



**CITY OF NEW YORK
BOARD OF CORRECTION**

OPEN MEETING
November 18, 2014

MEMBERS PRESENT

Gordon Campbell, Esq., Chair
Jennifer Jones Austin, Esq.
Greg Berman
Derrick D. Cephas, Esq.
Robert L. Cohen, M.D.
Honorable Bryanne Hamill
Michael Regan
Steven M. Safyer, M.D.

An excused absence was noted for Alexander Rovt, Ph. D., Vice Chair

DEPARTMENT OF CORRECTION

Joseph Ponte, Commissioner
James Dzurenda, First Deputy Commissioner
Martin Murphy, Acting Chief of Department
James Perrino, Acting Assistant Chief
Erik Berliner, Deputy Commissioner
Peter Thorne, Deputy Commissioner
Errol Toulon Jr., Deputy Commissioner of Operations
Winette Saunders-Halyard, Acting Deputy Commissioner for Youthful and Adult Offender Programs and
Assistant Commissioner for Community Partnerships and Program Development
Heidi Grossman, Esq., General Counsel
Jeff Thamkittikasem, Chief of Staff
Sean Jones, Deputy Chief of Staff
Shirvahna Gobin, Executive Director for Intergovernmental Affairs
America Canas, Senior Policy Advisor
Yolanda Canty, Assistant Chief
William Barnes, Deputy Warden
Joseph Caputo, Deputy Warden
Hon Pun Chan, Deputy Warden
Terrence Graham, Deputy Warden
Damon Harris, Deputy Warden
Tonya Hayes, Deputy Warden
Angelo Jamieson, Deputy Warden
Karen Lewis, Deputy Warden

Becky Scott, Deputy Warden
Brian Sullivan, Deputy Warden
Marsha Elliott, Captain
Jack Ryan, Press Officer
Shaquana Thomas, Correction Officer
Danielle Leidia, Correction Officer
Ana Billingsely, Urban Fellow

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Mary Bassett, M.D., M.P.H., Commissioner
Sonia Angell, M.D., M.P. H., Deputy Commissioner, Division of Prevention & Primary Care
Elizabeth Ford, M.D., Executive Director, Mental Health, Bureau of Correctional Health Services
Anthony Waters, Psy.D., Director, Mental Health, Bureau of Correctional Health Services
Zachary Rosner, M.D., Deputy Medical Director, Bureau of Correctional Services
Sarah Glowa-Kollisch, Director of Policy and Evaluation
Anne Sperling, Deputy Director of Intergovernmental Affairs
Nathaniel Dickey, Special Assistant
Patrick Alberts, Esq., Agency Counsel

OTHERS IN ATTENDANCE

Skylar Albertson, The Bronx Defenders
Anna Anandel, Columbia Mailman School of Public Health
Joseph Antonelli, Office of Management and Budget (OMB)
Jessica Souhanian-Braunstein, Public Advocate Office
John Boston, Legal Aid Society
Gina Bull, Public Advocate Office
Dahianna Castillo, OMB
Jared Chason, Public
Billy Clareman, Paul, Weiss
David Condliffe, Public
Albert Craig, Correction Officers Benevolent Association (COBA)
Brian Crow, NYC Council
Marion Defeis, National Religious Campaign Against Torture
Agata Deia, Jails Action Coalition (JAC)
Riley Evans, Brooklyn Defenders Services/JAC
Joseph Ferramosca, Correction Captains' Association
Chrissy Fiorentini, NYC Independent Budget Office (IBO)
Elizabeth Glazer, Director of Mayor's Office of Criminal Justice
Susan Goodwillie, JAC
Dashone Hughey, OMB, Senior Analyst
Elias Husamudeen, COBA
Kim Joyce, NYC Law Department
Deandra Kahn, NY Civil Liberties Union (NYCLU)
David Karopkin, NYC Council
Martha Kashickey, Stoll, Glickman & Bellina
Alyssa Katz, Daily News Reporter
Michael Kenny, OMB
Sarah Kerr, Legal Aid Society
Martha King, Senior Policy Analyst
Celeste Koeleveld, Executive Assistant, Corporation Counsel for Public Safety
Arthur Larkin, NYC Law Department

Neil Leibowitz, M.D., Director, Mental Health, Corizon
Jennifer Levy, Public Advocate
Jeff Mailman, City Council
Felix Martinez, Board of Correction
Elizabeth Mayers, JAC
Barbie Melendez, Board of Correction
Ingrid Montgomery, OMH
Valentina Morales, Principal Attorney at Mental Health Legal Service
Sharon Nelson, COBA
Jennifer J. Parish, Urban Justice Center/JAC
Amanda Parsons, Vice President of Community and Population Health at Montefiore Medical Center
Jake Pearson, Associated Press
Shaquana Pearson, Board of Correction
Julie Pennington
Victoria Phillips, JAC
Charlotte Pope, Children's Defense Fund-NY
Beth Powers, Children's Defense Fund
Jeffrey Prey, US Attorney's Office (USAO)
Celia Rhodes, NYC Law Department
Ariel Rtichin, Student
Alisa Roth, OSF
Norman Seabrook, COBA
Jeffrey Schwartz, US Department of Justice
Sidney Schwartzbaum, President, Assistant Deputy Wardens Association
Michael Schwirtz, New York Times
Stefen Short, Disability Rights New York
Jane Stanicki, JAC
Marc Steier, COBA
Eric Stone, Paul, Weiss
Chris Terranova, Paul, Weiss
Mariana Veras, MDRC Program Assistant, Mental Health
Amy-Monique Waddell, Board of Correction
Gale Weiner, JAC
Michael Winesip, New York Times
Eisha Wright, NYC Council, Finance
Milton Zelermyer, Legal Aid Society, Prisoners' Rights Project

The meeting commenced at 9:11 AM. A video recording of the meeting is available on the Board of Correction (BOC) website at www.nyc.gov/boc.

