

# Correction Officers' Benevolent Association, Inc.

"Patrolling the Toughest Precincts in New York"



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President

December 17, 2014

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Dear Chairman Campbell and Members of the Board:

**WILLIAM VALENTIN**  
Corresponding Secretary

The Correction Officers' Benevolent Association (COBA) represents approximately 9,000 men and women who are on the front lines of the current debate on jail reform. Along with infracting inmates and their fellow inmate victims, Correction Officers have the most to lose or gain from meaningful reforms to enhance safety for all in a system that we all agree is broken.

**KAREN BELFIELD**  
Recording Secretary

**BENNY BOSCIO**  
Sergeant-At-Arms

To date, the Correction Officers Benevolent Association (COBA) has not gone on the record with the Board of Correction (BOC) concerning changes to minimum standards which has been discussed for over a year. It is evident from the many comments made in this process that no accurate representation of Punitive Segregation – which is *not* solitary confinement — has actually been discussed.

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As stated in his support for the Enhanced Supervision Housing (ESH), former Commissioner Horn highlights this distinction:

**BISHOP WILLIAM  
RAYMOND WHITAKER II**  
Chaplain

**DR. JOHN MCCANN**  
Stress Management

**VINCENT COPPOLA**  
Retiree Consultant

**KOEHLER & ISAACS, LLP**  
COBA Attorney

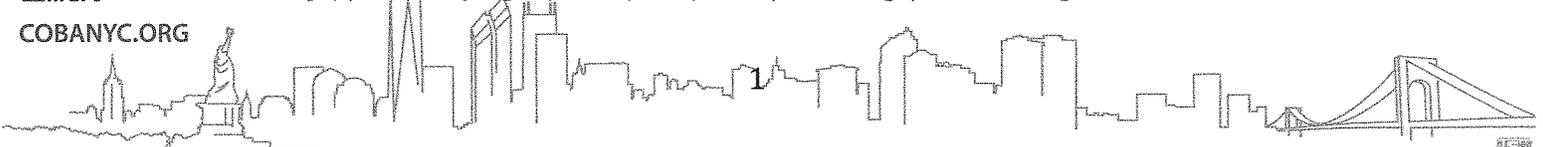
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<sup>1</sup> Submission by former Commissioner Horn, page 3, last accessed on December 17, 2014, [http://www.nyc.gov/html/boc/html/meetings/RuleChanges\\_2015.shtml](http://www.nyc.gov/html/boc/html/meetings/RuleChanges_2015.shtml)

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Unlike the informed perspective of Martin Horn, the public view is informed by how super max prisons (not jails) are represented in the media, in movies and on television. The public view of inmates is also highly academic – with arguments that hardened recidivist violent offenders who happen to be under 25 – some as young as 16 -- ought to be set apart and protected as if they could be redeemed by special treatment in their short term stay in the Department of Correction (DOC) system (with an average of 57 days).

The Correction Officers Benevolent Association (COBA) now submits this letter in support of most of changes to the Board of Correction (BOC) minimum standards proposed by the New York City Department of Correction (DOC). As was succinctly stated in testimony before the Board by Commissioner Ponte, Enhanced Supervision Housing (ESH) is necessary in reforming punitive segregation. Any reservations that the Correction Officers Benevolent Association (COBA) may have about the current proposal concern the details of this shift away from “punitive segregation” as a “go to” tool with the violent and unruly. It is an effective tool, even if perceived as antiquated or over-used. This said, the Correction Officers Benevolent Association (COBA) is in overall support of the Department of Correction’s (DOC) proposal and the Commissioner and Mayor’s goals of sharply curbing the use of punitive segregation.

The goal of Enhanced Supervision Housing (ESH) is to increase safety for staff and inmates. It comes as no surprise to the Correction Officers Benevolent Association (COBA) and its members that a very small percentage of predatory individuals (as reported by the DOC) are responsible for the most heinous crimes committed within the jails, as well as the recidivism rate of this population. More than recalcitrant, these violent and disruptive inmates pose an enhanced threat to safety and security when in the custody of the Department of Correction (DOC). Many of these are gang leaders and members. Regardless of age, these inmates engage in behavior that cannot be, and has not been, altered by their many stays at Rikers. Nor has their behavior changed in the streets of New York- which is why they end up back in the custody of the Department of Correction (DOC).

