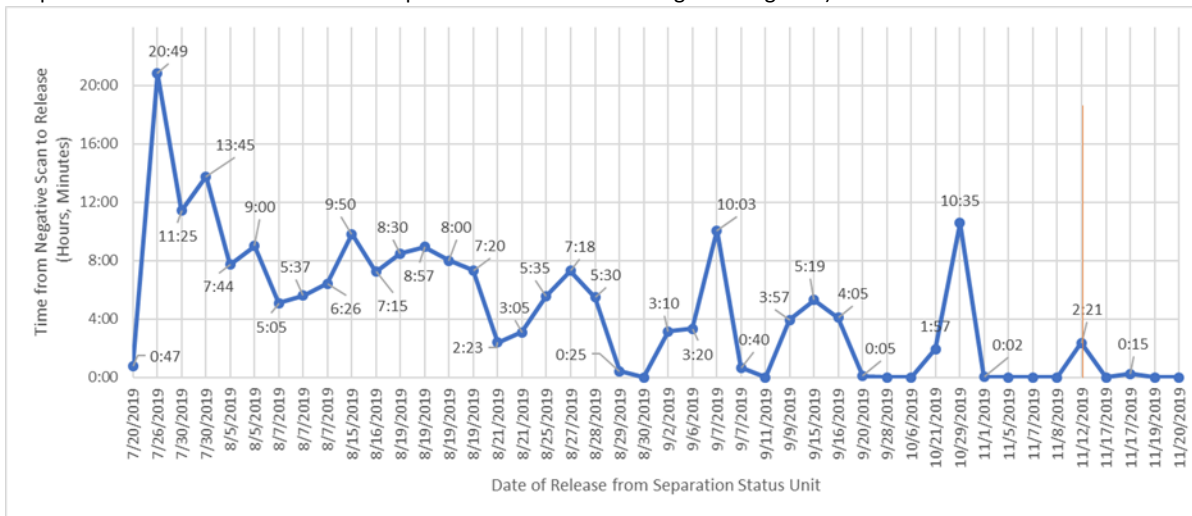
Board staff were able to determine the time from negative scan to release from the unit for 44 of the 45 placements.⁶⁴ The mean time from negative scan to release from Separation Status was 4 hours, 4 minutes (median=3 hours, 42 minutes, min.=0 hours, 0 minutes, max.=20 hours, 49 minutes).

Fifty-two percent (52%, n=23) of placements were released from the unit within four (4) hours of a negative scan. Seventy-eight percent (78%, n=18) of the 23 placements since September were released within four (4) hours of a negative scan, showing an improvement over time.

In 40% (n=18) of placements, the individual was taken to intake, scanned, and did not return to the unit. In the other 60% (n=26), individuals returned to the unit after a negative scan while awaiting a housing placement decision before being released from Separation Status (see Figure 9).

Figure 9: Time from Negative Scan to Release from Separation Status unit, N=44

(Source: Separation Status Release Forms and Separation Status Unit Housing Area Logbook)



Of the ten (10) placements that took eight hours or more from negative scan to removal from unit, 50% (n=5) were moved to a more restrictive housing placement than the one they were in before placement into Separation Status, and 50% (n=5) returned to their previous housing area.

⁶⁴ The Housing Area Logbook was not available on the Separation Status unit when Board staff entered the unit to take photos of logbook entries on September 29 and 30, 2019.

Opportunities for a Daily Scan while in Separation Status

For 80% of placements (4 out of 5 placements) lasting 48 hours or more, DOC had no documentation in the unit logbook of offers to scan on the full days on the unit between arrival and release.

The Department's directive on body scanners states that people in Separation Status should be offered the opportunity to go through the scanner on at least a weekly basis. The Board's November variance condition (10) requires that individuals in Separation Status be offered the opportunity to scan on a daily basis.

Variance condition (3.e) requires the Department to notify the Board in writing of any instances in which a person is denied the opportunity to receive a daily scan.

One of the four placements with no documented offer to scan on one day in the unit was since the Board's variance, though the Board did not receive notification.