Board Chair Gordon Campbell opened the meeting with a tribute to former Executive Director Cathy Potler, whose memorial service was held at the NYU Kimmel Auditorium on November 1, 2014. Chair Campbell read an excerpt from the program describing her life and accomplishments. He went on to say that Ms. Potler cared so much for incarcerated persons and that she made a difference in their lives. After the Board observed a moment of silence in her memory, Board members Greg Berman, Michael Regan, Dr. Robert Cohen, Dr. Steven Safyer, and Judge Bryanne Hamill each paid special tribute to Ms. Potler and thanked her for her service and commitment to the Board.

Chair Campbell then welcomed the three new Board members: Jennifer Jones Austin, Derrick Cephas, and Dr. Steven Safyer. He read their biographies which are also posted on the BOC website. Board member Austin is the Chief Executive Officer and Executive Director of the Federation of Protestant

Welfare Agencies. She recently served as co-chair of Mayor-Elect De Blasio's transition committee, and is currently a board member and spokesperson for the National Bone Marrow Donor Program. Board member Cephas is a partner at Weil, Gotschal & Manges LLP, where he heads Weil's Financial Institutions Regulatory practice. He previously served as a member and chair of the Civilian Complaints Review Board. Board member Dr. Safyer is the President and Chief Executive Officer of Montefiore Health System and previously worked at Montefiore's Rikers prison health program from 1985 to 1993.

The Board approved a motion to approve the minutes for the September 9, 2014 board meeting.

The two-month variance granted on September 19, 2014 to comingle 18- to 21-year-old inmates

Chair Campbell opened the discussion with a brief history on the Department of Correction's (DOC) continuing variance request for a housing cohort for 18- to 21-year-old inmates. Chair Campbell reminded the Board that it had approved the variance at the September 9, 2014 board meeting. He stated that at that meeting and in a subsequent letter to DOC Commissioner Joseph Ponte the Board raised a number of concerns regarding cameras, programming, Safe Crisis Management training for staff, as well as the proper staff-to-inmates ratio. While noting that Commissioner Ponte did submit a letter to the Board earlier today, he asked Commissioner Ponte to address the Board's concerns.

Speaking on behalf of Commissioner Ponte, First Deputy Commissioner Jim Dzurenda first addressed the Board's concerns about cameras. First Deputy Commissioner Dzurenda stated that DOC began its review of camera system coverage needs at RNDC and determined that they will need around 1,250 cameras to cover the entire facility. Given that estimate and the number of beds at RNDC, First Deputy Commissioner Dzurenda extrapolated that 10,515 cameras would cover every DOC facility. He explained that DOC has 2,703 cameras installed and in operation, and that they secured funding for 3,000 additional cameras. He added that DOC is currently seeking funding for an additional 4,811 cameras. Amending First Deputy Commissioner Dzurenda's statement, Commissioner Ponte stated that the City has committed to funding the additional cameras and that DOC will issue a request for proposals (RFP). He added that DOC hopes to have complete camera coverage in all the facilities within 18 months after they award the contract. In response to Judge Hamill's subsequent question as to why only one of the units housing 18-year-olds has cameras, First Deputy Commissioner Dzurenda stated that RNDC is DOC's priority, and that the units housing 18-year-olds will eventually be covered.

Winette Saunders-Halyard, the Acting Deputy Commissioner for Youth Offender Programs and Adult Programming, responded to the Board's concerns about staff training. Acting Deputy Commissioner Saunders-Halyard stated that pursuant to DOC's plan to develop a "trauma-informed care environment," it has integrated the Safe Crisis Management (SCM) curriculum into its academy's syllabus. She explained that training began in September 2014, and that DOC will have 250 staff trained in SCM by the end of 2014. Acting Deputy Commissioner Saunders-Halyard stated that 30% of the 110 staff who have completed training thus far work in the adolescent and young adult housing areas.

Responding to Chair Campbell's subsequent question about programming, Acting Deputy Commissioner Saunders-Halyard stated that DOC plans to integrate re-entry services and comprehensive discharge planning continuum for adolescents and young adults. She added that DOC also plans to integrate career and technical education, as well as workforce development. She said that the programming is largely contingent on whether DOC secures an estimated \$5 million in funding. Acting Deputy Commissioner Saunders-Halyard said that DOC has already requested the funding. In response to the Chair's subsequent request for additional information on funding, Commissioner Ponte stated that they have discussed with the City several possible revenue streams, and that DOC is in the process of fine-tuning their request for funding.

In response to Chair Campbell's next question as to whether a 1:15 staff-to-inmate ratio is necessary for the 16- and 17-year-old housing units, Commissioner Ponte stated that DOC has discussed adding other types of staff to the units because a 1:15 ratio is cost-prohibitive at this time and difficult to achieve.

