

BODY SCANNERS RISK HEALTH AT RIKERS ISLAND

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JULY 23, 2020

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By Melissa Giddings

For the past year, correction officers on Rikers Island have been using radiation-emitting body scanners to search inmates for contraband, repeatedly exposing them to a health risk. Body scanners can detect hidden items without clothing removal or a physical search.

Outside of jails and prisons, it is a crime for anyone but a licensed medical professional to use radiation-emitting scanners.¹ At Rikers, untrained corrections staff operate body scanners without any certification in radiation safety. In January, the Board of Correction (“BOC”), sets administrative rules for New York City jails, found that the lack of training increases the risk of false negatives, which undermines the City’s “ability to use scanners effectively as a tool to identify contraband,” and false positives, which unnecessarily subject inmates to solitary confinement.

The BOC reported that the lapse in training is “creating a risk of radiation exposure to staff and people in custody.”² Between July 15 and November 30 of last year, Rikers staff conducted 11,212 body scans on inmates, and the BOC found that in at least one of those months untrained staff conducted around a third of all scans. This recklessness led the BOC to recommend “an immediate investigation into misuse” of the body scanning devices at Rikers Island.³

New York legislators carved out an exception for the use of body scanners on Rikers Island in 2018, deciding that the state prohibition on the use of radiation for non-medical purposes no longer protected inmates.⁴ This umbrella prohibition exists because city, state, and federal authorities recognize the danger that even low levels of radiation exposure poses to an individual. The Center for Disease Control cautions that “even if it is a small dose, if receiving that dose has no direct benefit, you should try to avoid it.”⁵ The Environmental Protection Agency (EPA) recognizes that while exposure to low levels of radiation may not cause immediate health effects, it can cause an increase in the risk of cancer over a lifetime.⁶ The EPA further counsels that children and fetuses are especially sensitive to radiation

¹ §3502, https://www.health.ny.gov/environmental/radiological/radon/docs/article_35.pdf.

² Body Scanners and Separation Status in New York City Jails, New York City Board of Correction (Jan. 2020), https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.01.13%20FINAL%20Separation%20Status%20Body%20Scanner%20Public%20Report_to%20PDF.pdf.

³ Reuven Blau, *Correction Board Seeks Probe into ‘Misuse’ of Rikers Body Scanners*, THE CITY (Jan. 14, 2020), <https://www.thecity.nyc/2020/1/14/21210584/correction-board-seeks-probe-into-misuse-of-rikers-body-scanners>

⁴ §3502, https://www.health.ny.gov/environmental/radiological/radon/docs/article_35.pdf.

⁵ <https://www.cdc.gov/nceh/radiation/alara.html>

⁶ <https://www.epa.gov/radiation/radiation-health-effects>

exposure as their cells divide rapidly, providing more opportunity for radiation to disrupt the process and cause cell damage.

Still, corrections officials insist these devices are safe, even as state law forbids their use on department staff or visitors. The 2018 bill authorizing the exception for use of body scanners by the Department of Correction (“Department”)—which holds operational control of New York City jails—limits the use to inmates and calls for oversight by the city and state departments of health “because any radiation exposure is potentially dangerous.”⁷ Specifically, oversight is requested “to make sure that individual adult inmate exposure is minimal, that adolescents are only exposed to radiation under exceptional circumstances and that pregnant women are excluded from scanning.”

Correction officers justify body scanners in their facilities by arguing that their use will prevent the smuggling of contraband into facilities by inmates, but the discriminate application of this technology only to inmates does not actually address that problem when the correction officers themselves have consistently proven willing and able to accept thousands of dollars in bribes to do the same.⁸ Contraband smuggling by guards has been a significant concern of the courts⁹ and government attorneys¹⁰ for

⁷ Memorandum in Support of A.6838 (2018), https://assembly.state.ny.us/leg/?default_fld=&bn=A6838&term=2017&Memo=Y.

⁸ See, e.g., *6 Guards, 15 Others Charged in Rikers Island Drug-Smuggling Bribery Case*, AP (Jan. 14, 2020), <https://www.silive.com/news/2020/01/6-guards-15-others-charged-in-rikers-island-drug-smuggling-bribery-case.html>. See also Ted Conover, *NEWJACK: GUARDING SING SING 104* (2000) (“The first strange thing about contraband was that its most obvious forms - weapons, drugs, and alcohol - could all be found fairly readily inside prison. Some of the drugs probably slipped in through the Visit Room, but most, it seemed, were helped into prison by [corrections] officers who were paid off.”); George Renaud, *Who’s Really Bringing Contraband into Jails?*, PRISON POLICY INITIATIVE (Dec. 6, 2018), <https://www.prisonpolicy.org/blog/2018/12/06/jail-contraband/> (“I reviewed news stories of arrests made in 2018 of individuals caught bringing contraband into jails and prisons. What I found wouldn’t surprise any person in jail, but it’s a truth that sheriffs prefer to avoid: Almost all contraband introduced to any local jail comes through staff. This year alone, 20 jail staff members in 12 separate county jails were arrested, indicted, or convicted on charges of bringing in or planning to bring in contraband.”).