In structured interviews with six people released from Separation Status in September 2019, four individuals described requesting to be scanned while in the unit. Two of them reported their request being met but waiting several hours for a Captain escort to intake, and two reported multiple requests for a scan being ignored.

Missed Court Dates

Of the 45 placements, three (6.7%) missed scheduled court dates. Nobody has missed a court date while in Separation Status since the Board variance passed.

The Board's variance condition (3.g) requires the Department to consult with the Office of Court Administration on producing individuals to court while in Separation Status and producing all individuals the Court expects to be produced. If the court requests that a person not be produced, the Department shall, to the extent possible, enable participation in his court proceeding via video conference.

On November 29, 2019, the Department created a space in the unit for confidential video conferencing to facilitate court appearances.

Removal, Contraband Recovery, and Infractions

Contraband recovery

From the 45 placements in Separation Status from July through November 2019, the Department recovered five (5) pieces of contraband, all of which were weapons, from five (5) separate placements.

Four placements resulting in contraband recovery were following positive scans, and one placement resulting in contraband recovery was for a scan refusal.

The Department reports that it has recovered a total of 37 contraband items from the use of body scanners, that did not result in Separation Status placement. Ten (10) contraband items were surrendered immediately prior to a scan and twenty-seven (27) items were surrendered immediately following a scan.

The Department reports that it is tracking contraband recovery from both Separation Status and body scanners in a spreadsheet. Contraband recovery from scans (while awaiting scan, after a scan, or after Separation Status placement) is documented in scanner logbooks.

Infractions and Punitive Segregation

The Department's directive on body scanners states that individuals who refuse a body scan shall be infraacted for refusal to obey orders and not following facility rules, and that individuals who have a positive scan shall be infraacted "accordingly." The Department's directive on the control and search of contraband states that individuals who surrender contraband shall be infraacted for possession of contraband.⁶⁵

Thirty-three percent (33%, n=15) of the 45 placements had infractions associated with dates of incident, scan or refusal, or stay in Separation Status.⁶⁶ A total of 68 infraction charges were served, of which 66% (n=45) were adjudicated guilty.

Four (4) individuals were adjudicated guilty of infractions for possessing, making, smuggling, or sharing contraband; all had contraband recovered. One individual who had contraband recovered had no corresponding infraction. Nobody was infraacted for refusing to be scanned.

Five (5) individuals with infractions were placed into Punitive Segregation directly from Separation Status.⁶⁷ Nine (9) individuals were found guilty of infractions and not placed into Punitive Segregation.⁶⁸

Health and Mental Health

The Department's current directive states that Correctional Health must provide authorization prior to anyone who requires mental observation being placed in the unit. Correctional Health have objected to this requirement citing practical and ethical concerns regarding CHS involvement in security decisions.

Of the 45 placements into Separation Status from July through November 2019, 16 (39%) had a Brad H designation (signifying the individual was receiving mental health services while in custody) (see Figure 10).

⁶⁵ N.Y.C. DEPT. OF CORRECTION, DIRECTIVE NO. 4508R-E CONTROL AND SEARCH OF CONTRABAND, Appendix B at p.4 (effective May 15, 2019).