Judge Hamill stated that her understanding is that DOC has not met the conditions enumerated in the Board's variance approval letter. She emphasized that the two-month variance approval was premised upon DOC meeting those conditions, and went on to ask Commissioner Ponte whether DOC has prepared a report for the Board focused on whether a C-post officer is needed in the young adult housing area – a report that the Board had specifically requested. Commissioner Ponte responded that they have no report for the Board because DOC has not used the variance and the groups have not been comingled. He explained that the conditions attached to the variance were unachievable.

Returning to the Board's staffing concerns, Judge Hamill stated that during her tours at Rikers, correction officers have told her that they feel unsafe inside the units where 18-year-olds are held because they feel outnumbered by the inmates. After emphasizing that 18-year-olds were included in the U.S. Department of Justice's investigation, report, and recommendations, Judge Hamill asked why DOC has not augmented supervision in the units where 18-year-olds are held. Commissioner Ponte responded that the staffing ratio and staffing plan are "pretty traditional," and that he will be more than happy to discuss staffing concerns with his staff.

Dr. Cohen stated that during his visits to GRVC and GMDC, where 18- to 21-year-olds were to be comingled in young adult housing units, he spoke with the wardens of both facilities. He stated that both wardens, including Warden Canty who is no longer at GRVC, told him that they could not safety staff the young adults housing units unless there was a C-post officer in those units.

Dr. Cohen went on to state that DOC should withdraw the variance request and bring it back to the Board when it is ready to implement the changes. He explained that DOC has not implemented the changes, and does not have in a place a plan to do so, despite their prior representations to the Board that they needed the variance. Addressing Commissioner Ponte's earlier statement that the variance conditions were unachievable, Dr. Cohen said that the Board and DOC negotiated those conditions. Commissioner Ponte challenged Dr. Cohen's statement that the conditions were negotiated, and when asked what specific conditions he disagreed with, Commissioner Ponte stated that he does not wish to be specific. When asked to comment, Ms. Masters stated that she and Deputy Commissioner Berliner had an extensive conversation about each of those variance conditions, and that it was represented to her that DOC would not have problems complying with those conditions.

In response to Chair Campbell's subsequent question as to when DOC plans to comingle the 18- to 21-year-olds, Deputy Commissioner Berliner stated that they would like to do so immediately. He explained, "A lot of our programming assumptions, in terms of being able to provide everybody with the programming, are based on the need to put the 19- to 21-year-olds in the same housing areas as the 18-year-olds." Deputy Commissioner Berliner further stated that he and Ms. Masters discussed the Board's conditions on training, and they were going to be difficult for DOC to achieve by the timeline set forth by Board. Deputy Commissioner Berliner clarified, however, that DOC has committed to training everyone, and that the agency has expedited the training to have more officers trained by the end of December.

Judge Hamill moved to table the variance to the next Board meeting. She explained that the Board is in the midst of rulemaking addressing related issues, and that it will take DOC some time to implement the conditions that would make it safe to comingle the 18- and 21-year-olds. The Board voted unanimously to table the variance to the next Board meeting.

The proposed rule establishing Enhanced Supervision Housing (ESH) units

Chair Campbell launched the discussion on the proposed rule with some background. He stated that the Department had originally submitted a request for a variance so that they may establish Enhanced Supervision Housing (ESH) units. Chair Campbell said that a number of Board members felt strongly that the variance request warranted a public hearing, and some thought that the request should be considered through the CAPA rulemaking process. He added that the Board also heard from many stakeholders who posited that DOC's request should go through the CAPA rulemaking process.

Chair Campbell said that he subsequently reached out to Corporation Counsel and was advised that the best course of action is to consider DOC's request through the CAPA rulemaking process. Chair Campbell stated that Corporation Counsel drafted the proposed rule based on DOC's request for the ESH variance, and that the proposed rule goes one step further in that it addresses the issue of owed punitive segregation time, a longstanding issue for the Board. Chair Campbell stated that if the Board votes to place the proposed rule into the CAPA rulemaking process, the public and interested stakeholders will have an opportunity to submit written comments and testify at a public hearing at the end of the 30-day notice period. Chair Campbell clarified that voting to place the proposed rule into the CAPA rulemaking process is not the same as adopting its provisions. He emphasized that process gives interested stakeholders the opportunity to comment and the Board the opportunity to deliberate.

Chair Campbell stated that the Board will have to consider a number of issues during this rulemaking process – issues that he discussed with both Commissioner Mary Bassett of the Department of Health and Mental Hygiene (DOHMH) and Commissioner Ponte as recently as a yesterday. Chair Campbell said that they discussed exclusion criteria including medical conditions and mental illnesses. He stated that the Board seeks the best thinking from both departments on that point. Chair Campbell also stated that the Board will also want to spend some time considering:

- the appropriate screening mechanism,
- the appropriateness of the various restrictions that are built into the proposed rule,
- a review of the procedural process for placement in and exit from the ESH unit,
- the proposed elimination of owed punitive segregation time,
- the reduction of punitive segregation sentence lengths from 90 to 30 days per infraction, and
- whether to place a cap on the number of 30-day punitive segregation sentences one may be sentenced to in a 90-day period or a six-month period

Chair Campbell stated, “By proceeding with the rule now, we will expedite the elimination of owed time and significant reduction of punitive segregation from 90 to 30 days.”