⁹ See, e.g., *Sec. & Law Enforcement Employees v. Carey*, 737 F.2d 187, 191 (2d Cir. 1984) (noting that is not unexpected or surprising that some of these guards or corrections officers breach security by smuggling contraband into correctional facilities). See also *Williams v. Price*, 25 F. Supp. 2d 605, 613 (W.D. Pa. 1997) (describing guards’ involvement in smuggling contraband, including drugs, to prisoners); *Ohio Civil Serv. Employees Ass’n v. Seiter*, 858 F.2d 1171, 1177 (6th Cir. 1988) (“Not only do prison employees spend more time in prisons, but they also have more access to sensitive areas of the facility.”)

¹⁰ See, e.g., Press Release: Former Rikers Correctional Officer Pleads Guilty To Smuggling Contraband For Inmates, S.D.N.Y. (July 15, 2020), <https://www.justice.gov/usao-sdny/pr/former-rikers-correctional-officer-pleads-guilty-smuggling-contraband-inmates>; Press Release: Former New York City Correction Officer Pleads Guilty to Conspiring to Smuggle Contraband into Rikers Island Jail, S.D.N.Y. (Aug. 9, 2019), <https://www.justice.gov/usao-edny/pr/former-new-york-city-correction-officer-pleads-guilty-conspiring-smuggle-contraband-0>.

See also Joseph Ax, *Guards, Inmates Charged with Smuggling at New York’s Rikers Island*, REUTERS (May 19, 2016), <https://www.reuters.com/article/us-new-york-crime-rikers-idUSKCN0YB005> (“A Reuters analysis previously found that more than 50 guards at Rikers have faced criminal charges since 2012 for assault, falsifying reports and smuggling contraband, as city and federal investigators have accelerated efforts to combat misconduct among correction employees.”); Joshua Jamerson, *Correction Officer Accused of Smuggling Contraband Into Manhattan Detention Complex*, N.Y. TIMES (June 18, 2015), <https://www.nytimes.com/2015/06/19/nyregion/correction-officer-accused-of-smuggling-contraband-into-manhattan-detention-complex.html>; Michael Schwirtz, *Rikers Island Guard Is Arrested on Charges of Smuggling*, N.Y. TIMES (Nov. 25, 2015), <https://www.nytimes.com/2015/11/26/nyregion/correction-officer-at-rikers->

decades for this very reason, yet New York exempts them from radiation scanning when they enter prisons and jails daily.

To date, the Department has purchased 12 of the 20 total body scanners planned.¹¹ The Rikers facilities with body scanners in use currently are all male facilities, though neither the law nor the Department's body scanner directive prohibit women from being scanned once the rest of the 20 planned scanners are installed.¹² This is true even as Correctional Health Services has urged the Department to explicitly exempt all female inmates from scanning.¹³

The Department minimizes the impact of body scanners, claiming adults would be exposed to no more than 0.25 μSv ¹⁴ per scan, and no more than 125 μSv annually,¹⁵ consistent with levels set by the American National Standards Institute.¹⁶ But when NY1 reported on the body scanners at Rikers, they showed that the scanners produced eight times as much radiation as claimed.¹⁷ To meet the standards they would need to limit inmate exposure to around 60 scans a year, but the Department permits officers to scan an inmate as often as twice per day.¹⁸

Inmates who refuse to be scanned for health reasons are issued disciplinary infractions and sent to the Separation Status Unit ("SSU"), which is solitary confinement by another name. The Department

island-arrested-on-charges-of-smuggling.html ("In the last year and a half, 11 guards and civilian staff members have been arrested for contraband smuggling, according to the [city's] Investigation Department.").

¹¹ Reuven Blau and Savannah Jacobson, *Pregnant Pause: Jail Officials Seek Safe Path for Body Scanners*, THE CITY (June 12, 2019), <https://www.thecity.nyc/justice/2019/6/12/21211013/pregnant-pause-jail-officials-seek-safe-path-for-body-scanners>.

¹² When it passed in 2018, the body scanner bill dictated that "procedures for identifying pregnant women shall be set forth in the regulations." S.5337 (2017). To date, the regulations have given minimal to no guidance on what that means. Title 10 of the New York City Codes, Rules and Regulations simply says that "pregnant women shall not be subject to scanning at any time." 10 NYCRR, Vol. A, § 16.70: Use of Body Scanning, (e)(2)(iii), (July 3, 2019). The City Health Code only requires that "a sign must be posted that advises pregnant and potentially pregnant females that they should not be screened and that they should inform DOC personnel of such status," 24 NYCRR, §33.08, placing the onus on underserved inmates to both know they are pregnant and to refuse a scan.