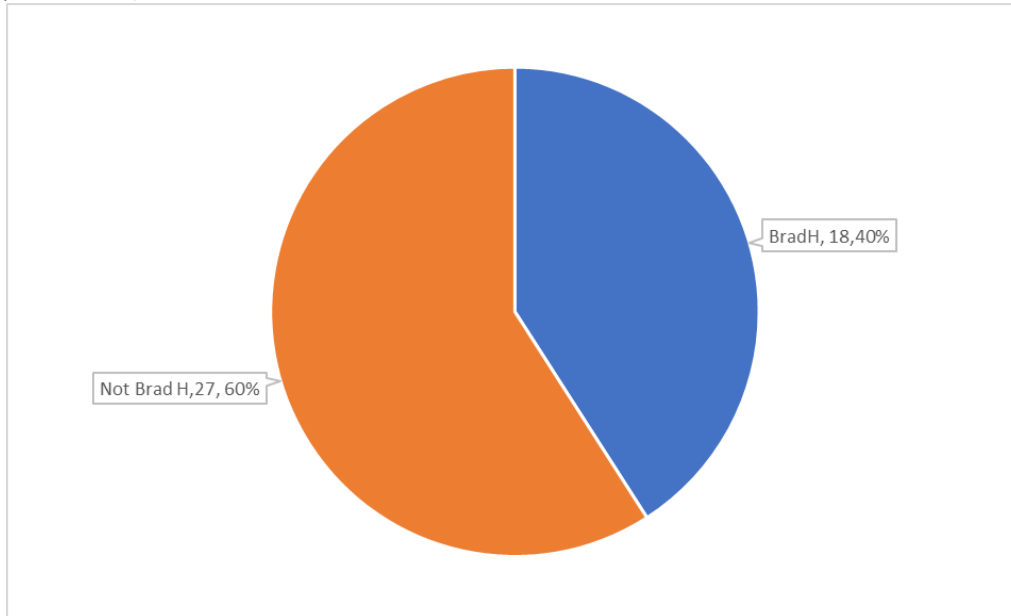
⁶⁶ Board staff checked infraction histories on December 19, 2019 for all individuals placed in Separation Status.

⁶⁷ Only one of these individuals had contraband-related infractions; the other four were related to incidences preceding the scan and Separation Status placement.

⁶⁸ One individual was placed in Punitive Segregation due to time owed from a previous infraction.

Figure 10: Individuals known to Mental Health at time of Placement into Separation Status, July-November 2019, N=41

(Source: DOC population data)



Of the 45 placements, two (2, 4.4%) were known to have a serious mental illness at the time of placement. Nobody had a known physical or developmental disability at the time of placement.

At the time of placement, twenty-six (26, 57.8%) were prescribed self-carry medications, eight (8, 17.8%) were prescribed non-carry medications, and one (1, 2.2%) was prescribed injectable medication. Nobody was receiving substance use treatment at the time of placement.

While in Separation Status, six individuals missed a mental health appointment and one person was not produced for a specialty clinic appointment.

Of the six (6) individuals released from Separation Status in September who were interviewed by Board staff, two (2) described not receiving medications, one of whom CHS confirmed missed four (4) doses of insulin while housed on the unit.

Medical Intake Before Separation Status Placement

The Department is required by its directive to scan everyone on admission to custody, as part of the intake process.⁶⁹ The Board’s Minimum Standard § 3-04⁷⁰ requires all individuals to undergo medical intake within 24 hours of admission to custody and before being housed. Placing people into Separation Status before medical intake would create significant risk for those with acute or deteriorating physical or mental health need – and population health risk in the case of airborne infectious diseases. To prevent people from being housed in

⁶⁹ Not all intake facilities have scanners.

⁷⁰ [N.Y.C. BOARD OF CORRECTION, TITLE 40, CHAPTER 3, §3-04 SCREENING \(effective January 2, 2017\)](#)

Separation Status before medical intake, variance condition (1) requires that everyone receives a medical and mental health intake before being scanned.

Of the 41 placements into Separation Status from July to November 2019, only one (1) was placed after a new admission scan (in August 2019). It was not clear in DOC's placement documentation whether that individual was provided a Medical intake before being scanned or placed into Separation Status. He was in Separation Status for 33 hours, and the housing area logbook contained no record of Correctional Health rounding on the unit during his stay.⁷¹

DOC staff operating scanners consistently report to Board staff that new admissions are not scanned until after medical intake.

Daily Medical Rounds

Condition (3.c) of the November variance requires CHS to conduct daily medical rounds to people in Separation Status as a tool for mitigating the risks of restrictive housing. Board staff had access to the housing area logbook for 16 of the 17 placements lasting 24-48 hours and found documented daily medical rounds for 12 (75%) of those placements. The four placements with no documented rounds were during the first five placements into the unit. Two (2) placements lasted between 48 and 72 hours, and had medical rounds documented on both full days in the unit. Three (3) placements lasted over 72 hours, and had medical rounds documented for two of their three full days on the unit. All placements lasting more than 24 hours since mid-August 2019 have had documented, daily medical rounds.