Commissioner Ponte then guided the Board through DOC's PowerPoint presentation. A printed copy of the PowerPoint slides is attached hereto as Appendix A.

Referencing one of the PowerPoint presentation slides, Judge Hamill asked Commissioner Ponte what criteria DOC uses to determine who gets placed in its maximum custody units such as the ones she visited at the Manhattan Detention Complex (MDC) and Brooklyn Detention Complex. She described them as units where inmates are largely isolated and placed in individual cells that open up into enclosed spaces surrounded by metal bars, thereby affording inmates limited opportunities for contact with others. Speaking on behalf of Commissioner Ponte, Acting Chief Martin Murphy responded:

Those are inmates who are identified as being involved in violent incidents, usually stabbings, slashings, and serious assaults on staff. They cannot comeingle with many others. There may be one or two inmates who can comeingle together, so they're placed

in a cubicle side-by-side. But, for the most part, those inmates would not do well in general population.

When asked about the isolation unit at West Facility where inmates are locked into cells with small anterooms and have limited contact with others, Acting Chief Murphy stated that those inmates were transferred to the North Infirmery Command (NIC) Main building after renovations were completed. He also said that NIC Main building and housing area 9 South at MDC are enhanced restraint housing units, and the criteria for placement there are the same as those he had described earlier.

Dr. Cohen commented that he visited 9 South at MDC last week and that the men there have limited access to programs, much like the men placed in punitive segregation at the Central Punitive Segregation Unit (CPSU). He stated that medical staff at MDC informed him that the prisoners in 9 South repeatedly miss their medical appointments because there are no DOC staff available to escort them to the clinic. Dr. Cohen also compared the access to recreation and recreation conditions at MDC with those at the CPSU. He emphasized that inmates at 9 South there because they are categorized as enhanced restraint and that they are not there to serve punitive segregation sentences.

Following a brief exchange between Dr. Cohen and Acting Chief Murphy, Commissioner Ponte continued his presentation and stated that ESH is not punitive segregation. He explained, "All inmates are out of their cells seven hours a day and have access to all programming which will come to the house for delivery." He continued, "And there will be no reduction in the services to those with mental illness."

In response to Dr. Safyer's question as to the number of people in mental observation (MO) housing, Deputy Commissioner Berliner stated that there are approximately 800 inmates there.

Commissioner Ponte continued his PowerPoint presentation and stated that DOC will reduce the cap on punitive segregation sentence lengths from 90 days to 30 days per infraction. He further stated that DOC will eliminate all punitive segregation owed time and eliminate the backlog of inmates waiting to serve their punitive segregation sentences. Commissioner Ponte also stated that DOC is also creating a "punitive segregation lite," which would give DOC staff more options. He explained:

You could go to regular segregation. You could go to segregation where you get out seven hours a day. Or, for lower charges – Grade III – you would not go to segregation at all. So there are options in the model that we currently don't have.

Commissioner Ponte stated that establishing ESH will give DOC a place "to put our real dangerous inmates quickly" to get them out of population. He stated that ESH will help DOC maintain safer and more humane correctional facilities. He went on to state that only ten percent of the inmate population commit rule infractions, and only six percent commit violent rule infractions. Commissioner Ponte explained that ESH will have 250 beds and cover approximately 2.2% of DOC's average daily population.

Responding to Judge Hamill's questions on the timing of DOC's announced reforms on reducing the use of punitive segregation, Commissioner Ponte said that the reforms are in progress. However, he went on to say that at this time DOC is hesitant to move forward on certain elements of the reform, such as the elimination of owed time, unless it is able to remove violent inmates from population. He explained:

It's not about reducing punitive segregation or reducing the number of punitive segregation beds. We have to have safe facilities. Once we have safe facilities, then we can have a pretty open conversation about how do we move forward from that point.

In response, Judge Hamill stated:

You just said that programming can wait because you have to have safe facilities. Certainly, in your best practices research, you've found that having intensive therapeutic programming available—including idleness reduction, and for all those in mental observation (MO) units something in the nature of CAPS [Clinical Alternatives to Punitive Segregation]—could help to dramatically reduce the number of incidents among those that are mentally ill. Is there a reason that has not been implemented to try to see what effort can be made to reduce the violence among the mentally ill before putting them in enhanced supervision [housing] units?

In his response, Commissioner Ponte said that the City has offered DOC funding for four additional housing units operating on a model similar to CAPS except that inmates in these units would be placed there prior to committing an infraction. He said that the first of these units will open in six weeks.

Dr. Safyer asked Commissioner Ponte to describe the predictive analytics DOC used to identify the inmates who will go into the proposed ESH. Dr. Safyer expressed concern that there ought to be a balance between sensitivity and specificity, and that it is important that people who are not prone to violence not be placed there. Commissioner Ponte responded that there are some “obvious indicators” as to who would be placed on the list for ESH:

- people who have committed violent acts, including serious assault or attempted assault,
- those who have a “propensity for violence,”
- those who may have “acted out” in the community,
- those who “may have gotten to the point of not actually committing the violent act but have the likelihood that they may.”