¹³ Reuven Blau and Savannah Jacobson, *Pregnant Pause: Jail Officials Seek Safe Path for Body Scanners*, THE CITY (June 12, 2019), <https://www.thecity.nyc/justice/2019/6/12/21211013/pregnant-pause-jail-officials-seek-safe-path-for-body-scanners>. (During a State Public Health and Health Planning Council meeting last June, Dr. Patsy Yang, Senior Vice President for Correctional Health Services, made the recommendation to exempt all inmate who could get pregnant because "[t]here is no way to rule out pregnancy, nor should we mandate pregnancy tests.")

¹⁴ " μSv " is an abbreviation for microsieverts, the common radiation dose measurement.

¹⁵ Body Scanners, New York City Department of Correction, https://www1.nyc.gov/assets/doc/downloads/press-release/Body_Scanners_Hand_Outs.pdf ("Each scan exposes the inmate to 0.25 μSv ").

¹⁶ ANSI/HPS N43.17-2009, RADIATION SAFETY FOR PERSONNEL SECURITY SCREENING SYSTEMS USING X-RAY OR GAMMA RADIATION, Section 6.1.1.1 ("[T]he maximum dose per screening is 0.25 microSv."). See also Reuven Blau and Savannah Jacobson, *Pregnant Pause: Jail Officials Seek Safe Path for Body Scanners*, THE CITY (June 12, 2019), <https://www.thecity.nyc/justice/2019/6/12/21211013/pregnant-pause-jail-officials-seek-safe-path-for-body-scanners>.

¹⁷ Courtney Gross, *Rikers Island's New Scanners Provide a Glimpse Inside an Inmate's Body*, NY1 (Sept. 9, 2019), <https://www.ny1.com/nyc/all-boroughs/politics/2019/09/09/rikers-island-scanners-like-airport-glimpse-inside-body-search-for-weapons-new-york-city>.

¹⁸ See Body Scanners, *supra* note 13.

opened the SSU on July 18, 2019, in conjunction with the introduction of body scanners.¹⁹ The SSU imposes 24-hour-a-day lock-in (except for a daily shower) and uninterrupted supervision. The Department holds inmates in the SSU until they either submit to a body scan or are released from custody. In May, over 90% of those who were removed from the SSU had eventually submitted to a scan.²⁰

The BOC maintains “minimum standards” for all Department facilities, which entitle inmates to rights such as due process, access to legal documents, visitations, and recreation. The Department must grant a variance when a practice fails to meet their minimum standards, but the Department knowingly and improperly placed 41 inmates into the unit before seeking the variance.²¹ The BOC temporarily granted the variance allowing the SSU to remain in operation pending future evaluation.

Body scanners expose users to ionizing radiation that can mutate DNA and increase the risk of cancer. The Department claims to limit exposure to amounts that are eight times lower than their own machines advertise. Even when used properly, they pose a health risk that the European Union and the United States Transportation Security Administration determined to be too high.²² But correction officers operating these devices at Rikers are not trained in proper use, resulting in false negatives or false positives. These improper readings undermine security efforts and frequently result in the prolonged discipline and isolation of inmates. And in targeting inmates alone, the use of body scanners fails to address the significant danger posed by guards smuggling contraband into prisons and jails.

The BOC report released in January called for “urgent” corrective action to address the failures in implementation of the body scanners at Rikers and eliminate the health risks implicated by those failures.²³ But so long as the policy of body scanner use remains in effect, health and safety are unacceptably risked.

¹⁹ New York City Board of Correction Public Meeting Minutes, Sept. 10, 2019, <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/October/September%2010%202019%20Board%20Meeting%20Minutes%20DRAFT.pdf>.

²⁰ Monthly Separation Status Report, New York City Department of Correction (May 2020), https://www1.nyc.gov/assets/boc/downloads/pdf/separation_status_monthly_report_may_2020.pdf.

²¹ Body Scanners and Separation Status in New York City Jails, New York City Board of Correction (Jan. 2020), https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.01.13%20FINAL%20Separation%20Status%20Body%20Scanner%20Public%20Report_to%20PDF.pdf.

²² Jack Nicas, “TSA to Halt Revealing Body Scans at Airports,” *The Wall Street Journal*, Jan. 18, 2013, <https://www.wsj.com/articles/SB10001424127887323783704578250152613273568>; David DiSalvo, “Europe Bans Airport Body Scanners for ‘Health and Safety’ Concerns,” *Forbes*, Nov. 15, 2011, <https://www.forbes.com/sites/daviddisalvo/2011/11/15/europe-bans-airport-bodyscanners-over-health-and-safety-concerns/#3e50435e2b57>.

²³ Rikers Body Scanners Risk Jailed New Yorkers’ Health, *FILTER MAG* (Jan. 21, 2020), <https://filtermag.org/rikers-body-scanners-health/>.



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