Notifications of Placement to Correctional Health

The Board's variance passed on November 12, 2019 requires that DOC must notify CHS of each placement or removal from Separation Status at the conclusion of each tour (a maximum of eight (8) hours after arrival on the unit).

Of the four (4) placements since the variance passed on November 12, 2019, DOC notified CHS of two (2) placements before arrival on the unit and notified CHS of one (1) placement five and a half hours after arrival on the unit and within the same tour. In one placement, CHS was notified twelve (12) hours after the person's arrival on the unit (not by the end of the tour).⁷²

Emergency Variance declarations before the November variance did not include time of CHS notification.

Injury report forms

Ingesting or secreting drugs or weapons creates a risk of internal lacerations, gastrointestinal obstruction, and overdose.⁷³ As such, DOC directives on "Control and Search of Contraband,"⁷⁴ and "Injury to Inmate Reports"⁷⁵ both state that any person in custody suspected of or observed ingesting or secreting contraband in a body

⁷¹ This placement was prior to the Board's variance condition requiring daily CHS medical rounds on the unit (condition 3.c).

⁷² Data source: DOC placement notifications to Board.

⁷³ Evans, D. C., Wojda, T. R., Jones, C. D., Otey, A. J., and Stawicki, S. P. (2015) Intentional ingestions of foreign objects among prisoners: A review. *World Journal of Gastrointestinal Endoscopy*.

⁷⁴ N.Y.C. DEPT. OF CORRECTION, DIRECTIVE NO. 4508R-E CONTROL AND SEARCH OF CONTRABAND, Appendix B at p.1 (effective May 15, 2019).

⁷⁵ N.Y.C. DEPT. OF CORRECTION, DIRECTIVE NO. 4516R-C INJURY TO INMATE REPORTS at p.2 (effective August 14, 2019).

cavity shall be made the subject of an Injury to Inmate Report and escorted to the facility's medical clinic for an assessment and risk counselling. The allowance for individuals to have an immediate medical assessment once they are suspected of ingesting or secreting contraband in body cavity is not outlined in the Department's directive on body scanners and the first medical encounter for individuals placed in Separation Status is through daily medical rounds. Only one (1) of 31 placements in Separation Status involving either a positive scan or an individual observed swallowing or secreting contraband had a documented injury report related to contraband ingestion or secretion and none of these placements were escorted to the medical clinic for an assessment and risk counseling.⁷⁶

The Department's placement of people into Separation Status after positive scans that identify contraband but without an injury evaluation is contrary to their policies on the control and search of contraband and on injury reporting and puts people at risk of injury.

Other Services

Variance condition (3.f) requires the Department to provide opportunities for regular visiting and attorney visiting by a secure video conferencing system by December 1, 2019. The Department installed a confidential (soundproofed) space with video-conferencing equipment for video visits and attorney visits.

The housing area logbook contains no documentation of access to loose-leaf legal materials, per variance condition (5), or access to newspapers, per variance condition (11). The Department states that individuals are informed verbally on entering the unit of restrictions to services while in Separation Status, including their right to access loose-leaf legal materials. It is not clear how requests for legal materials are coordinated with Law Library to provide materials requested.

Variance condition (6) require individuals to be allowed one (1) hour of daily recreation after 48 hours in Separation Status. Of the four (4) placements from November 12 to November 30, 2019, one placement was for longer than 48 hours. The housing area logbook contains no documentation of that individual being afforded recreation. Board staff visiting the unit on December 5, 2019 found a designated recreation cell.

Of the six individuals released from Separation Status in September who were interviewed by Board Staff, five described being told they were being placed in isolation with no services until they surrendered contraband, and one described being given no information about restrictions and services.⁷⁷

Limitations

Data presented and analyzed in this report required extensive data collection from multiple sources and manual data entry of handwritten DOC documentation. The reporting requirements in the Board November 2019 variance are intended to facilitate the Department's electronic tracking of data required for internal quality assurance and monitoring of both body scanners and Separation Status to ensure compliance with DOC policies, BOC Minimum Standards, DOHMH rules, and state laws.

