

**BOARD OF CORRECTION DETERMINATIONS
ON DEPARTMENT OF CORRECTION REQUESTS FOR VARIANCES FROM
MINIMUM STANDARDS EFFECTIVE MAY 1, 1978**

The Board of Correction received the attached variance requests on March 29, 1978. Most of these involved delays in the effective date of particular sections of the minimum standards. Three requests sought permanent changes in the standards.

Upon receipt, the requests were transmitted to forty interested individuals and organizations throughout New York City for their comments. These included the Correctional Employees Benevolent Association, and the Prisoners' Right Project of the New York City Legal Aid Society. Board staff independently investigated the factual bases of the requests.

The requests were formally considered by the Board of Correction at its meeting on April 17, 1978. The Board found that the need for additional personnel, as well as structural alterations, justified all of the requests for a delay in effective dates; the specific sections are listed below. The Board granted one of the permanent changes requested (Section 15.2), the other two permanent changes were granted provisionally pending receipt of additional evidence of their need from the Department and other interested parties.

VARIANCE DECISIONS

1. Sections 4.7(c) and (d) are delayed at the Adolescent Reception and Detention Center until September 1, 1978.
2. Section 5.3(a) is delayed at the Correctional Institution for Men until September 1, 1978.
3. Section 6.2 is delayed system-wide until July 1, 1978. Prior to that date, the Department shall present to the Board a detailed schedule for full compliance with this Section. Any requested variances must be fully documented.
4. Section 7.3 is delayed at the Queens House of Detention and the Adolescent Reception and Detention Center until September 1, 1978. During the period May 1, 1978 through September 1, 1978, recreation shall be provided at least twice a week for two hours at a time at the Queens House of Detention and twice a week for two and a half hours at a time at the Adolescent Reception and Detention Center.
5. Section 10.2(d) (ii) is delayed system-wide until September 1, 1978.
6. Section 10.3(a), (b) and that part of (e) that requires at least one visit per week to be on an evening or weekend are delayed system-wide until September 1, 1978.
7. Sections 10.3(e) and 10.6 are delayed at the Correctional Institution for Men until September 1, 1978.
8. Section 10.6 is delayed at the Queens House of Detention until September 1, 1978.
9. Sections 11.3, 11.4 and 11.6 are delayed at the Adolescent Reception and Detention Center, the Correctional Institution for Women, the Correctional Institution for Men, and C-71/95 until September 1, 1978.
10. Section 7.3 is delayed at the Correctional Institution for Men until September 1, 1978. During the period May 1, 1978 through September 1, 1978, prisoners shall be provided at least three recreation periods per week for a total of seven and a half hours. The Department's request for a permanent variance in Section 7.3 at the Correctional Institution for Men is denied. The evidence presented in support of this request was not sufficient.
11. Section 7.6 is amended system-wide to permit a denial of recreation to prisoners in punitive segregation for the first five days of their confinement in segregation. This amendment shall remain in effect from May 1, 1978 until September 1, 1978. During this period, all prisoners confined in segregation on one or more charges must, by the sixth consecutive day of such confinement, be afforded the recreational opportunities provided by Section 7.3. Further, during this period, all prisoners in punitive segregation must be afforded daily recreation outside of their cells by access to either an outdoor recreation area, an indoor recreation area, a tier area, or a dayroom. The Department's request for a permanent change in Section 7.6 is denied. The Department did not present sufficient justification including details of the routines of prisoners in punitive segregation.
12. Section 15.2 is permanently amended system-wide to allow the Department to require the consent of an attorney or a parent or legal guardian prior to scheduling a media interview with a prisoner under 18 years of age. The Board found that the legal problems of obtaining "consent" from prisoners under 18 years of age justified this amendment. It is particularly important since statements made by prisoners to media representatives may be used against them in later legal proceedings.

Dated: April 21, 1978.