Commissioner Ponte conceded that the latter indicators can be subjective, which is why DOC will also look to intelligence, staff reports, and DOC's gang units to get more information on who may become violent. Commissioner Ponte emphasized that it is not enough for DOC to respond to incidents; DOC is also trying to prevent incidents from occurring.

Board member Cephas asked the Commissioner to clarify whether an inmate could be sent to segregation because DOC suspects that he may become violent, even if the inmate has not committed an act of violence. Commissioner Ponte stated that Board member Cephas is correct, and added that DOC would also consider “what the charge was, what they've done on the street, and prior history”.

Chair Campbell stated that if the Board votes to place the proposed rule into the CAPA process, it would want to look closely examine screening process during the deliberation and hear from stakeholders, including the DOC and DOHMH.

Dr. Cohen remarked that DOC's use of punitive segregation has actually increased under this current administration; the average length of stay in punitive segregation is now 15 days, an increase of one day since the start of the calendar year. Dr. Cohen expressed his concern that Commissioner Ponte has stated that he will repurpose the RHUs and use those cells to increase the punitive segregation capacity at Rikers Island. Interjecting, Commissioner Ponte stated that it is part of his response to the State Commission's concerns about the punitive segregation backlog at Rikers. The Commissioner added, “We need to respond to the backlog . . . [which is] why it wouldn't make sense to reduce cells and also try to reduce the backlog.” Dr. Cohen stated that he understands DOC's need to clear the backlog, but he is concerned

that the number of punitive segregation cells will remain the same, and that DOC is also talking about adding a new punitive segregation unit and ESH units starting with 250 beds.

Dr. Cohen asked whether DOC will close the RHUs and integrate that population into the regular solitary confinement. Commissioner Ponte responded that the RHUs have not worked well and that DOC is looking at a new model that may work better. Dr. Cohen then turned to DOHMH Commissioner Bassett and asked her to reflect on Dr. Safyer's earlier question about the validity of the prediction model concerning placement in the proposed ESH units. He also asked Commissioner Bassett to comment on Commissioner Ponte's proposal to eliminate the clearance process for people with mental illness entering solitary confinement, as Commissioner Ponte described in a letter to the State Commission.

Commissioner Bassett stated that she is not aware of the proposal to eliminate the clearance process, and that she would be happy to comment on it once she has had the opportunity to look at the letter Dr. Cohen referenced. Adding to Dr. Cohen's question, Dr. Safyer asked whether mental illness is included in the screen and whether it would trigger another review of some kind. In response, Commissioner Bassett stated that they are in discussions about the separating the assessment – the process of identifying groups of people for whom placement in solitary confinement would be inappropriate – so that the assessment is independent of the punitive process. Commissioner Bassett went on to say that the occurrence of violent events – though horrible and should not happen – is relatively rare. She stated that 88 slashings out of 11,000 inmates indicates that slashings are a relatively rare event. She added, "It is very, very difficult to predict rare events."

Chair Campbell invited other Board members to ask questions. Board member Austin stated that DOC is requesting material changes and that therefore the changes need to be considered through the rulemaking process. She further stated that while she appreciates the work that the Board has done over the last year with respect to rulemaking on punitive segregation, there are "exigent circumstances" that require the Board to "move expeditiously while thoughtfully" on the proposed ESH rule. Board member Austin moved the Board to engage put the proposed ESH rule through the CAPA process.

Judge Hamill, in response, voiced strong opposition to moving the proposed ESH rule through the CAPA process. She stated that Board members were provided copies of the proposed rules for ESH late yesterday, with no notice to her or the Chair of the other rulemaking committee. Judge Hamill went on to say that as Chair of the Adolescent Rulemaking Committee, she has for some time engaged in fact-finding meetings, reviews of draft standards prepared by Board staff, research in best practices, and discussions, in an open, transparent, deliberative process. She also stated that the Chair and Executive Director declined to submit the piecemeal rules she has been proposing over the past six months on the ground that CAPA requires certifications from the Mayor's Office of Operations and Corporation Counsel. Judge Hamill asserted that "this will be a grave injustice to the work of this Board and to the people of the City of New York to consider these proposed rules alone, to start the CAPA process" on the proposed ESH rule independent of the rulemaking on solitary confinement that is already in progress.

Judge Hamill also expressed concern that the proposed rule does not address the "substantial questions of exclusion of vulnerable groups, including young adults, the mentally ill, the physically disabled, due process, [and] programming." She stated that these issues must be addressed first, and that it is not her experience that they will be properly addressed once CAPA starts. She stated that the rules should have been inclusive, and that the process is flawed. She went on to say, "It is nothing short of sandbagging the Board of Correction, which is meant to be an independent oversight and regulatory authority." Judge Hamill emphasized that the Board has fiduciary responsibilities to the City of New York and its people, and that she is concerned that the Board's actions may constitute a breach of office that she has sworn to uphold. She subsequently moved the Board to table the proposed rule.

Board member Austin responded that her experience has been that when rules are put into CAPA, it is possible to have a “thoughtful, deliberate exchange and discussion.” She emphasized that it is not clear to her what the Board would lose by moving the proposed ESH rule through the CAPA process, apart from “moving as expeditiously as we can to address what is a mounting, serious issue.”