⁷⁶ Board staff found an additional thirteen (13) injury reports that related to use of force or fights on the day of placement or scan, with no mention of contraband or foreign object ingestion or secretion. One placement had an injury documented in the Injury Report Logbook indicating "self-harm," but the Injury Report Form was not available to review whether it referred to contraband ingestion.

⁷⁷ These individuals were placed and released from Separation Status before the November variance.

The Department has been compliant with timely production of Separation Status placement and release documentation to the Board, per variance condition (9). However, Board staff have encountered inconsistencies and inaccuracies in documentation.

These deficiencies are barriers to both DOC's internal and BOC's independent monitoring of compliance with DOC policies, the Board's Minimum Standards and variance conditions, and DOHMH regulations.

Data, Documentation, and Reporting Inaccuracies

Quality of Scan Images

Images of positive scans shared with Board staff have been consistently poor quality and have included grainy photocopies of original images and photographs of computer screens with positive images. The quality of these images is not sufficient for the verification of positive images, which will prohibit any future independent audits assessing false positives and false negatives in scan interpretation.

Body Scanner Logbooks and Scanner Software Data

Body scanner logbooks do not include a reason for the scan. DOC is required by state law and local regulation to report reasons for all scans (apart from new admission scans) annually to DOHMH, the State Assembly, and the State Senate. The Board is concerned that the reasons tracked by the Department's scanner software are not accurate due to entry errors and because the software itself is not currently set up to capture all permissible reasons for scans. The Department must immediately take steps to update the scanner software to capture accurate reasons for scans and retrain staff to ensure both logbooks and information entered into the scanners is accurate.

Separation Status Placement Forms

Two (2) Separation Status Placement forms were missing the time of positive or refused scan.⁷⁸

The Separation Status placement forms do not accurately capture all the reasons for scans listed in the Department's directive and are not completed consistently, with the checkbox frequently conflicting with information provided in the open-text field of the form, or not completed.

Separation Status placement forms do not include a designated field for related Incident Report numbers (for placements following incidents) or whether the individual was involved in the incident referenced in the reason for placement.

Forms do not contain information confirming that the individual completed medical intake (in the case of new admission scans),⁷⁹ and whether the individual has had a medical assessment for the ingestion or secretion of contraband consistent with DOC's injury reporting or contraband recovery policies.

Forms include a field for "facility" which DOC confirmed is intended to document the facility of scan. One form listed MDC as the facility, despite their being no scanner at MDC.

⁷⁸ These forms were for placements prior to passage of the November 2019 variance.

⁷⁹ The requirement that medical intake be completed prior to scan is a condition of the Board's November 2019 variance but not yet required by DOC policy. Neither the Board's variance nor DOC policy currently require this information be documented.

Separation Status placement forms do not include a specific field for the Correction Officer to describe the contraband seen on a positive scan; documentation is in the form of open-text fields with no written requirement to document the nature or location of the object. The nature of the contraband identified in positive images may be helpful in contraband recovery and verification following negative scan images.

While DOC have been documenting time of arrival on unit since the November variance required them to do so, there is no designated field on Separation Status placement forms for the time of arrival onto the Separation Status unit. Before the variance, this information was not included on Separation Status placement forms.

The Department reports that individuals may receive multiple scans prior to placement in the Separation Status unit. The Separation Status placement forms currently only report time of initial scan and do not instruct staff to report if multiple scans were completed or the time those scans took place.

Separation Status Removal Forms

Separation Status removal forms do not contain a designated field for the time of release from Separation Status, which was only consistently documented in the Separation Status housing area logbook until December 2019 when the Department began including time of release from Separation Status on forms.

Separation Status Housing Area Logbook

The Separation Status housing area logbooks contain all data on the activities of people in custody while in the unit, including services afforded, as well as security operations on the unit. 1:1 security watch observations are documented in the housing area logbook, rather than in a separate designated document similar to those utilized for suicide watch observations.