The Department of Correction (DOC) is under a legal obligation to take reasonable measures to protect inmates from violence. Violent inmates exist. And they must be controlled by separation, restricted movement and limited access to inmates and staff. As is stated by former Department of Correction (DOC) Commissioner Martin Horn in his letter supporting the DOC proposal:

The City has a duty to protect prisoners from others who would harm them. This is as true with respect to harm from

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other prisoners as harm at the hands of staff. Both are to be avoided. The unfortunate reality of jails is that they house primarily young men, for long times, and with nothing to do all day. And these young men bring with them into the jail the same gang associations and bullying behaviors they experienced and participated in on the street<sup>2</sup>.

Backing former Commissioner Horn's statement, the United States Supreme Court has ruled that if jail officials know of a substantial risk of harm to an inmate but knowingly disregard the risk by failing to take reasonable measures to abate it, and the prisoner or inmate suffers serious harm, the officials may be found liable for the harm.<sup>3</sup> The Supreme Court has ruled that officials have a duty to take reasonable measures to protect inmates from violence. Indeed, federal courts in New York have squarely addressed this in the DOC and at Rikers<sup>4</sup>. Frankly, the voiceless majority of inmates who cause no trouble while at Rikers would be first to applaud this move to isolate this violent element - so ironically reviled by the Legal Aid Union representing the attorneys who represent inmates in their criminal cases<sup>5</sup>.

However, the Correction Officers Benevolent Association (COBA) has concerns about suddenly expunging time owed by returning inmates, recalibrating the "penalty matrix," and automatically reducing the maximum time for serving segregation time from 90 to 30 days. These changes taken together will destabilize

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<sup>2</sup> Letter to BOC Chair Campbell by Martin F. Horn, dated December 11, 2014, last accessed on December 17, 2014 at [http://www.nyc.gov/html/boc/downloads/pdf/Variance\\_Comments/RuleMaking\\_201412/Proposed%20Rule%20Change%20to%20permit%20Enhanced%20Supervision%20Housing.pdf](http://www.nyc.gov/html/boc/downloads/pdf/Variance_Comments/RuleMaking_201412/Proposed%20Rule%20Change%20to%20permit%20Enhanced%20Supervision%20Housing.pdf)

<sup>3</sup> Farmer v. Brennan, 511 U.S. 825, 842 (1994) (deliberate indifference and prisoner rape).

<sup>4</sup> Shuford v. City of New York, 09 Civ. 0945 (PKC)(SDNY)(failure to protect adolescent inmate from other inmates), last accessed on December 16, 2014 at <http://www.legal-aid.org/en/lawreform/lawreform/prisonersrightsproject/activecases/violenceandpersonalsafety/shufordvcityofnewyork.aspx> and Fisher v. Koehler, 83 Civ. 2128 (MEL)(SDNY)(spurred suit where Court identified, *inter alia*, lack of proper classification of prisoners and adequate security staffing caused inmate on inmate violence) at <http://www.legal-aid.org/en/lawreform/lawreform/prisonersrightsproject/activecases/violenceandpersonalsafety/fishervkoehler.aspx>

<sup>5</sup> See Letter dated December 8, 2014 from Deborah L. Wright, President of the Association of Legal Aid Attorneys, UAW 2325 (AFL-CIO), last accessed on December 16, 2014 at <http://www.nyc.gov/html/boc/html/home/home.shtml>.

expectations of an already demoralized workforce. The current atmosphere in the jails is one of impunity- inmates do as they will. All “stakeholders” agree that Rikers is more violent than it has ever been. Those inmates who fling feces at staff – uniformed and civilian – are rarely re-arrested and prosecuted by the Bronx District Attorney. The same is true of actual physical assaults on staff. The perpetrators rarely answer for these felonies.

In recent local demonstrations concerning the death of Eric Garner, demos supported by the administration and many City Council members, some protesters expressed outrage by assaulting law enforcement officers. These individuals were swiftly arrested and prosecuted<sup>6</sup>. This is how order is maintained in civil society – as it should be in jails. But these assaults happen *every single day* to Correction Officers. While our society cannot abide by what was caught on video in the case of a member of the New York City Police Department, this same “society” seems to have no problem ignoring the same behavior when it comes to inmate attacks on Correction Officers.

Because of this, the Correction Officers Benevolent Association (COBA) is fundamentally opposed to expunging “time due” by violent offenders who *again* return to the Department of Correction (DOC) system. The violent “frequent flyers” that are in the custody of the Department of Correction (DOC) year in and year out do not deserve a “pass” for their past transgressions that landed staff in a hospital ward. As for the other proposed disciplinary changes, and alternate sanctions, these must only be implemented with a *guarantee* that the New York City’s prosecutors – especially the Bronx District Attorney – prioritize the prosecution of attacks on law enforcement officers no matter what beat they walk – in a neighborhood or in a housing unit. Otherwise, the current increased rate of violence will be met by the same jaundiced sense of impunity as now exists. Inmate lawsuits have ballooned over the past few years (and costs to the City), and this comes in tandem with the empowered feeling of impunity when they attack inmates and staff alike at will.