Board member Cephas sought confirmation that the Board would be at liberty to deliberate on the proposed rule, conduct research, and input additional language before adopting it as the final rule. Board member Cephas stated that he would support the motion to move the proposed rule through the CAPA process if the Board retrains that liberty. Board member Berman also wanted confirmation that the Board is not being asked to “explicitly endorse the language as proposed.”

Chair Campbell stated that Board members Cephas and Berman are correct and deferred to Ms. Masters for additional comments. Ms. Masters stated that they are correct that the language in the proposed rule need not be the same as that which will be included in the final rule. She explained that there will be an opportunity for the public to submit written comments and testify at the hearing, and that the Board will have opportunities after the hearing to discuss among themselves the statements that were given and what changes, if any, should be made to the proposed language.

Dr. Safyer sought confirmation that the proposed rule is only provisional and that it can be modified by the Board based on its prior work and future deliberations. Chair Campbell stated that he is correct.

Dr. Cohen opposed moving the proposed ESH rule through the CAPA process. He stated:

For 30 years, I have watched the Board of Correction and have participated in the process of developing standards and developing rules. And this has always been a deliberate and careful process in which the members of the Board recognized that they have a grave responsibility . . . that the Minimum Standards of the Board of Correction set a floor—a moral and political floor—to protect our citizens.

He stated that he was involved in the Board’s rulemaking process regarding mental health services, when he was a Montefiore Medical Center employee working on Rikers. Dr. Cohen added that it took years to establish those rules, and yet at 6 PM last night—the night before the Board meeting—he was provided a set of proposed rules which the Board has not had the opportunity to analyze. Dr. Cohen stated that proceeding in this manner would “discard a year’s worth of” work by the Board on rulemaking on solitary confinement.

Dr. Cohen urged the Board to table the resolution. He went on to state that the Board has been presented a proposed rule that is too broad and that it requires careful deliberation. He also stated that the Board and CAPA process are not nimble, and it is not easy—despite what some have suggested—to make changes to the rules once they have entered the CAPA process. He stated, “We should not be tampering with the Minimum Standards at this point in this way, and I would really urge the Board to table this resolution.” He went on to say that there is no emergency or exigent circumstances that would require the Board to move as quickly as it is asked to do now. He explained that DOC had initially requested a variance for ESH housing in July, later withdrew it, and resubmitted the request in October, with no communication between the Board and DOC during the intervening months on this matter.

Dr. Cohen proposed another option: the Board could adopt a rule allowing it to consider through a variance-like process DOC proposals. He explained that DOC can request variances, as the need arises, to put into practice best practices for a limited period, tell the Board why it is a good idea, how it will measure its efficacy, and later come to the Board and explain that it worked or did not work.

Chair Campbell clarified that the Board's work on rulemaking on punitive segregation will continue because the proposed ESH rule before the Board at this meeting is narrower in scope.

Judge Hamill stated that if the Board does not vote to table proposed rule, she would move the Board to amend Board member Austin's motion to include adoption by the Board of Correction of the Jails Action Coalition's (JAC) petition, with its detailed proposed rules and the law supporting their proposed rules. Judge Hamill explained that the petition by JAC essentially supports the extensive work that the Board has done on rulemaking on the issue of solitary confinement. Judge Hamill further stated that including their petition in the rulemaking process would allow the Board and the public to consider it as a whole.

Chair Campbell put to a vote Judge Hamill's motion to table the proposed ESH rule. With only two votes, the first motion failed. Chair Campbell next put to a vote Board member Austin's motion to put the proposed ESH rule into the CAPA process. The second motion passed. After some discussion, Chair Campbell put to a vote Judge Hamill's motion to add the JAC petition, which they received this morning, into the CAPA process. With only three votes, the third motion failed.

Requests from DOC for continuing variances

Ms. Masters stated that the first of several variance requests from DOC is for a variance from Minimum Standard § 1-02 which relates to classification of prisoners. She said that the variance was originally granted in 1989 and it has been reapproved by the Board since that time. Ms. Masters stated that it allows DOC to house together adolescents who are sentenced and those who are pre-trial detainees, provided that sentenced prisoners are given the same rights as pre-trial detainees. Ms. Masters explained that it was originally granted due to space constraints and that DOC has asked for renewal of the variance. No Board member moved to support the variance and the first variance request failed.

Ms. Masters described the second request as another variance from Minimum Standard § 1-02. In place since 2009, it allows DOC to comingle adolescent and adult detainees at RMSC who are pregnant. She explained that the Minimum Standards would normally prohibit the comingling of adolescents and adults, but this variance was granted in 2009 on the notion that housing these women together would help DOC limit their access to contagious diseases, and to facilitate provision of an appropriate diet and pre-natal care. Ms. Masters stated that she has discussed with DOC's General Counsel a possible conflict, now that the Prison Rape Elimination Act (PREA) regulations have come out, and they prohibit comingling of adults and adolescents in housing areas. She stated that she asked General Counsel to consider whether they are seeking renewal of the variance. Ms. Masters stated that while DOC's intent is a good and that the variance seems to have been working for them, it does violate federal and state laws prohibiting comingling. Ms. Masters recommended that the Board enquire of DOC the number of young women affected and whether it is possible for DOC to come up with an alternative way to protect their health. Deputy Commissioner Berliner responded that he is fairly certain that two women are affected, but he will have to confirm that. Judge Hamill subsequently moved the Board to terminate the variance effective today. The motion passed and the variance was terminated effective immediately.