Appendix A: Sample Emergency Variance Declaration

The Department is notifying the Board of an emergency situation and declaration of an emergency variance pursuant to §1-15(b)(3) of the Minimum Standards. An emergency situation prevents the Department's continued compliance with §1-03(c,d,f,g,j) Shaving, Haircuts, Personal Health Care Items, Clothing, Housing Areas; §1-04(b)(2-3) Single Occupancy; §1-05(a-c) Lock-In; §1-06 Recreation; 1-07(c,h) Congregate Religious Services; §1-08(b-d) Judicial and Administrative Proceedings, Access to Counsel, Access to Co-Defendants; §1-08(f)(4) Law Library Access; §1-08(g)(2-4) Legal Documents and Supplies Access; §1-09(c-d,f) Visiting Schedule, Initial Visit, Contact Visits; §1-11(c-d) Outgoing Correspondence; §1-12(d) Packages; §1-13(a-c) Publications; and §1-14 (a-b) Access to Media, as they pertain to an individual in custody suspected of concealing a weapon and the placement of that individual in separation status housing.

On [DATE] an individual in Department custody was involved in a violent incident, causing serious injury. Following review of Genetec video and in consideration of the injuries (lacerations) suffered by the victim, it was determined that the individual was the perpetrator of a slashing incident and was suspected to be in possession of a bladed weapon. The individual subsequently received a body scan on [DATE]. The body scan returned a positive finding for an unknown metallic object (suspected weapon) located in the individual's body cavity. Following the positive finding, the individual was processed and placed in separation status on [DATE] pending recovery of the suspected weapon.

Maintaining the safety and security of individuals in custody and staff is a critical function and responsibility of the Department. The existence of a suspected weapon in a Department facility poses a significant threat to the safety of the population in custody and staff. The nature of this emergency situation prevents the Department's continued compliance with the Minimum Standards enumerated above. The Department appreciates the Board's consideration of this matter.

Appendix B: Record of Variance, passed November 12, 2019



**BOARD OF CORRECTION
CITY OF NEW YORK**
1 CENTRE STREET, RM 2213
NEW YORK, NY 10007
212 669-7900 (OFFICE)
212 669-7980 (FAX)

Record of Variance Action for November 12, 2019 Public Meeting

This variance allows the Department to house people in Separation Status.

Type of Variance: Limited

Date on which variance will commence: November 12, 2019

Time period, if any: Three months, ending February 12, 2020

Minimum Standard for which Variance is Granted: 1-03(c-d, j) (Personal Hygiene); 1-04(b)(2-3) (Single Occupancy, including storage and desk space); 1-05(a-c) (Lock-In); 1-06 (Recreation); 1-07(c) (Religion) 1-08(f)(4) (Law Library Access); 1-08(g)(2-4) (Legal Documents and Supplies Access); 1-09 (c-d, f) (Visiting); 1-11(c-d) (Correspondence); 1-12(d) (Incoming Packages); 1-13(a-c) (Publications); and 1-14(a-b) (Access to Media)

Date on which Board of Correction first approved variance (for renewals only):

Requirements imposed as conditions on variance:

1. All newly admitted people in custody shall receive a medical and mental health intake, per Minimum Standard § 3-04, prior to body scan.
2. The Department shall place a person in Separation Status only if the person: (i) has a positive body scan; or (ii) refuses a body scan.
3. The Department shall:
 - (a) House people in Separation Status within four (4) hours of a positive scan or refusal to scan, absent extenuating circumstances, which shall be documented and communicated to the Board in each instance;