The Correction Officers Benevolent Association (COBA) is encouraging the Board of Correction (BOC) to not only implement rules (or pass variances) requested by the Department of Correction (DOC), but also proposes or allows the DOC to implement rules that will make the Enhanced Supervision Housing (ESH) more effective. First and foremost: eliminate rotating tours of duty (the wheel). Steady tours and posts given to correction staff have been proven to be a best practice in other jurisdictions. Housing areas/units that have steady personnel assigned to them show a decrease in violence as well as better results for the inmates. This is true in all housing categories, but especially so with problem populations such as will be housed in Enhanced Supervision Housing (ESH). The

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<sup>6</sup> See Daily News Article dated December 12, 2014, last accessed on December 16, 2014 at <http://www.nydailynews.com/new-york/nyc-crime/nypd-deputy-inspector-punched-eric-garner-protester-article-1.2043158>.

Correction Officers Benevolent Association (COBA) respectfully requests that the Department of Correction (DOC) be made to follow the current law in the elimination of rotating tours of duty-- "wheeling" of personnel --in this unit. A three (3) platoon system must be implemented as it is required by law<sup>7</sup>. This would mean that Correction Officers should be assigned on a 5x2 work schedule (five days working and two off) as opposed to a 4x2 work schedule with no rotating tours of duty (the wheel)<sup>8</sup>.

In 1939, over the objection of then-Mayor LaGuardia, the New York City Council established rotating tours of duty (the wheel) for Correction Officers<sup>9</sup>. The City Council made it illegal for the Correction Commissioner to not have a system of rotating tours of duty (the wheel). The City Council believed that rotating tours of duty (the wheel) were the only way to fairly distribute the burden of a 24-hour schedule between employees. If the Correction Commissioner did not have a wheel schedule, he or she could be removed from office.

Mayor LaGuardia opposed the establishment of the rotating tours of duty (the wheel). He stated that the plan was "unworkable," and could not "be made to work without affecting the efficiency of our institutions to the point where the interests of the community are seriously impaired."<sup>10</sup> Mayor LaGuardia stated, "discretion must be left to the Commissioner or the Warden having the responsibility" in order to address scheduling needs<sup>11</sup>.

Almost 70 years later, after trial and error proved the failings of the wheel - tour system, COBA's President submitted this self-evident statement to the City Council: "working the wheel is very stressful, physically draining and antiquated." Norman Seabrook only echoed what the federal government (OSHA) has recognized as an occupational danger - shift fatigue <sup>12</sup>.

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<sup>7</sup> New York City Administrative Code § 9-116.

<sup>8</sup> See "Tour of Duty" last accessed December 16, 2014 at [http://en.wikipedia.org/wiki/New\\_York\\_City\\_Department\\_of\\_Correction](http://en.wikipedia.org/wiki/New_York_City_Department_of_Correction)

<sup>9</sup> See Committee Report last accessed December 16, 2014 at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=446076&GUID=8E996347-0D20-4EAF-B885-047862F8F76A&Options=ID|Text|&Search=9-116>

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> See OSHA FAQ, last accessed December 17, 2014 at [https://www.osha.gov/OshDoc/data/Hurricane\\_Facts/faq\\_longhours.html](https://www.osha.gov/OshDoc/data/Hurricane_Facts/faq_longhours.html)

Eight years ago, COBA, the City Council and Mayor Michael Bloomberg and then DOC Commissioner Martin Horn<sup>13</sup> had the foresight to see that rotating tours of duty (the wheel), did not work. In 2006, Mayor Michael Bloomberg and the City Council amended the Administrative Code of the City of New York in relation to the DOC's three-(3) platoon system. The Bloomberg administration repealed subdivision E of section 9-116 which would permit removal of the Correction Commissioner for having failed to install a system of rotating tours of duty (the wheel). However this change in the law has not been followed by a change in operations at the DOC.

These legislative measures were meant to do away with the wheel but Horn's departure from the Department of Correction (DOC) in 2009 put an end to retiring this antiquated scheduling practice. Bloomberg's appointee, Dr. Dora Schriro never implemented the changes agreed to by former Commissioner Horn. Now in 2014, 75 years after LaGuardia's prescience, the Department of Correction still has not ended rotating tours of duty (the wheel) in the face of best practices implemented in other Correction agencies throughout the country.