Ms. Masters stated that the third continuing variance request was one that the Board had already discussed earlier in the meeting, concerning the 18- to 21-year-old cohort, which the Board tabled.

Ms. Masters stated that the fourth request is for a variance from Minimum Standard § 1-03 concerning personal hygiene. She explained that the variance, which has been in place since 1991, allows DOC to put detainees who are in punitive segregation in uniforms. She stated that the variance is designed to help DOC control violence in punitive segregation by reducing the number of places a person can hide objects in their clothes. Ms. Masters explained that the Board requires that their jumpsuits be laundered appropriately and that prisoners be given their street clothes every time they go to court.

Interjecting, Judge Hamill asked whether the Board's practice of continuing variances for as long as this one – since 1991 – is consistent with the Board's own rules on variances. She further asked whether the request is being considered for a rule change and the CAPA rulemaking process that the Board is engaging in now. Ms. Masters responded that Judge Hamill raises a good point, and stated, "The difference between wearing your street clothes and wearing a uniform is the sort of thing that may not meet the threshold of being something that [DOC] cannot accomplish, if the issue is that you do not use the variance process unless it is something that you cannot accomplish." Board member Regan moved the Board to continue the variance. The motion passed and the variance was continued.

Ms. Masters stated that the fifth request is also for a variance from Minimum Standard § 1-03 which pertains to personal hygiene. She explained that this variance has been in place since 2003, a time when there were a number of troubling suicides, when inmates used their bed sheets to create nooses and harm themselves. Ms. Masters stated that the variance allows DOC to place inmates on suicide watch in a special suicide smock that cannot be turned into a noose. It also permits DOC to use special bedding that cannot be fashioned into a noose. Ms. Masters explained that the purpose of the variance is to protect the health and wellbeing of inmates. Board member Regan moved the Board to continue the variance. The motion passed and the variance was continued.

Ms. Masters said that the sixth request is for a variance from Minimum Standard § 1-04 which relates to overcrowding. She stated that the variance allows for some dorm housing to have increased capacity beyond what is allowed under the Minimum Standards. Ms. Masters stated that it allows DOC to house up to 60 inmates per dorm at EMTC, MDC, and OBCC. It also allows dorms at VCBC—the boat in the Bronx—to house up to 55 inmates. She reported that the Board initially granted the variance in 2004, and that variances covered all four facilities by 2005. Ms. Masters explained that the variance was initially granted at a time when the prisoner census was higher. Ms. Masters further explained that the census now is approximately 10,976, and approximately 80% of the cells in the system are in use. Ms. Masters then asked the Board to consider whether this variance continues to be necessary, and whether the facilities are using the variance. Chair Campbell invited DOC to respond.

Acting Chief Murphy stated that the variance is currently in use. Dr. Cohen remarked that the Board has not received any information from DOC explaining why the variance is necessary now, given that there is more space on Rikers Island. He also cited the risk of violence when there is a smaller correction officer-to-prisoner ratio. Dr. Cohen went on to say that the Board should not approve the request, and that it can reconsider the request if DOC provides the Board information as to why the variance is critical. Board member Regan stated that he agrees with Dr. Cohen and added that there were extraordinary circumstances in 2004 and 2005. The Board voted to deny this request for the continuing variance.

Ms. Masters stated that the seventh request is for a variance from Minimum Standard § 1-06 which relates to recreation. She stated that it allows for limited indoor recreation for inmates who are in the Communicable Diseases Units (CDU) at the West Facility, and explained that they are there because they are too sick to be among others. She stated that this variance has been in place since 1992, and it allows DOC to provide these prisoners indoor recreational activities such as arts and crafts. Board member Regan moved to approve the continuing variance. The motion passed and the variance was continued.

The eighth request was for a variance from Minimum Standard § 1-09 which requires DOC to allow inmates at least two evening visits during weekdays. Ms. Masters said that this is a Thanksgiving variance that the Board grants every year, and it allows DOC to conduct visits on Thanksgiving Day on a day schedule rather than evening schedule. She explained that its purpose is to encourage and facilitate visits between inmates and their family and friends. Board member Berman moved the Board to approve the variance. The motion passed and the variance was continued.

Multi-day lockdown at GRVC

Chair Campbell reported that GRVC was locked down from October 6th through October 10th, and that Board granted DOC an emergency variance from October 9th to the 10th. He stated that Board has raised a number of concerns about the lockdown and has repeatedly requested information on which mandated services were provided in each housing area. Chair Campbell stated that the Board has received limited information from DOC. He then asked the Commissioner to respond.

Commissioner Ponte stated that DOC has looked at it, and that one of the problems is that DOC does not collect information “in this manner.” Commissioner Ponte went on to say that one of the things DOC looked at was medication compliance for those inmates on medication. Deputy Commissioner Berliner stated that medication compliance was in line with normal rates.

In response to Dr. Cohen’s subsequent question about sick call, a mandated service, Deputy Commissioner Berliner confirmed that sick call was afforded to prisoners during the lock down. Seeking clarification, Dr. Cohen asked, “People signed up for sick call and they were taken to sick call?” Deputy Commissioner Berliner responded that DOC did not afford “normal sick call” due to the lockdown, but they did have emergency sick call and sick call for those who required certain types of care.