- (b) Notify CHS of each person placed into and/or released from Separation Status upon the conclusion of each tour. Each notification is to include a notification to Pharmacy and individual-specific information (i.e., Name and Book and Case number). For people released from Separation Status, DOC shall provide CHS with the person's new housing location;
 - (c) CHS shall provide daily medical rounds to people housed in Separation Status and shall have the authority to determine if any person should be removed for clinical evaluation or treatment.
 - (d) Institute one (1) Correction Officer-to-one (1) person in custody observation of each person throughout placement in Separation Status and fully document such observation.
 - (e) By the next business day, notify the Board in writing of any instances in which an individual is denied the opportunity to receive a daily scan and provide the reasons for such denial.
 - (f) Provide opportunities for regular visiting and attorney visiting by a secure video conferencing system that the Department shall have in place starting December 1, 2019
 - (g) The Department shall consult with the Office of Court Administration on producing people in Separation Status to court and shall produce any person the Court orders to be present. If the Court requests that the person not be produced, the Department shall, to the extent possible, enable the person to participate in his court proceeding through a secure video-conferencing system.
4. When a person remains in Separation Status for 72 hours, the Chief of Department, the Bureau Chief of Security, and the GRVC Warden ("Committee") shall meet to develop a plan for moving the person out of Separation Status. The Committee shall meet and develop a plan every 72 hours until the person is moved out of Separation Status. The Department shall provide each written plan to the Board within one business day of the Committee's meeting.
 5. Upon request, loose-leaf legal materials shall be provided to people in Separation Status. This shall include legal mail and Law Library requests. The Department may institute limits on the number of loose-leaf pages a person may have in the person's cell at any given time.
 6. When a person remains in Separation Status for 48 hours, the Department shall begin to afford one hour per day of indoor recreation. Recreation will be provided on the housing unit in a closed space but outside of the person's assigned cell. Recreation space shall include appropriate recreation equipment.
 7. The Department shall not limit the number or duration of confidential calls to attorneys, the Board of Correction, the Department of Investigation, or any other monitoring body.
 8. Signs shall be posted at intake to advise individuals in custody that they can (i) make complaints about body scanners/body scanning to DOC's Office of Constituent and Grievance Service (OCGS) or 311; and (ii) upon release from DOC custody, request the total accumulated radiation exposure from all body scans of that person conducted during the incarceration.
 9. By the next business day of a person's placement in and release from Separation Status, the Department shall provide the Board access to all supporting documentation related to the person's placement and release. The Department shall provide the Board with a monthly public report on the implementation of Separation Status. The requirements for the notification and report are outlined in Appendix A hereto.

10. The Department shall offer a daily opportunity to body scan to each person in Separation Status.
11. The Department shall provide access to newspapers. The Department may limit the number of newspapers that a person may have in cell at any one time.

APPENDIX A
Reporting Requirements

1. The Department shall notify the Board in writing of the specific location(s) of any units designated for Separation Status, including opening and closing dates of each unit.
2. The Department's notification to the Board regarding placement in Separation Status shall include:
 - (a) Date and time of positive scan or refusal to scan
 - (b) Facility of scan
 - (c) Reason for scan, including COD number, if applicable
 - (d) Date and time of arrival to Separation Status
 - (e) Reason for placement (positive scan or refusal)
 - (f) Date and time CHS notified of placement in Separation Status
 - (g) A high-quality printout of the scan image, if applicable
 - (h) Form SEP-1
3. The Department's notification to the Board regarding removal of an individual from Separation Status shall include:
 - (a) Date and Time of negative rescan
 - (b) Dates and Times of positive rescans (in Separation Status) and refusals to rescan, if applicable
 - (c) Date and Time of removal from Separation Status
 - (d) Reason for removal (e.g., cleared scanner, removed for clinical evaluation and/or treatment, discharged from custody, etc.)
 - (e) Description of contraband recovered (if any)
 - (f) Form SEP-2
4. The Department shall produce monthly public reports with the following metrics reported in total since body scanners were implemented and by reporting month:
 - (a) Number and percent of placements in Separation Status by reason for placement (positive scan, refusal to scan)
 - (b) Number of unique individuals placed in Separation Status
 - (c) Number of unique individuals with multiple placements in Separation Status disaggregated by number of placements
 - (d) Number and percent of placements with contraband recovered disaggregated by type of contraband recovered
 - (e) Number of people removed from Separation Status during the reporting period, in total and disaggregated by removal reason (cleared scanner, removed for clinical evaluation and/or treatment, discharged from custody, etc.)

- (f) The Mean, Median, Min, Max length of stay in Separation Status (in hours), overall since start of the Department's use of Separation Status and by month
- (g) Number of people currently in Separation Status as of the last day of the reporting period
- (h) The Mean, Median, Min, Max, time in Separation Status for those still in Separation Status as of last day of the reporting period.
- (i) The number of people in Separation Status who missed a scheduled court appearance.