The three (3) platoon system is used throughout the country as standard "best practice" in Corrections. Correction Officers are assigned to steady tours of duty and therefore do not suffer from "shift fatigue"<sup>14</sup>, are not disoriented, and are more focused. As an example taken from the many comments made during Board of Correction meetings, the San Francisco Deputy Sheriffs have no rotating tours of duty in the jails as do Correction Officers in New York City. The steady tours of San Francisco Deputy Sheriffs not only stabilize their expectations, but those of inmates they interact with daily.

When inmates have the same Correction Officers to deal with throughout their incarceration, it eliminates the unnecessary adjustment to different personalities and ways of doing things. Steady tours and posts provide stability and consistency for all. It is a proven fact that jails run more efficiently in areas where there is steady personnel. Correction staff will be better able to understand the inmate population in Enhanced Supervision Housing by having consistent schedules. They can build relationships and trust with the population under their care, and have knowledge of particular inmates and his/her triggers. Having consistent staffing, both uniform and civilian, would allow the Department of

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<sup>13</sup> COBA notes that the submission by former Commissioner Horn, last accessed on December 17, 2014, fully supports the Enhanced Supervision Housing- See [http://www.nyc.gov/html/boc/html/meetings/RuleChanges\\_2015.shtml](http://www.nyc.gov/html/boc/html/meetings/RuleChanges_2015.shtml)

<sup>14</sup> See Sleep Disorders, Work Shifts and Officer Wellness, by Beth Pearsall last accessed on December 16, 2014 at <http://www.nij.gov/journals/270/Pages/officer-wellness.aspx>.

Correction (DOC) to better provide care, custody and control of a population that requires constant watch and overall treatment, and build a stronger and more suitable partnership in assisting the inmates in Enhanced Supervision Housing (ESH).

In conjunction with “steady” tours, Enhanced Supervision Housing (ESH) units should reflect the practice experienced by inmates in San Francisco jails. In a recent visit by COBA members to that jurisdiction, at the suggestion of Board member Hon. Bryanne Hamill, we saw that program staff, clinical psychiatrists and psychologists, nurses, doctors and corrections professionals all worked the same tours over extended periods of time and thus made for a cohesive team. The benefits of managing the expectations of inmates and staff together, ensuring consistency in such settings, has tangible benefits on even the most unruly inmates that have been proven time and again.

The Correction Officers Benevolent Association (COBA) is also requesting that the Department of Correction (DOC) be required to not only ensure that the Department of Health and Mental Hygiene share information with line staff, but also develop and install a computerized system that allows the Correction staff to have real time access to all pertinent data on the inmates assigned to the Enhanced Supervision Housing (ESH). Again, the DOC’s traditional approach to segregating information from its staff has fallen behind best practices – leading to unfortunate results for inmates and staff alike.

One final note concerns training. Mayor Bill DeBlasio recently announced an “Action Plan” with sweeping set of changes to the criminal justice system. In the section concerning “Jail” his Action Plan states a laudable goal: “Reducing violence is the overarching goal to enhance safety for both staff and inmates, and addressing the treatment of this population is a key piece of that strategy.” However while the Mayor has announced spending of 35 million dollars to retrain 22,000 Police Officers to deal with the *possibility* of meeting up with mentally ill citizens in the street, nothing has been said about retraining (or, rather, properly training) the men and women who *actually* deal with the most concentrated number of mentally ill citizens in all of New York City – Correction Officers. The suggestion that eight (8) additional hours of training is sufficient is laughable, and dangerously so. Crisis Intervention Training (CIT) should be implemented for ALL Correction Officers who may come into contact with an undiagnosed inmate with mental health issues. This must be implemented immediately regardless of the adoption or disapproval of the current rule proposed by the Department of Correction. The fact is that the well-meaning medical staff working side by side with Correction Officers, at times misdiagnose inmates. This has lead to tragedies that could be averted. Without meaningful and immersive training for Correction Officers, such tragedies will be repeated through no fault of a workforce being tasked with care, custody and control of inmates with a variety of mental health indications.

On behalf of the nearly 9,000 men and women of the Correction Officers Benevolent Association (COBA), we urge the Board of Corrections (BOC) to approve the current proposed rule by the Department of Correction (DOC) in order to support the Mayor's initiative to enhance safety for both inmates and staff in this nation's second largest jail system.

Very truly yours,

Elias Husamudeen  
First Vice President