Directing his statement at DOC, Dr. Cohen stated that an emergency variance is premised on the importance of providing services, and yet DOC’s request for the emergency variance did not cover most of the days that the facility was on lockdown. Dr. Cohen went on to say that Board staff have reported that people did not get sick call. He then turned to DOHMH. Dr. Elizabeth Ford, the Executive Director of Mental Health, confirmed that there were disruptions to sick call, and that no mental health programming was afforded in the way that they would usually prefer, especially in the RHUs.

Dr. Cohen stated that DOC is supposed to notify the Board when they are going to lock down a housing area for 24 hours and not provide mental health or medical care services. He stated that DOC’s position is that inmates are locked down from 9 PM to 5 AM anyway, so even if the facility is locked down from 5 AM to 9 PM, it is still less than 24 hours. Dr. Cohen stated that this is an area where further discussion is warranted. Chair Campbell stated that he agrees with Dr. Cohen, and added that he hopes that DOC will soon provide the Board the same lockdown reports that the Commissioner and his staff receive. Commissioner Ponte stated that DOC does not track information, and has not kept information like that. He stated that they will begin to collect that information on what services were provided during lockdowns, and DOC will provide them to the Board in the future.

GRVC 12 Main

Chair Campbell moved the discussion to GRVC 12 Main. He stated that 12 Main is a housing area located inside GRVC’s clinic, and that inmates there are in punitive segregation and have serious mental illness (SMI). He reported that inmates there have little access to services. He added that the unit experienced a large number of fires started by inmates, and that the fires seriously affected the health of clinic staff and rendered the clinic intermittently inaccessible to others at GRVC. Chair Campbell went on to say that while he understands that most of the nine SMI inmates have been relocated, the Board is concerned that 12 Main may be repurposed. He asked Commissioner Ponte to respond.

Commissioner Ponte said that everyone agrees that 12 Main did not work. He went on to say that all but one inmate in 12 Main has been transferred elsewhere, and that the one inmate still there will be moved. Deputy Commissioner Berliner added that DOC worked with DOHMH to find an appropriate placement

for all of the inmates housed at 12 Main. He went on to say that the transfers have been successful and that the one inmate who is still there now should be moved no later than tomorrow.

Dr. Cohen stated that he and Ms. Masters visited 12 Main recently, and that it was a terrible, dangerous place. He said that there were fires there every day or every other day. He went on to say:

There were people in there serving thousands of days of solitary confinement. There were excessive uses of force and extractions. I just want to compliment the Department of Health for its consistent efforts to try to close this unit down. Corizon staff also publicly and personally asked that this situation be ended; they could not provide mental health services in this area.

But it should be known that when I began on the Board in 2009, 12 Main was 12 Main. It was the same horrible place that it is now – that it was till last week. It was shut down when Board members [went] there and said this is a bad place, and it was repurposed again; it was closed down and then it was set up again. [There] should be some process involved where the Department remembers its history and does not set up another horror show like 12 Main.

Recent inmate deaths

Chair Campbell moved to the next agenda item and turned to Ms. Masters. Ms. Masters stated that the Board would like to ask DOC and DOHMH questions about two inmate deaths that occurred in October. She stated that one was a 53-year-old man who had not been in DOC custody very long, and the other was 24 years old. She said that both deaths raised some questions about the policies on providing first aid and CPR to inmates, and the procedures for getting inmates to medical care quickly.

Commissioner Ponte requested that the discussion be moved into executive session because they involve ongoing investigations.

Interjecting, Judge Hamill moved the Board to amend the by-laws of the Board of Correction so that the Board meets monthly, as it has in the past, not bimonthly. She explained that the Board is dealing with many issues, such as the DOJ investigation and report, escalating violence, the proposed ESH and the CAPA process, DOI report, and deaths that raise serious concerns. She stated, “To be able to carry out our oversight and regulatory authority, a monthly public meeting where these issues can be aired and discussed among the Board is necessary.” Chair Campbell responded that the Board members should discuss the request and bring the issue back at the next Board meeting. The motion did not pass, with only three Board members voting in favor of it. Chair Campbell stated that the motion did not fail, and that the Board will seriously consider it at its January meeting.

Returning to the subject of inmate deaths, Dr. Cohen stated that the concerns about the availability of CPR to inmates is not new, and asked whether DOC or DOHMH has taken any action to review CPR training and emergency notifications. He also asked whether any staff have been counseled subsequent to these deaths, and whether the lack of access to CPR was raised. Dr. Zachary Rosner, the Deputy Medical Director of Correctional Health stated:

We have a robust internal morbidity and mortality review that is ongoing at the Department of Health. Often, findings come out of this process. Our meeting is Friday. And we work with Department of Correction to address any issues that come up within the Department of Correction protocols. We do have concerns about the CPR as well,

and there's regular training that occurs with the Department of Correction. And we'll continue to work with them on that.

The public comment period may be viewed in full at www.nyc.gov/boc. Written public comments provided to Board staff are attached hereto as appendix items.

The public portion of the Board meeting concluded at 12:04 PM, and the Board entered executive session.

Appendices:

- A. DOC PowerPoint presentation
- B. Written public comments